# LEGAL RESEARCH JUST IN TIME: A NEW APPROACH TO INTEGRATING LEGAL RESEARCH INTO THE LAW SCHOOL CURRICULUM

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## I. INTRODUCTION

Law schools are investing more time in practical skills training than at any time in the recent past.[1] Yet, as students gain greater opportunities for instruction and practice in areas such as legal writing, legal analysis, and client advocacy, one important skill has received relatively minimal attention—legal research. Studies show recent law school graduates lack research competency.[2] Employers consistently complain that new lawyers cannot think conceptually when researching and do not know what questions to ask when receiving a research assignment.[3] They report that recent law school graduates are woefully unprepared to research in areas outside basic case law research and updating, such as administrative law and legislative history.[4] And they criticize new lawyers for failing to perform cost-effective research, citing their inability to use print and online resources interchangeably as the main reason for that failure.[5] Despite employers' dissatisfaction with the research skills of recent law graduates, many law schools continue to struggle with how to address the need for more legal research training in the face of increasing competition over decreasing resources.[6]

This Article discusses an innovative way of integrating legal research instruction into the law school curriculum without

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1. *See* WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 87–95 (2007) (urging law schools to bridge the gap from "thinking like a lawyer" to "lawyering" in an attempt to better prepare students for the practice of law and the role they will play in the legal profession).

2. *See, e.g.*, Patrick Meyer, *Law Firm Legal Research Requirements for New Attorneys*, 101 LAW LIBR. J. 297, 303–04 (2009) (discussing survey results showing new lawyers lack the ability to perform efficient and effective research).

3. *See generally* THOMSON WEST, RESEARCH SKILLS FOR LAWYERS AND LAW STUDENTS (2007) (discussing the results of a survey on the research skills of new associates in law firms).

4. *See* Meyer, *supra* note 2, at 304.

5. *See id.*; *see also* THOMSON WEST, *supra* note 3, at 3 (finding that law firm "partners agree that associates are almost completely incapable of book research, unfamiliar with print resources, [and] over-reliant on electronic sources . . . .").

6. *See, e.g.*, Barbara Glesner Fines, *Out of the Shadows: What Legal Research Instruction Reveals About Incorporating Skills Throughout the Curriculum*, 2013 J. DISP. RESOL. 159, 167–68 (noting that while law schools incorporate some legal research instruction into the curriculum, that instruction is minimal and is thus insufficient to develop the necessary legal research skills in students); Sarah Valentine, *Legal Research as a Fundamental Skill: A Lifeboat for Students and Law Schools*, 39 U. BALT. L. REV. 173, 180 (2010) ("Law schools are facing concerted and well-documented arguments that they are failing to teach the skills necessary to become a competent professional," including basic research skills).

detracting from the time and resources necessary for intensive legal writing and analysis instruction. Building on the concept of "just-in-time" learning, a pedagogical method based on the theory that students learn better when there is an immediate need for the information they are receiving,[7] this Article proposes infusing legal research instruction into the law school curriculum at key moments, or "checkpoints," rather than in isolated blocks of time. The Article argues that making legal research instruction dynamic rather than static, available to students on both an as-needed and an ongoing basis, can enhance student learning and better prepare students for the practice of law.

Part II of the Article addresses the critical role legal research plays in the practice of law, both from the perspective of employers and the American Bar Association (ABA). Part III explains the consequences for inadequate legal research in practice, including the disciplinary, professional, and legal sanctions lawyers face, and examines the reasons for recent law school graduates' reported lack of preparation in legal research. Part IV then offers one possible solution to address the problem. Specifically, Part IV proposes that law librarians work in conjunction with faculty, students, and external stakeholders to determine the most essential areas for research instruction and develop video-based legal research modules that integrate seamlessly into the law school curriculum just at the time when students need to learn the legal research skill in question. The Article concludes by advocating for the adoption of this innovative approach in order to better prepare law students for entry into the legal profession.

## II. LEGAL RESEARCH IS AN ESSENTIAL LAWYERING SKILL

Legal research is an essential lawyering skill for the practice of law. Employers regularly rate the ability to conduct legal research effectively and efficiently among the top skills they look for when hiring new lawyers.[8] That preference makes sense given the amount of time lawyers devote to legal research in practice. Studies show that most lawyers spend somewhere between one-fifth and one-third

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7. *See* Alma Asay, *Applying the Technology Lessons of Legal Research to Litigation Practice: Just-in-Time Learning for Young Litigators*, 40 AM. J. TRIAL ADVOC. 459, 472–73 (2017) (discussing the concept of "just-in-time" learning).

8. *See, e.g.*, Susan C. Wawrose, *What Do Legal Employers Want to See in New Graduates?: Using Focus Groups to Find Out*, 39 OHIO N. U. L. REV. 505, 533 (2013) (stating strong legal research is one of the top skills employers look for in new hires).

of their time conducting legal research.[9] But the importance of legal research to the practice of law goes beyond employers' preferences and expectations. The ABA standards on accreditation of law schools, for example, list legal research as one of the five fundamental lawyering skills students ought to learn during their legal education.[10] In fact, legal research is arguably the most fundamental legal skill of all, the one from which all the other important skills—writing, analysis, and even the revered "thinking like a lawyer"—spring.[11]

To see why this is true, consider a traditional law school class for a moment. In most doctrinal courses, especially those in the first year, students learn to analyze the law by using inductive reasoning to understand rules[12] and then deductive reasoning to apply these rules to new sets of facts.[13] In most instances, professors teaching these courses use casebooks.[14] Students are thus presented with sample cases categorized for them both by major subject area—property, torts, etc.—and by topic within chapters in the casebook.[15]

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9. *See, e.g.*, Fines, *supra* note 6, at 164; Caroline L. Osborne, *The State of Legal Research Education: A Survey of First-Year Legal Research Programs, or "Why Johnny and Jane Cannot Research"*, 108 LAW LIBR. J. 403, 405 (2016).

