

# Teaching Legal Research Through an Information Literacy Lens



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The 2016 presidential election brought the term “fake news” into the popular consciousness. Stories began emerging about individuals and groups who had created realistic looking news websites to share false stories via Facebook and other social media sites. These efforts were successful largely because so many people believed the stories to be real and shared them, spreading the fake news far and wide. Until now, people have not been accustomed to evaluating news outlets to see if they are legitimate or not; even for those who try, doing so can be difficult without careful inspection. Recognizing the importance of this issue, universities such as the University of Washington have begun offering courses designed to teach students how to recognize false news and data.<sup>1</sup> However, without constant vigilance, it can be easy to mistake a fake story as real and to disseminate it even further without realizing it.

For lawyers doing legal research, the same pitfalls exist. Legal research is now almost exclusively conducted online. Thus, lawyers must be mindful not only of the content of their legal research but also

the reliability of the online source they are using. Legal information used to be carefully cabined in print sources, making it easy to identify the official versions and easily understand the source (e.g., court, legislature, etc.). In a digital environment, however, those distinctions are not so easy to draw. Thus, while finding information is easier than it has ever been, evaluating it for relevance, usefulness, and reliability has never been more difficult. This poses a significant challenge for those of us teaching legal research to new law students and is especially important as we move through an era where proprietors of fake news are deliberately trying to undermine our ability to distinguish among online sources.

The field of Information Literacy suggests an approach to teaching legal research that addresses some of these challenges. Librarians have made the connection between the idea of Information Literacy and students’ ability to identify “fake news.”<sup>2</sup> We likewise suggest that this is the direction legal research instruction should be heading.

## A. WHAT IS INFORMATION LITERACY?

Information literacy is the ability to “recognize when information is needed and have the ability to locate, evaluate and use effectively the needed information.”<sup>3</sup> The concept of information literacy was first identified by academic librarians in response to the growing availability of information through electronic means. Since that time, librarians and academics have developed both instructional approaches and learning outcomes for gathering and using information.<sup>4</sup> These have been adopted at universities throughout the

country and have gradually made their way into legal academic libraries as well.<sup>5</sup>

Traditionally, information literacy involved five core competencies: students should *know* what information they need; be able to *access* that information efficiently and effectively; *evaluate* the information critically; *use* the information they gathered; and all in a manner that is *ethical/legal*.<sup>6</sup> For each competency, the standards include performance indicators, providing concrete descriptions of the skills needed to achieve competence.<sup>7</sup> Each performance indicator contains a set of learning outcomes that provide specific means of assessing whether the student has learned. While all of these standards were designed to apply to higher education generally, not all translate directly to a law school legal research context. Nonetheless, information literacy provides a useful framework to approach the process of legal research, as well as a way to assess whether students have attained the competency they need to move into the practice of law. The principles of information literacy can quite easily be adapted for legal research.

## B. LEGAL RESEARCH THROUGH AN INFORMATION LITERACY LENS

In a traditional research curriculum, the goal is to make sure students know how to plan and execute a search—to locate the materials they will need in order to understand and analyze the law. Traditional legal research instruction focuses on a bibliographic approach, identifying how the various publications can be found and explaining how each can be accessed to find the sources within.<sup>8</sup> Whether searching primary or secondary sources, the method is relatively similar: looking up key terms in an index or table of contents, finding relevant sources, reading them, and seeing if they lead to additional sources. Students learn to conduct statutory research by looking in a key word index to find relevant code sections; they find cases by looking up key terms in the index of a digest and so on.<sup>9</sup> Because legal information has historically been organized by jurisdiction and source of law, and because this method of research was developed in a world where the library contained as many “finding” tools as actual sources, this type of research instruction focuses on finding materials, presuming that researchers will easily understand what it is they have found.<sup>10</sup>

This linear research process allowed the researcher a certain amount of confidence in the reliability and utility of the information found. Because the researcher had to take so many steps before encountering a primary source, the search was more directed, and the results necessarily fell within a certain category—for instance, the New Jersey Reports contains nothing but primary case law from New Jersey. This is similar to what might happen if a person decided a particular news source was credible and sought all news from that one source as a measure of protection against fake news.

