General Principles of Legal Research

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Over the roughly 40 years that I have been teaching legal research, I have seen a number of approaches come and go. When I began, the emphasis on the teaching of sources or research tools held almost universal sway. Scavenger hunt assignments were very popular and caused chaos at my school as the undergraduate shelvers were unable to keep up with the numbers of displaced volumes in the days before Lexis and Westlaw were in everyday use. Eventually, research methodology began to attract interest and found its way into the classroom. Over the years, I have tried any number of approaches to try to enliven what can be a dry and difficult area of instruction.

For the past decade, I’ve taught a mandatory research course for second-year students. This builds upon and reinforces the research instruction they received in their first-year legal writing course. As it currently stands, most of my weekly lessons begin with a 30- or 40-minute lecture interspersed with questions addressed to the students, followed by a short 20-minute in-class exercise. Complementing this are five lengthy outside assignments spread across the semester.

Throughout all of my lectures, I find ways to interject what I am calling the “general principles of legal research.” These are a collection of core observations on the topic. Think of these along the lines of mathematical axioms or the Ten Commandments for legal research, except that I have identified many more than 10. Some of these are just common sense, many come from years of experience, and a few derive from making or watching others’ mistakes. One or two of these “principles” were stolen from other
librarians—acknowledgements will be forthcoming—and a couple originated from my students as the result of exercises I assigned. I don’t claim to have a complete list, and the list presented here leaves out several items for the sake of brevity. I’m sure dozens more could be added.

On the first day of class, each student gets a list of the “principles” along with a simple explanation of the importance I place on them and notice that they will hear about them over and over. Whenever I mention one of these in class, I make sure to tell the students that this is one of the items from their list, and that way I keep calling attention to it.

Do the principles help the student to become a better researcher? Without some sort of extensive testing, there is no way to know for sure. Anecdotally I have noticed that at least some of this has been retained by those students who are enrolled in the second of the courses I teach, Advanced Legal Research. Repeatedly, I find evidence incorporated into the research strategies of their final project that reflect some of these concepts.

Following are about two dozen of the “principles” from my personal list of about 40. I have annotated each of them with comments explaining them in greater detail. My hope is that both new and experienced legal research instructors might find of interest in my approach.

**Take detailed notes so you do not have to retrace your steps.**
**You should always date your notes**

It’s not unusual to start a research project and be swept away by the number of sources that you consult and the amount of information that you find. One thing leads to another, and after a few hours things start to become hazy, and it’s not clear where you originally read something. Taking notes will trace a path for you and provide summaries of all of the crucial information discovered. It will allow you to accurately revisit a text when needed. Because not all research is put to immediate use, dating your notes will allow you to pick up where you left off months or even years later and to determine when it’s time to revalidate your primary sources. This principle is derived from the many instances where students have approached the library reference desk with a question, usually derived from a work assignment, and are responding from a faulty memory.

**Start your research with secondary sources**

If you are researching in an unfamiliar area of the law, secondary sources are helpful in a number of ways. They will provide you with background information, tipping you off as to whether this is a federal, state, or local issue. The footnotes are a great place to start to hunt for primary sources. Finally, they often clue you in to the “terms of art” used in this particular
legal arena. This has immediate relevance for students in law school. I tell them that once they are in practice, many of them will work in a few concentrated areas of the law and will be aware of the major sources of authority along with the vocabulary used in these specialties.

Find someone who has done the work for you

Anyone who has ever been involved with teaching legal research knows that this statement originated with Bob Berring, the founding father of modern-day research instruction. In simplest terms, recognize that others have trod this path before you and seek their help. This can be delivered in the form of advice from a colleague or an ALR annotation. Both in law school and in practice, time management is important—don’t reinvent the wheel. Students often do not realize that law firms and law offices in other institutions will have mechanisms for retaining work product for future reference and possible reuse.