10. *See* COUNCIL OF THE AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2020-2021, at 17 (2020).

11. *See* Valentine, *supra* note 6, at 212 ("Legal research is arguably the legal skill upon which most other skills are built, as it is difficult to imagine legal writing, effective interviewing, discovery, negotiations, or client counseling without legal research"); *see also* Alyson M. Drake, *The Need for Experiential Legal Research Education*, 108 LAW LIBR. J. 511, 522 (2016) (arguing that other fundamental lawyering skills, like problem-solving and legal analysis, "depend greatly on an attorney's ability to conduct legal research").

12. *See* Paul T. Wangerin, *Law School Academic Support Programs*, 40 HASTINGS L.J. 771, 799 (1989) (explaining that the case method approach employs an inductive reasoning and presumes students can extract the relevant legal principles by studying judicial opinions); *see also* AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM 279–80 (1992) [hereinafter MACCRATE REPORT] (explaining that the case method approach employs an inductive reasoning and presumes students can extract the relevant legal principles by studying judicial opinions).

13. *See* Wangerin, *supra* note 12 (describing deductive reasoning in the context of problem-oriented approach to law teaching, where students are presented with fact patterns and asked to spot the issues and identify possible solutions).

14. *See* SULLIVAN ET AL., *supra* note 1, at 55–56 (describing the use of casebooks in law school as a "unique invention of legal pedagogy").

15. *See id.* at 56 (explaining case selection and organization of casebooks); *see also* Eric E. Johnson, *A Populist Manifesto for Learning the Law*, 60 J. LEGAL EDUC.

Moreover, these cases are nearly always excerpts, including only the most essential part of the case necessary for extracting the rule from the text.[16] As a result, students learn how to read and analyze discrete rules isolated for them in bite-sized portions of the actual cases.[17]

This process, however, is nothing like the practice of law.[18] In practice, a lawyer is not typically presented with a discrete legal issue to analyze. Rather, more often than not, a lawyer must extrapolate the key legal issue or issues from a set of disjointed facts and legal concepts. A lawyer may not be able to articulate these issues at all until after some preliminary research. Once the key issues are identified, further research must be conducted to determine how such issues have been dealt with in the past. This explanation, of course, is an oversimplification of the research process, which is in fact recursive—issues are identified, explored, revisited, eliminated, reinstated, and so on in a nonlinear pattern until the lawyer begins to master the subject matter and major sources allowing her to further refine her research.[19] As one commentator noted:

> [L]egal research is an iterative process of problem solving requiring legal reasoning and analysis. It would be impossible to do legal research without

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41, 42 (2010) (describing the casebook as "a compendium of judicial opinions that are roughly ordered by their principal subject matter").

16. *See* SULLIVAN ET AL., *supra* note 1, at 53, 55 (noting the appellate opinions students read in their first-year doctrinal classes are "highly edited and abstracted versions of events" that "render fact-patterns in condensed formulas").

17. *See* Thomas A. Woxland, *Why Can't Johnny Research? or It All Started with Christopher Columbus Langdell*, 81 LAW LIBR. J. 451, 457 (1989) (noting that by "condens[ing] and recompil[ing] sources that are scattered throughout dozens of reporters, codes, periodicals, and secondary literature into a portable law library . . . [the casebook] has freed the student from the need to master even the most basic research skills").

18. *See, e.g.*, Sharon L. Beckman & Paul R. Tremblay, *Foreword: The Way to Carnegie*, 32 B.C. J.L. & SOC. JUST. 215, 216 (2012) ("The case method misses a great deal of the *practice* of law by neglecting clients, the role of fact development and ambiguity, the importance of judgment and reflection, and the ethical underpinnings of serving others in a professional role.").

19. *See* Aliza B. Kaplan & Kathleen Darvil, *Think [and Practice] Like a Lawyer: Legal Research for the New Millennials*, 8 LEGAL COMMC'N & RHETORIC: JALWD 153, 164 (2011) ("Legal research is a complex process that involves strategizing and designing an effective research plan, learning about the topic or issues involved, considering different sources and their hierarchy, and working meticulously and patiently.").

> analyzing, synthesizing, and applying the information found, both to the original issue and to the research plan developed to address the issue. The process of legal research requires an ability to determine legal context, assess the law found in the process, and an ability to understand how what is found relates to specific situations. The process of legal research cannot be mechanically divorced from legal analysis and reasoning.[20]

In short, legal research is not a separate skill from legal analysis; legal research *is* legal analysis, at least one form of it. Legal research is therefore an essential lawyering skill—a skill that is at the core of effective and ethical lawyering. As a result, competency in legal research is not only a necessity for entering the legal profession, it is also a requirement for the competent practice of law.

### *A. Employers' Perspectives*

Employers have consistently identified strong legal research as an essential lawyering skill for law school graduates.[21] Employers expect new lawyers to perform efficient, thorough, and cost-effective legal research.[22] That is, employers expect new lawyers to develop and execute research strategies both effectively and efficiently.[23] They also expect new lawyers to be cognizant of the costs associated with conducting research and to choose their research methods accordingly.[24]

In a comprehensive study conducted by the Institute for the Advancement of the American Legal System, 84% of employers identified effective legal research skills as a core foundational skill

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20. *See* Valentine, *supra* note 6, at 210–11.