However, this confidence has been eroded because the organization of legal information has become largely separated from the print environment in which most legal research curricula developed.<sup>11</sup> Modern research is based around a search engine, rather than individual sets of publications. The online research tools are continually changing and evolving as vendors create new research products. Thus, it is time to reframe the goal of legal research instruction in light of the changed reality of legal research. For today’s law students to learn legal research now and for the future, they need to develop the metacognitive skills that will allow them to adapt to changing technology. Teaching research through information literacy can give them those skills.<sup>12</sup>

Finding tools are a thing of the past. Whether on a free platform like Google, or fee-paid services such as Westlaw, Lexis, or one of the many other legal research platforms, the entry point to research is a search box, and the results of the search come from many different sources. The researcher enters terms into a search box, and an algorithm returns results that match those terms. The organization of the legal information accessed by the search is not always readily apparent to the researcher. Thus, while finding materials is no challenge at all, understanding what those materials are can be difficult, especially for novice researchers. The goal of legal research instruction should address this reality.

Students come to law school already well acquainted with the search box and at least the basics of online research. There is very little possibility that they could enter terms into a search box on Lexis and get no results. We do not need to teach them that. What we do need to teach them is how to understand what it is they have found. In other words, we need to increase

students' level of legal information literacy. If we think of this as the goal of the legal research course, it leads to a very different approach to teaching research, focusing less on individual print and electronic research tools and more on evaluating the results of searches, focusing on concepts such as sources of law, hierarchy of authority, and even citation.

## **C. EVALUATING RESEARCH RESULTS USING INFORMATION LITERACY**

Finding legal source material is no longer difficult. In the first week of law school, a student working on a laptop in class can have a research result in hand before the professor has finished defining the research task. The focus must instead be on evaluation of the sources found in light of the needs of the research assignment.

Teaching legal research with a focus on evaluating rather than finding is most effective when research is taught as a process in a problem-based curriculum. Starting with a legal problem to solve, legal research professors can teach students to use information literacy skills to identify controlling legal authority and secondary authority without source-by-source bibliographic instruction. Instead of spending class time explaining various different research services and how they work, the professor can focus on making sure students understand what to look for and how to recognize it when they see it. We recommend giving students the following list of information literacy-based questions and walking through them as a way of teaching research.

- Is it law?
- Is it my law?
- If it's my law, is it useful law?
- If it's not law, or not my law, is it useful in some other way?
- Is it credible?
- Is it permanent?

Using these questions as the framework for teaching legal research gives students both the research and information literacy skills they will need as they move into the practice of law.

### **1. Is it law?**

This opening question invites students to learn about the sources of law and the distinction between primary and secondary authority. Using the context of a client problem, the research professor can start by outlining the structure of the United States legal system and inviting students to think about what kind of law is likely to govern the client situation. State or federal? Case or statute? This then can lead to a discussion of what those things are and how to recognize them as a result of a search. If the client problem involves common law, the professor can focus on cases, how courts make law, what a legal opinion looks like, what its citation will look like, and so on. The professor can devote some time to developing search terms and narrowing results to the type of law the students will be seeking, but the majority of the discussion can focus more broadly on how to recognize what sources are law as opposed to something else. There are a lot of "something elses" it could be, but this is the first of two binary questions that even a novice legal researcher should be able to answer: a legal source is either law, or not.

### **2. Is it my law?**

The second question also poses a binary: the law in hand is either the type of law you need (that is, law from the relevant jurisdiction) or it is not. Through this question, the professor can explore the concepts of jurisdiction and binding versus persuasive authority. Again, using the problem as a jumping off point, the professor can discuss how to recognize when a source constitutes controlling legal authority, regardless of the method used to obtain it. The students will learn that they need to figure out who is making the decision in a case and what kind of authority is binding in that setting. For example, if a problem involves a tort claim in the state of New Jersey, students will learn that they need appellate cases from New Jersey to address their client's concerns. Class discussion can then focus on how to recognize that type of case so when a search is performed, the researcher can hone in on the right kind of information. The "is it my law?" question also allows the professor to teach students about narrowing and filtering by database to identify sources from the relevant jurisdiction.