The key to researching a new area of law is to learn the terms of art that are used to describe this area or concept

Ten minutes with almost any law text will demonstrate that there is a unique language at play. Many terms and concepts work across the legal spectrum, but almost every niche has its own specific vocabulary. Now that so much research is done online, one of the keys to successful searching is being aware of those specific terms of art that an author is almost certain to use in discussing an issue. Secondary sources are a great place to learn the language. I give my students a problem to work on involving the concept of “bailment.” This is an area they did not cover in their first year of law school, and rarely has anyone in the class heard of this term. On Lexis or Westlaw they all flounder because it’s difficult to describe the concept of bailment with everyday words; they need to know the term of art. I want them to fail in this exercise so that they get the point I’m making.

When searching or working with an index, move from the specific to the general

Many research tools are designed to flood you with information under the assumption that everything relevant will be in your results somewhere, and you can use filters to uncover it. In a successful law practice, time is very valuable. Targeting your search toward the specific hopefully will allow you to find relevant sources at the beginning of your research without sorting through tangential or outright unhelpful material. If this is not successful, you can always broaden your search, possibly even in steps. This way you
are spending the least amount of time from the start and only investing more time incrementally if you are not finding what you need. When students are having problems retrieving relevant resources, I repeatedly ask to see the searches they are formulating. It isn’t unusual to see them starting with the broadest terms possible. I point this out and suggest alternative search terms that are narrower in scope.

**Redundancy is your friend. Use several sources that cover the same material when possible**

I try to emphasize the use of redundancy whenever I can, in as many ways as I can. The obvious example is my pointing out to students the range of differing case annotations presented in both the USCS and the USCA. Redundancy will lead you to things easily overlooked, whether by you or the editorial team at one of the research providers. The downfall of redundancy is that it uses extra time that often is not available.

**Validate everything**

This is something that all law students should hear endlessly while they are in school. The status of the law changes constantly. Decisions go up on appeal, get overturned, or are criticized in other opinions. Statutes are repealed or ruled unconstitutional. A competent researcher must be aware of the status and weight of authority of any primary source they intend to rely upon. This principle is closely related to the following one.

**Update everything—sometimes several times throughout the process**

Especially in practice, the research process can extend over a significant period of time. Litigators may start their research years before a case comes to trial. Work on an appellate brief may extend over several months. The law changes constantly. The courts are handing down an endless stream of new opinions; regulations come and go. Sometimes it is conceivable to anticipate possible changes by looking in the pipeline; sometimes there are surprises. You never want to do your research and assume six months later that nothing has shifted. This is one of the reasons researchers need to maintain detailed notes.

**You can’t assume that because you found something relevant to your research you can stop looking for authority**

This mistake is easy to make during the statutory phase of your research. You find a statute on point and then move on to something else. What
you don’t realize is that there is another statute that also relates to your issue, or perhaps there are state and federal statutes on the same topic (think odometer tampering). I give my students a problem to work on where they will quickly find a local tax statute. What they almost never find is the second statute dealing with the same type of tax, which sets different rates and reinforces the principle. I also have them working with odometer tampering statutes. Rarely does it occur to them that there are both state and federal statutes dealing with this issue.

Always check the official text of a statute or regulation

It’s not uncommon for students to pull statutes from any old Web site without giving any thought to when the text was last updated or to whether the language is actually correct. I have plenty of examples showing that the commercial statutory code in my state has accidentally deleted authentic text. I tell a story in which a local attorney advised a client improperly because a statutory paragraph was missing, and I show the students a case in which a corporate counsel made a costly tax decision due to missing text. Your reputation and the client’s affairs are at stake when you undertake research. You must be sure you are using authoritative sources.

Always read the definition section of a statute

Just about every statute, federal and state, will have a section devoted solely to defining terms used within the language of the act. These might be technical terms or everyday words that have a specific meaning oriented to the context of the legislation. It is imperative that the definition section be consulted before proceeding to the substantive text to ensure that the reader’s understanding matches that of the legislators who drafted and enacted the law.