21. *See* Wawrose, *supra* note 8 (noting legal research is one of the skills employers want new associates to have).

22. *See id.* (stating employers depend on new hires to do legal research both efficiently and effectively while also noting employers' expectation for new attorneys to keep in mind the cost of legal research); *see also* Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 547, 551–52 (2014) (listing legal research as a core competency consideration for hiring new lawyers in large law firms).

23. *See* Wawrose, *supra* note 8.

24. *See id.* at 533–34.

for new lawyers.[25] In fact, employers viewed the ability to perform effective legal research as the top lawyering skill law school graduates must possess as they enter the legal profession.[26] Effectively researching the law was ranked higher than any other skill, including the ability to "identify relevant facts, legal issues, and informational gaps or discrepancies," "effectively use techniques of legal reasoning and argument (case analysis and statutory interpretation)," and critically evaluate arguments.[27]

A number of other studies confirm employers' preference for and expectations of strong legal research skills among law school graduates. In a 2015 study commissioned by LexisNexis, for example, 86% of respondents identified legal research skills as highly important for new lawyers in litigation practice and 81% identified advanced legal research skills as highly important.[28] In the transactional setting, 76% of respondents believed the ability to conduct due diligence research was essential for new lawyers to have, second only to new lawyers' knowledge of fundamental financial and business concepts.[29] Similarly, a national job analysis survey of legal employers identified the use of research methodology as among the top five most significant knowledge domains and

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25. ALLI GERKMAN & LOGAN CORNETT, FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT 11 (2016). In an attempt to identify the foundations new lawyers need to succeed in the practice of law, the study surveyed lawyers across the nation to ascertain the legal skills, professional competencies, and characteristics legal employers value in new hires. *Id.* at 4. More than 24,000 lawyers from various backgrounds and practice settings responded. *Id.* at 1.

26. *Id.* at 11.

27. *Id.* The responses in the "Legal Thinking and Application" category were as follows: 84% identified effective legal research as a foundational legal skill necessary for new law lawyers in the short term; 71% viewed the ability to identify relevant facts and legal issues as a foundational legal skill; 67% identified the ability to gather facts through interviews, document reviews, and other methods as a legal skill necessary in the short-term; 65% viewed the ability to effectively use techniques of legal reasoning and argument as essential in the short-term; 55% listed the ability to critically evaluate arguments as essential; and 51% identified "maintain[ing] core knowledge of the substantive and procedural law in the relevant focus area(s)" as a foundational practice skill new lawyers should have. *Id.*

28. LEXISNEXIS, WHITE PAPER: HIRING PARTNERS REVEAL NEW ATTORNEY READINESS FOR REAL WORLD PRACTICE 3 (2015). The survey asked 300 hiring partners and senior associates responsible for the supervision of new associates in small and large law firms across the United States about the core skills legal employers need new lawyers to have. *Id.* at 2.

29. *Id.* at 6. Drafting simple contracts and agreements was the third-highest-ranked skill, with 74% of respondents identifying it as highly important. *Id.*

general tasks for new lawyers.[30] When asked about their employers' preferences, 85% of surveyed associates indicated the employer expected them to have strong legal research skills in their first position out of law school.[31]

Employers' perspectives on the importance of strong legal research are not surprising given the amount of time new lawyers spend on research tasks. Studies show that new lawyers spend between one-third[32] and one-half of their time conducting legal research in their first years of practice.[33] That number remains high even after accounting for five or more years of experience, with studies indicating senior associates devote about 40% of their time on legal research.[34] Competency in legal research is thus a vital necessity for law school graduates to have as they enter the practice of law. Employers overwhelmingly agree, as does the ABA, that legal research is a fundamental lawyering skill—a skill students must develop to become practice-ready professionals.

### *B. The American Bar Association's Perspective*

The ABA has long recognized that the ability to perform efficient, thorough, and cost-effective legal research is essential to the practice of law. In 1992, the now-famous MacCrate Report identified legal research as one of ten fundamental lawyering skills,

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30. *See* Susan M. Case, *The NCBE Job Analysis: A Study of the Newly Licensed Lawyer*, BAR EXAM'R, Mar. 2013, at 52, 54.

31. *See* STEVEN A. LASTRES, REBOOTING LEGAL RESEARCH IN A DIGITAL AGE 1–2 (2013) (analyzing the results of a recent survey by the Research Intelligence Group called "New Attorney Research Methods Survey"). The survey included 190 new lawyers "equally represented by large and small law firms across a variety of practice areas." *Id.* at 1; *see, e.g.*, THE BARBRI GROUP, STATE OF THE LEGAL FIELD SURVEY (noting 18% of practicing attorneys, "when forced to choose," listed the ability to conduct legal research as the most important skill for new law school graduates); Jacob Gershman, *The Ideal Law School Graduate? A 'People Person' Who Can Do Research,* WALL ST. J. (Nov. 25, 2013, 1:19 PM), https://blogs.wsj.com/law/2013/11/25/the-ideal-law-school-graduate-a-people-person-who-can-do-research/?mod=WSJ (noting that legal employers are looking for law school graduates who are research experts).

32. *See* LASTRES, *supra* note 31, at 3 (stating newer associates spend more than 30% of their time conducting legal research).

33. *See, e.g.*, LEXISNEXIS, *supra* note 28 ("[M]ost young associates spend between 40% and 60% of their time conducting legal research [tasks]"); THOMSON WEST, *supra* note 3, at 2 (finding that new associates in law firms spend about 80% of their time researching, drafting, and writing documents, with 45% of that time being spent on conducting legal research).