### **3. If it's my law, is it useful law?**

This is where the inquiries switch from categorization to evaluation. Our hypothetical researcher looking into

New Jersey tort law does not just need to find New Jersey appellate cases—the student needs to find appellate decisions *on the issue in question*. Thus, this information literacy question imports the notion of relevance—how factually similar to my client’s case is this past decision? In a world of *stare decisis*, like facts dictate like outcomes. The researcher needs to assess the source to determine its utility for the project at hand. To decide if a source is useful, the student really needs to understand the nature of legal analysis, which then informs the ability to identify what is useful as the result of a search.

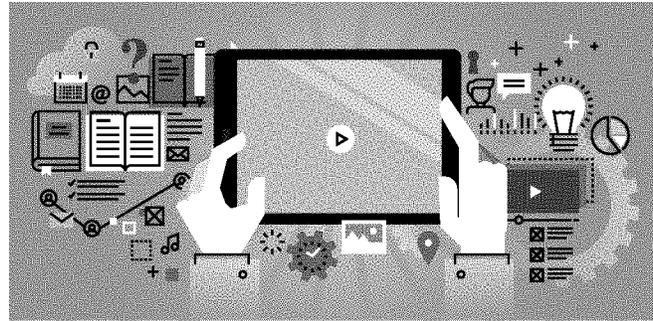
This is the point at which professors can introduce shortcut tools that can help with this assessment. The ability to filter by headnotes or core terms or isolate a term within a set of research results can help the researcher proceed more efficiently through a search that yields many results. The professor can also bring in concepts of weight of authority, including why some cases from the jurisdiction might be better to use than others.

#### 4. If it’s not law, or not my law, is it useful in some other way?

This question is more abstract than the preceding ones. It is meant to introduce the researcher to two things: the utility of secondary sources and the potential value of persuasive primary authority.

Secondary sources, previously presented as a pathway to primary sources in traditional bibliographic research, now mostly serve as opportunities for background reading and better understanding of the research question at hand. Though no longer finding tools, they may be useful in helping a researcher expand or refine a list of key words for subsequent searches, and they certainly have value to a researcher who is conducting research in a less familiar field. The universe of available secondary sources is much expanded in an online world, though—now a researcher can access any number of web sites and online publications offering analysis and commentary. Through the context of a client problem, students can start to learn how to weed through search results to select useful secondary authority.

Persuasive primary authority may also be valuable. For example, if a research result is “law, but not *my* law,” then maybe it can still shed light on the way another jurisdiction has dealt with these issues. Perhaps the issue is the subject of a circuit split for which



persuasive authority may serve a particularly useful purpose. Thus, the “is it useful?” question invites students to learn about other ways in which primary authority might be used.

#### 5. Is it credible?

The unfiltered nature of search results makes the “is it credible?” question particularly important for online legal research. Credibility takes on a couple of meanings in this framework. First, there is a question of threshold credibility—does it have any at all? Most primary authority and much secondary authority accessed through paid legal research services arrives with an imprimatur of credibility, as opposed, for example, to an article found on a law firm website.

Second, a question with a finer point: is this a particularly credible source on my legal question? For my audience? One can imagine a taxonomy of credibility, where there are both groupings of credibility (e.g., law review articles by law professors are more credible than authorless, anonymous blog posts) followed by the more nuanced degrees of credibility (e.g., this particular law professor is a known expert on this point). This may be one of the harder questions to answer in the online world because many legal sources look the same online. In print, it might be more obvious to a researcher that the law review article she is reading was authored by a student because student work was printed at the back of a print volume. Online, the researcher has to do more work to identify the author and assess his or her credibility.

#### 6. Is it permanent?

Here, the framing of the question varies based on the type of source involved. Most things live a long life on the internet, but for legal research purposes, permanence has a slightly more nuanced meaning.