If you have found a relevant statute, look for regulations

In any given jurisdiction, a significant number of the statutory enactments have delegated authority to administrative agencies to promulgate regulations. In my school, the first-year research and writing instructors mostly ignore regulatory law. A year later when these students show up in my class, I emphasize that statutes are the skeleton or structure and regulations are the details or the meat that fills in between the bones. It is best to know right from the start if there are regulations made under the authority of your statute. Environmental legislation serves as a good example of this principle. The statutes often set out broad policy goals, but the regulations go into minute detail with requirements often described in “parts per billion.”
Do not pay for sources when you can get them free

Law students are fixated on Lexis and Westlaw and rarely see beyond them. At every opportunity, I try to introduce them to a range of alternatives. The universe of legal sources has changed so much in the past two decades. There was a time when, unless you were a government depository, you had to pay for every resource in your library. Today there is a multitude of good government legal resources available at no cost. These sources are likely to be more accurate than the comparable commercial equivalents and in many cases more timely. Why spend money when you can access something free? Even if you intend to use a paid resource to take advantage of the bells and whistles they provide, you can often work out the kinks in your search strategy by using a free database before you approach the expensive subscription service. I doubt there is a class session where I don’t turn to govinfo.gov to show my students something.

Be cognizant about the quality of the information you are using

Where does your information come from, who is the author, when was it written? These are all questions researchers need to be aware of, especially considering the almost unlimited reach of the Internet and the uncertain quality and reliability of what you can find there. With secondary sources it is important to use materials authored by recognized authorities that are up-to-date. Almost anyone teaching in a law school can get a law review article published in a journal. At what institution does this author teach, how long has he been writing in this area, does she have an agenda, how old is the article? Before reading the first sentence in a treatise, you should take note of when the book was published and whether it has been updated in some form. One assignment I have my students work on is a book review of a major treatise set in which they need to answer these questions along with documenting the organization of the text and the “special features” (forms, legislative history, court rules) included. I was once on a committee that recommended the purchase a new digital encyclopedia for the whole University. We were all embarrassed a month later when a faculty member pointed out numerous examples of outdated information, including an entry on a country that had not existed for over a decade.

Use an indexed source and a free-text source when looking for cases

Before subscription databases existed, most information was print-based, and the primary tool used to access that information was some form of an index. While many sources still come with an index, they do not seem to occupy the primary role they once did. Students rush to employ a full-text
search and often accept the results as definitive. They are both tools and have their advantages and disadvantages. In the case of the index, someone has actually read the document and converted their understanding into a controlled list of terms. With a full-text search, you are trying to discern what language an author would use to describe an issue or topic and then matching that language within the search constraints. Both are useful, and both should be employed whenever possible to do a thorough search. This is why I still teach the West topic and key number indexing system as accessed through Westlaw.

**Do not rely on summaries of primary documents**

Case head notes are perhaps the most widespread examples of summaries of points of law. There are others, including short descriptions of statutes and regulations on various Web sites. Often these descriptions are either inaccurate or incomplete. They are no substitute for reading the document itself.

**Browse—examine neighboring entries in sources**

Browsing is an undervalued research skill. Whether it is locating a treatise in the library stacks or looking at a statute in a code, stop and look at what is sitting next to the focus of your attention. There is a good chance that something related to what you are working on is within arm’s reach. Many times, I have seen students locate a statute that on first glance appears to relate to a problem they are dealing with, when in reality the following statute in the code is much more appropriate. Many organizational systems arrange like things together, and browsing is not as serendipitous as it sounds.

**Look for authorities that undermine your legal position**

It is important not just to look at the authorities that support your argument but also to be thinking strategically. What resources have you discovered that could be used to buttress an opposing point of view? Validate these authorities: Are they still good law, have judges questioned the reasoning of the cases you have found? How are you going to diminish this line of thinking?

**In specialized practice areas, current awareness should be a component of research**

Attorneys that practice in specialized areas should be routinely reading legal news sources, newsletters, newspapers, and blogs to keep up with developments in their field. By doing this, you will at the very least be aware of major court decisions and possible legislative changes in the
pipeline. When it comes time to begin a research project, you will not be start-
ing from scratch. I try to emphasize that students who have a fairly clear idea
of their future practice area should be somewhat familiar with the appropriate
BNA, Law 360, or Mealey’s publications by the time they graduate.