34. *See* THOMSON WEST, *supra* note 3, at 2.

stating "[i]t can hardly be doubted that the ability to do legal research is one of the skills that any competent legal practitioner must possess."[35] As the report explained, legal research is "in essence a process of problem solving."[36] To conduct legal research effectively, lawyers must have "a working knowledge of the nature of legal rules and legal institutions, the fundamental tools of legal research, and the process of devising and implementing a coherent and effective research design."[37] The report thus concluded that to prepare for the practice of law, students must learn: (1) problem-solving skills, including the skill to efficiently and effectively conduct research; (2) the legal research process; and (3) the ability to research using a variety of sources.[38]

The ABA again affirmed its view of legal research as an essential lawyering skill when, in 2005, it passed new accreditation standards mandating skills training. According to current Standard 302, law schools must train students in skills that will allow them to show competency as an entry-level practitioner.[39] Legal research is one of the skills explicitly mentioned in the standard.[40] In fact, the ABA regards legal research as such a fundamental lawyering skill that the National Conference of Bar Examiners even explored the possibility of including legal research on the bar exam.[41]

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35. *See* MACCRATE REPORT, *supra* note 12, at 163; *see also* ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 56–57 (2007) (describing legal research as one of the professional skills law schools should help students develop); SULLIVAN ET AL., *supra* note 1, at 101 (listing legal research as one of "the important skills that define effective lawyering").

36. *See* MACCRATE REPORT, *supra* note 12, at 163.

37. *Id.* at 157.

38. *Id.* at 255–56.

39. *See* COUNCIL OF THE AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 10. Standard 301 requires law schools to "maintain a rigorous program of legal education that prepares its students, upon graduation, for . . . effective, ethical, and responsible participation as members of the legal profession." *Id.* Standard 302 further provides that law schools establish learning outcomes that include competency in the knowledge, skills, and values enumerated in the Standard. *Id.*

40. *Id.* ("A law school shall establish learning outcomes that shall, at a minimum, include competency in . . . legal research . . . .").

41. *See* Valentine, *supra* note 6, at 174 (discussing the ABA's consideration of incorporating legal research into the bar exam); *see also* Steven M. Barkan, *Should Legal Research Be Included on the Bar Exam? An Exploration of the Question*, 99 LAW LIBR. J. 403, 406 (2007) (arguing that advocating for the inclusion of a legal research component "on the bar exam would send a clear message that a certain level of research competency is necessary before a law school graduate receives a license to practice law").

The ABA's Model Rules of Professional Conduct also allude to the importance of legal research to the ethical practice of law. Commentary to the Model Rules states, for instance, that "the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge."[42] To assess "what kind of legal problem" a given client or situation raises, an attorney must be able to conduct legal research based on a set of unique facts and circumstances. The commentary to the Model Rules suggests that legal research allows "a lawyer [to] provide adequate representation in a wholly novel field through necessary study."[43] In other words, a lawyer who knows nothing about a given issue can still ethically provide representation on that issue so long as she is able to identify and learn about it through research. But while legal research is undeniably an essential lawyering skill for the practice of law[44] as both employers and the ABA have long indicated and as the following Part will show, it is a skill many law school graduates lack as they enter the legal profession.

## III. RECENT LAW SCHOOL GRADUATES LACK SUFFICIENT PREPARATION IN LEGAL RESEARCH

The vital role legal research occupies in the practice of law requires that the law school curriculum adequately prepare students to be competent legal researchers upon graduation. Unfortunately, in most instances, this is not the case. Various studies show that students graduate law school without being sufficiently prepared to perform legal research. This lack of preparation has serious consequences for lawyers, clients, and the pursuit of justice as a whole.

### *A. Review of Studies Showing Lack of Preparation*

Numerous studies indicate recent law school graduates do not possess the necessary competence in legal research that is required of an entry-level practitioner. In particular, studies show that new

42. MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 2 (AM. BAR ASS'N 2019).

43. *Id.*

44. *See* Valentine, *supra* note 6, at 206 (discussing the commentary to the Model Rules and concluding that "[l]egal research is the legal skill that directly links the ability to determine legal issues and represent clients with the ability to achieve that 'necessary study'").

lawyers lack the necessary preparation to develop and execute a research plan.[45] They are uncertain of what questions to ask when receiving a research assignment and are deficient in choosing the appropriate sources to use given the nature of the assignment.[46] They struggle with interpreting search results[47] and they lack sufficient preparation in performing efficient and cost-effective research.[48]

Employers have also consistently expressed dissatisfaction with the research skills of new lawyers,[49] especially in areas outside of the bread-and-butter case law and statutory research.[50] Studies show new lawyers are often underprepared in important but less taught areas of research.[51] For example, a 2005 survey of attorneys, judges, and librarians revealed that recent law school graduates lack sufficient preparation for researching administrative law, even though many practice areas require some type of administrative law research.[52] The survey results further revealed high dissatisfaction with graduates' ability to research legislative history.[53] Similarly, a 2005 survey of law firm librarians showed that new lawyers lacked sufficient preparation to "effectively and efficiently use print legal

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45. *See, e.g.*, Joan S. Howland & Nancy J. Lewis, *The Effectiveness of Law School Legal Research Training Programs*, 40 J. LEGAL EDUC. 381, 383 (1990).

46. *See, e.g.*, Meyer, *supra* note 2, at 303–05 (discussing survey results showing new lawyers' inability to take an "integrated approach" to research, their failure to use secondary sources, and their lack of "knowledge of available research resources"); *see also* THOMSON WEST, *supra* note 3, at 3 (discussing survey results that showed "70% of new [associates] need help using print and online resources together").