Basic internet sources are “permanent” when the researcher (and later, the reader) can access the materials via a citation. But basic legal sources of the type a researcher is likely to use (and later, cite) are permanent when they are still good law. Through this question, the professor can present the idea of updating the law, such as by using an online service like KeyCite or Shepherd’s to make sure a statute has not been deemed unconstitutional or a case decision overruled. Here, again, the print analog is dead; it would be bordering on malpractice to think that a lawyer should be conducting these types of updates using print materials.

All of these questions are designed to help a researcher evaluate one research result, one source. Once a researcher has identified a primary, mandatory, relevant source, he or she can use that source to access other sources: those sources cited within it and those subsequent authorities that cite to it. The researcher should then apply this set of questions to all of those sources (admittedly, more efficiently as the researcher closes in on the best set of materials for that particular research problem). As researchers encounter the same sources through different research pathways, they should feel more confidence in the value of that source and know their research is closer to complete. In this way, the research process is more like an intricately woven web than the linear path traveled by bibliographic researchers.

In fact, today most information is tangled up in an intricately woven web—real news and fake news, facts and opinions, credible authors and anonymous sources. Researchers must learn how to detangle that web and evaluate each of the individual strands. Future law students will be arriving at law schools having encountered fake news and understanding the importance of being a discerning researcher. As teachers of legal research, we can build on that understanding, giving them the tools they will need to evaluate legal research that same way. Information literacy can be a valuable lens through which to learn legal research, both to give students those tools in the first place, and to set them up for lifelong learning as legal research technology continues to grow and change.

## NOTES

1. Katherine Long, *UW Class on How to Spot Fake News Data Goes Viral Within Hours*, SEATTLE TIMES (Jan. 28, 2017, 8:00AM), <http://www.seattletimes.com/seattle-news/education/uw-class-on-how-to-spot-fake-data-goes-viral-within-hours/>.
2. Candice Benjes-Small & Scott Dunn, *Information Literacy and Fake News*, ACRLLOG (Jan. 22, 2017), <http://acrlog.org/2017/01/22/information-literacy-and-fake-news/>.
3. *Presidential Committee on Information Literacy: Final Report*, AM. LIBR. ASS’N, (Jan. 10, 1989), <http://www.ala.org/acrl/publications/whitepapers/presidential>.
4. Dennis Kim-Prieto, *The Road Not Yet Taken: How Law Student Information Literacy Standards Address Identified Issues in Legal Research Education and Training*, 103 LAW LIBR. J. 605, 607-09 (2011).
5. *Id.*
6. Ass’n of Coll. and Research Libraries, *The Standards: Step-by-Step*, <http://www.ala.org/acrl/issues/infolit/standards/steps>.
7. Ass’n. of Coll. and Research Libraries, *Information Literacy Competency Standards for Higher Education*, <http://www.ala.org/acrl/standards/informationliteracycompetency>.
8. See, e.g., STEVEN M. BARKAN ET AL., FUNDAMENTALS OF LEGAL RESEARCH 78-80, 82-83, 232-33 (9th ed. 2009); LAUREL CURRIE OATES ET AL., JUST RESEARCH 46-48, 156-57 (2d ed. 2009); AMY E. SLOAN, BASIC LEGAL RESEARCH: TOOLS AND STRATEGIES 51, 74-76, 206-09 (5th ed. 2012).
9. Ellie Margolis & Kristen Murray, *Say Goodbye to the Books: Information Literacy as the New Legal Research Paradigm*, 38 U. DAYTON L. REV. 117, 122 (2012).
10. See F. Allan Hanson, *From Key Numbers to Keywords: How Automation Has Transformed the Law*, 94 LAW LIBR. J. 563, 571 (2002) (noting that the print-based system of legal authority made it easy for researchers to locate materials and understand what they are).
11. Ellie Margolis & Kristen Murray, *Using Information Literacy to Prepare Practice-Ready Graduates*, 38 HAW. L. REV. 1 (2016).
12. *Id.*