**Recognize differences in the weight of authority**

Years ago, I brought in a librarian from one of the federal courts to talk to
my class. In preparation for her talk, she polled the Assistant U.S.
Attorneys in our district about research shortcomings that they observed in
student interns. Overwhelmingly, they indicated that students do not
understand the weight of authority when citing cases. The students were
repeatedly citing cases from other circuits and federal districts when bind-
ing authority existed from our circuit. This is something that I am sure all
first-year research and writing instructors go over, but I reinforce this
whenever I can. To make my students aware of this issue, I present various
hypotheticals involving judicial opinions on the first day of class and ask
the students to select which case is authoritative in our jurisdiction.

**Know the court and the judge**

In my county the bar association publishes a guide to the local judges every
few years. It lists each judge along with contact information and the names of
clerks and aides. Perhaps the most important information it provides is a list
of policies and procedures the judge requires inside and outside of the court-
room. These can vary greatly from one judge to another. I have seen these
guides in other jurisdictions, and they are especially helpful to newer attorneys
and in situations where a new judge is elected or appointed to the bench.
Knowing what expectations a judge has set will help facilitate the flow of busi-
ness. From a strategic point of view, understanding the background of a judge
may help in constructing an argument. This was proven to me once when an
attorney approached me looking for old English case law. By doing his home-
work, he discovered that one of the judges hearing his appeal had an interest
in historical English law. He tailored his brief to this interest, captured this
judge’s attention, and was successful with his appeal.

**Be prepared to look in unexpected places**

Many legal matters require that you look beyond cases, statutes, and regu-
lations. Most students are somewhat aware of legislative history but rarely
agency guidance documents. It is not unusual for a litigation scenario to
require extensive nonlegal research. I demonstrate this by telling my stu-
dents of the time I challenged a speeding ticket on the grounds that the
police were using unapproved speed-calculating equipment. My research involved examining the operations of electronic speed-timing devices and comparing them to the product used to determine my speed. I also talk about the times I have contacted newspaper reporters for information and documents. I have also been very successful at getting local, state, and federal agencies to supply me with unpublished data. Good research often involves creativity and thinking about things from other perspectives.

At times when I need to bring out the heavy artillery to get this point across, I take a few minutes to tell a somewhat lengthy story about some research I did on the authorized biography of President Obama. Pulitzer Prize-winning author David Garrow’s *Rising Star: The Making of Barack Obama* was a work many years in the making. I spent much effort running down leads on a number of issues for Garrow, but one in particular seemed impossible. Obama has told the story repeatedly of how when traveling to Chicago after law school he stopped in Sharon, Pennsylvania, overnight at a small motel, the Fairway Inn. Upon checking out, the desk clerk struck up a conversation and asked him what his long-term plans were. The future President responded by bringing up his interest in politics. The clerk replied that politics was a bad career choice and that he had a nice voice and should think about going into radio. Garrow wanted me to verify this story from three decades earlier. How was I to find an unnamed clerk working in a motel ages ago that no longer existed? My first step was to find the address for the former Fairway Inn. I called the public library in Sharon and asked if they had old telephone books or locational directories. The librarian indicated that they did not keep those sorts of things but wanted to know what I was looking for. In a second, he was asking library patrons if a recently built hotel was on the site of the old Fairway Inn. Once he verified that it was, he provided me with the address. Using county property records, I was able to trace ownership back to a corporation, and then using state corporation filings I determined the name of the only corporate officer listed. I tracked this man to a nursing home in Ohio, and when contacted, he verified the story. Ironically, he had no idea the man he had had a conversation with all those years ago was now the President of the United States. While this may sound a little like something from Perry Mason, I don’t think it stretches the imagination too much to visualize creative research like this in a litigation setting.

Stop your research when you keep finding the same things over and over

This is one of the hardest things for students and novice researchers to comprehend—when to stop researching. Eventually it will become intuitive
for them, but in the beginning, it can create a lot of anxiety. At some point in the research process, it becomes obvious that every new article or case that you discover is leading you to the same sources you have already found. The trick is to recognize this as early as possible so that you do not waste valuable time.