47. *See* Meyer, *supra* note 2.

48. *Id.* at 312.

49. *See* Valentine, *supra* note 6, at 174 (stating that the bench and bar have "routinely highlight[ed] the inadequacy of the legal research skills of recent law graduates"); *see also* Osborne, *supra* note 9, at 404 ("[T]he research skills of recent [law] graduates are often labeled as insufficient").

50. *See, e.g*, ALL-SIS TASK FORCE ON IDENTIFYING SKILLS & KNOWLEDGE FOR LEGAL PRAC., A STUDY OF ATTORNEYS' LEGAL RESEARCH PRACTICES AND OPINIONS OF NEW ASSOCIATES' RESEARCH SKILLS 81–82 (2013); Carolyn R. Young & Barbara A. Blanco, *What Students Don't Know Will Hurt Them: A Frank View from the Field on How to Better Prepare Our Clinic and Externship Students* 117 (Chapman Univ. Sch. L. Working Paper, Paper No. 09–49, 2007), https://papers.ssrn.com/sol3/papers.cfm?abstractid=1028871 (describing survey results showing field supervisors' dissatisfaction with the legal research skills of externs, especially in the areas of thoroughness, efficiency, and non-case law searches).

51. *See, e.g.*, Jan Bissett & Margi Heinen, *Facing the New Normal*, 92 MICH. BAR J. 52, 52 (2013).

52. *See* Meyer, *supra* note 2, at 304 (discussing the results of the study).

53. *See id.*; *see also* THOMSON WEST, *supra* note 3, at 3 (noting the study showed new associates could not perform legislative history research).

research materials," "understand key sources for specific practice areas," and "perform legislative histories" research.[54] The overall results of that survey indicated that the legal research skills of recent law school graduates fall short of the desired skills for new lawyers.[55]

Recent studies continue to highlight the gap between employers' expectations and recent law school graduates' abilities in legal research. For instance, in 2011, the American Association of Law Libraries appointed a task force to "identify the current and future research skills that law school graduates need to succeed in legal practice."[56] Among other questions, the task force asked practitioners to rate the research skills of recent law school graduates.[57] Not surprisingly, while a majority of respondents agreed that recent law graduates research case law and statutes adequately or better,[58] a significant number of respondents expressed dissatisfaction with new lawyers' ability to perform various other aspects of the research process. A quarter of respondents, for example, rated new lawyers' skills in researching regulations as inadequate.[59] The same was true for their ability to effectively use secondary sources.[60] The dissatisfaction was even higher when respondents had to rate the research skills of recent law graduates in areas such as administrative law, legislative history, or court documents.[61] A large percentage of respondents viewed performance in these key areas as deficient.[62] About half of respondents rated new lawyers' ability to research administrative

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54. *See* THOMSON WEST, *supra* note 3, at 3.

55. *Id.*

56. ALL-SIS TASK FORCE ON IDENTIFYING SKILLS & KNOWLEDGE FOR LEGAL PRAC., *supra* note 50, at 1.

57. *Id.* at 76.

58. *Id.* at 81–82 (showing over 90% of respondents agreed that recent law school graduates research case law adequately or better and nearly 90% of respondents agreed recent law graduates research statutes adequately or better).

59. *Id.* at 83 (showing 25% of respondents reported poor performance by recent law school graduates in researching regulations and 4% believed recent law school graduates do so unacceptably).

60. *Id.* at 78 (indicating 23.7% of respondents believed recent law graduates performed poorly and 2.5% believed they performed unacceptably in effectively using secondary sources); *see also* THOMSON WEST, *supra* note 3, at 5 (noting 68.5% of respondents indicated the ability to perform secondary sources research as the most important research task new lawyers must know).

61. *See* ALL-SIS TASK FORCE ON IDENTIFYING SKILLS & KNOWLEDGE FOR LEGAL PRAC., *supra* note 50, at 84–85, 92.

62. *Id.*

decisions and legislative history as poor or unacceptable[63] and about a third described their ability to research court documents as poor or unacceptable.[64] Additionally, when asked to indicate how well recent law graduates perform in finding non-legal information, such as statistics or economic data, over 40% of respondents said that they perform poorly.[65]

The results of the study further revealed that many recent law graduates are woefully unskilled in performing cost-effective research, with nearly 40% of respondents ranking performance in that area as poor or unacceptable.[66] One possible explanation for this discontent could be the lack of sufficient preparation among law graduates in using research platforms other than Westlaw or Lexis.[67] An inability to realize when they should end the research process could be another. For instance, when asked about recent graduates' ability to know when to stop researching, about one-third of respondents rated new lawyers' ability as poor and 12% responded that it was unacceptable.[68]

The lack of sufficient preparation in legal research among recent law graduates is thus apparent. It is also quite alarming given the critical role legal research plays in the practice of law. That is

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63. *Id.* at 84–85. When asked how well recent law school graduates research administrative decisions, 37.1% of respondents rated their performance as poor and 6.9% rated it as unacceptable. *Id.* at 84. Similarly, 35.7% of respondents indicated recent law school graduates research legislative history poorly and 12% found their performance in that area to be unacceptable. *Id.* at 85.

64. *Id.* at 92 (showing 24.4% indicated that recent law school graduates research court documents poorly and 8.6% believed they do so unacceptably).

65. *Id.* at 94 (showing 31.1% found performance in researching non-legal information to be poor and 12.2% found it unacceptable).

66. *Id.* at 88 (showing 30.3% of respondents believed recent law school graduates perform cost-effective research poorly and 7.4% believed they do so unacceptably); *see also* THOMSON WEST, *supra* note 3, at 5 (explaining that 82.7% of respondents ranked the ability to perform cost-effective research to be the most important research task new lawyers must be able to do upon entering the practice of law).

67. *See* ALL-SIS TASK FORCE ON IDENTIFYING SKILLS & KNOWLEDGE FOR LEGAL PRAC., *supra* note 50, at 91 (noting that over one-third of respondents believed recent graduates' use of platforms other than Westlaw or Lexis to be poor or unacceptable); *see also* THOMSON WEST, *supra* note 3, at 7 (listing the following causes, among others, for a new lawyer's tendency to incur excessive online charges: "[n]ot planning before going online"; "[e]ngaging in a fishing expedition"; "ignorance of pricing plan particulars"; and "[n]ot starting with a broad search and then narrowing down for free").

68. *See* ALL-SIS TASK FORCE ON IDENTIFYING SKILLS & KNOWLEDGE FOR LEGAL PRAC., *supra* note 50, at 93.

especially true when accounting for how inadequate legal research skills impact a lawyer's ability to ethically execute her duties and effectively represent her clients.

### *B. Consequences for Inadequate Legal Research Skills*

The potential consequences for this lack of preparation in legal research among new lawyers can be severe. First, new lawyers' inability to perform competent legal research can lead to disciplinary actions, professional sanctions, and even legal malpractice lawsuits.[69] Second, new lawyers' inability to conduct efficient and cost-effective legal research can be quite costly for employers, both in terms of time and money.[70] More importantly, however, the failure to conduct competent and cost-effective research can negatively impact clients, thus interfering with the pursuit of justice.[71]

#### 1. Disciplinary, Professional, and Legal Consequences for Inadequate Legal Research

The ABA Model Rules of Professional Conduct address the requisite competence for a lawyer's research skills. Rule 1.1, for example, states that "[a] lawyer shall provide competent representation to a client."[72] The rule further provides that "[c]ompetent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[73] As the commentary to the rule explains, "[c]ompetent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem" a client faces.[74] The duty to conduct competent legal research is part of a lawyer's ethical obligation to provide competent representation[75]

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69. *See, e.g.*, Carol M. Bast & Susan W. Harrell, *Ethical Obligations: Performing Adequate Legal Research and Legal Writing*, 29 NOVA L. REV. 49, 49 (2004) ("[A]n attorney's failure to perform adequate legal research . . . can violate the attorney's professional responsibility . . . and can result in a reprimand, suspension, or disbarment from the practice of law").

70. *See, e.g.*, THOMSON WEST, *supra* note 3, at 7.

71. *See, e.g.*, Bast & Harrell, *supra* note 69 (showcasing that inadequate legal research can injure clients and serve as a basis for legal malpractice lawsuits).

72. MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS'N 2018).

73. *Id.*

74. *Id.* cmt. 5.

75. *See* Lawrence Duncan MacLachlan, *Gandy Dancers on the Web: How the Internet Has Raised the Bar on Lawyers' Professional Responsibility to Research and*

and a lawyer's failure to do so can lead to disciplinary action and professional sanctions,[76] become the basis of a legal malpractice lawsuit,[77] or cause reputational damage and public embarrassment.[78]

The duty to conduct competent legal research is further addressed by Rule 1.3 of the Model Rules of Professional Conduct. Rule 1.3 requires a lawyer to "act with reasonable diligence and promptness in representing a client."[79] Diligent legal research is an implicit component of that requirement.[80] Failure to diligently research the law can adversely impact a client's interests and in some instances, "as when a lawyer overlooks a statute of limitations," can even destroy "the client's legal position."[81] A lawyer's inability to conduct diligent research may therefore subject the lawyer to disciplinary action and professional sanctions.[82]

Poor research performance is also subject to professional sanctions under various court rules. For instance, under Rule 11 of the Federal Rules of Civil Procedure, a lawyer must certify that "the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law."[83] Inherent in that certification is the extent to which the lawyer has thoroughly

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*Know the Law*, 13 GEO. J. LEGAL ETHICS 607, 613 (2000) (stating that the Model Rules' requirement for competency applies to a lawyer's legal research); *see also* Michael Whiteman, *The Impact of the Internet and Other Electronic Sources on an Attorney's Duty of Competence Under the Rules of Professional Conduct*, 11 ALB. L.J. SCI. & TECH. 89, 90 (2000) ("It has long been recognized that the ability to perform adequate legal research is a component of Rule 1.1.").

76. *See* MODEL RULES OF PRO. CONDUCT Scope 14 (noting rules that use the term "shall" are imperatives and "define proper conduct for purposes of professional discipline"); *see also* Ellie Margolis, *Surfin' Safari – Why Competent Lawyers Should Research on the Web*, 10 YALE J.L. & TECH. 82, 90 (2007) (noting "[c]ourts are clearly aware of the duty of competent research and do not hesitate to refer attorneys for bar discipline when it appears they have violated their ethical duty" and providing examples of such instances).

77. *See, e.g.*, Bast & Harrell, *supra* note 69 (explaining that a lawyer's failure to perform adequate legal research may lead to a legal malpractice lawsuit).

78. *See* Margolis, *supra* note 76, at 88 (noting that failure to conduct adequate research may subject a lawyer to public embarrassment).

79. MODEL RULES OF PRO. CONDUCT r. 1.3.

80. *See, e.g.*, Cimino v. Yale Univ., 638 F. Supp. 952, 959 n.7 (D. Conn. 1986) ("Counsel is admonished that diligent research . . . is a professional responsibility." (citing Taylor v. Belger Cartage Serv., Inc., 102 F.R.D. 172, 180 (W.D. Mo. 1984))).

81. MODEL RULES OF PRO. CONDUCT r. 1.3 cmt. 3.

82. *See* Margolis, *supra* note 76.

83. FED. R. CIV. P. 11(b)(2).

researched the issues to find support for her arguments in existing law or in other legal sources that would allow her to advocate for changing the law.[84] A lawyer's failure to competently research the law warrants sanctions under the rule,[85] and courts have consistently imposed such sanctions when lawyers' filings at the trial level have demonstrated inadequate legal research.[86]

At the appellate level, the consequences for failing to conduct competent legal research are just as significant. Federal Rule of Appellate Procedure 28, for example, requires lawyers to provide citations to authorities in support of the legal contentions made in the briefs.[87] Failure to support arguments with citations to legal authorities may lead to dismissal of the appeal, and courts have not hesitated to do so when the requirements of Rule 28 have been violated.[88] Inadequate research is also subject to sanctions under Rule 38 of the Federal Rules of Appellate Procedure, which allows courts to "award just damages and . . . costs" if the appeal is frivolous.[89] Moreover, Rule 38 allows courts to find lawyers

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84. *See id.* advisory committee's note to 1993 amendment (stating "the extent to which a litigant has researched the issues and found some support for its theories even in minority opinions, in law review articles, or through consultation with other attorneys should certainly be taken into account in determining whether" the arguments for "extending, modifying, or reversing existing law or for establishing new law" are nonfrivolous, as required by the rule).

85. FED. R. CIV. P. 11(c)(1) ("If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.").

86. *See, e.g.*, Marguerite L. Butler, *Rule 11—Sanctions and a Lawyer's Failure to Conduct Competent Legal Research*, 29 CAP. U. L. REV. 681, 692–97, 703–05 (2001) (examining the variety of sanctions imposed by state and federal courts over the years to address the lack of competency in legal research and the most common types of inadequate legal research that warranted those sanctions).

87. FED. R. APP. P. 28(a)(8)(A).

88. *See, e.g.*, Murray v. Mitsubishi Motors of N. Am., Inc., 462 F. App'x 88, 91 (2d Cir. 2012) (dismissing the appeal for, among other reasons, failure to cite a single case to support the arguments in the brief and noting "[t]he requirements set forth in Rule 28(a) are mandatory, and noncompliance warrants dismissal of the appeal"); Armstrong v. City of N. Las Vegas, 138 F. App'x 41, 42 (9th Cir. 2005) (finding appellant violated Rule 28 where the citations to legal authorities were few and far between and dismissing the appeal as a result); First Home Sav. Ass'n v. Williams, No. 95-3796, 1996 WL 253853, at *1 (7th Cir. May 10, 1996) (dismissing an appeal where the brief failed to cite any relevant authority).

89. FED. R. APP. P. 38; *see, e.g.*, Mortg. Elec. Registration Sys., Inc. v. Estrella, 390 F.3d 522, 524 (7th Cir. 2004) (dismissing an appeal after concluding the attorney "failed to do any research into the requirements of federal appellate jurisdiction before filing th[e] appeal"); Natasha, Inc. v. Evita Marine Charters, Inc., 763 F.2d

personally liable for the award of damages if after "careful research of the law, a reasonable attorney would [have] conclude[d] that the appeal is frivolous."[90]

Inadequate legal research may also form the basis of legal malpractice or ineffective assistance of counsel claims. For instance, courts have long held that in advising clients, lawyers assume an obligation to conduct "reasonable research in an effort to ascertain relevant legal principles and to make an informed decision . . . ."[91] This obligation includes a lawyer's duty to discover "additional rules of law which, although not commonly known, may readily be found by standard research techniques."[92] As a result, "[w]hile a legal malpractice action is unlikely to succeed where an attorney erred because an issue of law was unsettled or debatable, an attorney may be liable for a failure to conduct adequate legal research."[93] Courts have thus concluded legal malpractice has been committed when the research performed by the lawyer fell below the requisite standard of care they owed to their clients;[94] that is, the lawyer failed to exercise "the skill, care, knowledge, and diligence exercised by [a] reasonable and prudent lawyer[ ] in similar circumstances."[95]

The standard of care articulated in legal malpractice cases is the same as the standard of care used by courts in post-conviction relief

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468, 472 (1st Cir. 1985) (imposing penalties under Rule 38 after determining that "a minimal amount of research, even a cursory reading of the relevant treatises and case law, should have revealed" the appeal was frivolous).

90. Beam v. Downey, 151 F. App'x 142, 144–45 (3d Cir. 2005) (citing Hilmon Co. v. Hyatt Int'l, 899 F.2d 250, 254 (3d Cir. 1990)) (holding appellant's counsel personally liable for the award of damages under Rule 38 because "if a reasonable attorney had carefully researched the law and analyzed the record, it would have been obvious that this appeal was frivolous"); *see also* Harris N.A. v. Hershey, 711 F.3d 794, 803 (7th Cir. 2013) (finding the appeal frivolous and imposing Rule 38 sanctions because, among other reasons "[a]ny competent attorney should have understood that [the appellant's] briefs and argument[s] simply failed to address the applicable law and relevant evidence").

91. Janik v. Rudy, Exelrod & Zieff, 14 Cal. Rptr. 3d 751, 755 (Cal. Ct. App. 2004) (citing Stanley v. Richmond, 41 Cal. Rptr. 2d 768, 780 (Cal. Ct. App. 1995)).

92. *Id.*

93. Kempf v. Magida, 832 N.Y.S.2d 47, 49 (N.Y. App. Div. 2007) (internal citations omitted).

94. *See* Streber v. Hunter, 221 F.3d 701, 725 (5th Cir. 2000) (concluding attorneys breached the standard of care and committed legal malpractice, in part, because their legal research was grossly inadequate); *see also* In re TCW/Camil Holding L.L.C., 330 B.R. 117, 130 (D. Del. 2005) (finding that the attorney breached standard of care for failing to conduct adequate legal research).

95. DAN B. DOBBS ET AL., THE LAW OF TORTS 11 (2011).

cases based on ineffective assistance of counsel claims.[96] In particular, when determining whether a lawyer's performance was deficient (the first prong of the test for ineffective assistance of counsel claims),[97] courts consider, among other factors, the adequacy of the lawyer's research.[98] A lawyer's "ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance . . . ."[99] A lawyer's failure to adequately research the law may thus render his performance unreasonable[100] and his representation ineffective for purposes of ineffective assistance of counsel claims.[101]

In all of the circumstances discussed above—be it disciplinary actions, professional sanctions, or legal malpractice suits—a lawyer is also likely to suffer reputational damage[102] or public

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96. *See, e.g.*, Sanders v. Malik, 711 A.2d 32, 34 (Del. 1998) ("The standards for proving ineffective assistance of counsel in a criminal proceeding are equivalent to the standards for proving legal malpractice in a civil proceeding."); Desetti v. Chester, 772 S.E.2d 907, 912 (Va. 2015) ("The same standard of care governing claims of ineffective assistance of counsel applies in a civil legal malpractice action." (citing Barner v. Leeds, 13 P.3d 704, 712 (Cal. 2000))).

97. *See, e.g.*, Strickland v. Washington, 466 U.S. 668, 687 (1984) (holding that a convicted defendant asserting an ineffective assistance of counsel claim must prove: (1) counsel's performance was deficient with respect to prevailing professional norms or duties; and (2) counsel's deficient performance did in fact prejudice the defense).

98. *See, e.g.*, United States v. Carthorne, 878 F.3d 458, 465 (4th Cir. 2017) (explaining counsel's performance will not be considered deficient when "counsel provides reasonably effective assistance, including demonstrating legal competence, doing relevant research, and raising important issues.").

99. Hinton v. Alabama, 571 U.S. 263, 274 (2014) (per curiam).

100. *See, e.g.*, *Strickland*, 466 U.S. at 688 (explaining deficient performance requires a showing that "counsel's representation fell below an objective standard of reasonableness"); Winston v. Pearson, 683 F.3d 489, 505 (4th Cir. 2012) (noting counsel's "lack of preparation and research cannot be considered the result of deliberate, informed trial strategy" when considering whether counsel's performance was deficient); State v. Stacey, 482 So. 2d 1350, 1351 (Fla. 1985) (concluding there was ineffective assistance of counsel where counsel failed "to research and recognize that the trial court's retention of jurisdiction was an unconstitutional violation of the ex post facto clause").

101. *See, e.g.*, *Carthorne*, 878 F.3d at 467–69 (concluding that counsel failed to adequately research the law despite, at the time of counsel's performance, there was clear Supreme Court and Fourth Circuit precedent); State v. Estes, 372 P.3d 163, 168 (Wash. Ct. App. 2016) (stating when counsel "unreasonably fails to research or apply relevant statutes without any tactical purpose, that attorney's performance is constitutionally deficient" (citing In re Pers. Restraint of Yung-Cheng Tsai, 351 P.3d 138, 144 (Wash. 2015))).

102. *See* Bast & Harrell, *supra* note 69.

embarrassment.[103] As a result, a lawyer who is unable to perform competent legal research risks becoming as much a liability as an asset to her employer. A law school graduate with a similar lack of skills may not get hired at all. Most importantly, a lawyer's inability to perform competent legal research compromises both the quality of representation clients receive and the public's trust in our legal system.

### 2. The Costs of Inadequate Legal Research Skills

In addition to the disciplinary, professional, and legal sanctions lawyers face for performing inadequate legal research, a lawyer's inability to conduct cost-effective and thorough research can also be quite costly for employers, both in terms of time and money.[104] In the law firm setting, for example, the lack of preparation in legal research often leads new associates to begin the research process with "an online keyword search, racking up unnecessary billings and online charges . . . ."[105] As a result, law firms generally write off half to all of a first-year associate's research billing.[106] That number is particularly concerning when accounting for the fact that new associates spend about half of their time on research[107] and for

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103. *See* Margolis, *supra* note 76, at 88.

104. *See* THOMSON WEST, *supra* note 3, at 7; *see also* THOMSON WEST, PARTNERSHIPS AND SOLUTIONS FOR PREPARING JOB-READY ATTORNEYS 6 (2008). The purpose of the report was to examine the discrepancies between what employers expect from new associates in terms of research skills and what new associates actually bring to the table upon law school graduation and to identify possible solutions. *Id.* at 3. It was a continuation of Thomson West's previous study on the research skills of lawyers and law students, which found a "gap between desired and actual research skills among new associates." *Id.*

105. *See* THOMSON WEST, *supra* note 3, at 2; *see also* Yasmin Sokkar Harker, "*Information is Cheap, but Meaning is Expensive": Building Analytical Skill into Legal Research Instruction*, 105 LAW LIBR. J. 79, 82 (2013) (pointing to anecdotal evidence of new associates "accidentally" incurring thousands of dollars in one commercial-database session); Patrick Meyer, *Law Firm Legal Research Requirements and the Legal Academy Beyond Carnegie*, 35 WHITTIER L. REV. 419, 433–34 (2014) (explaining the survey participants' concerns about young lawyers' desire to "just dive into expensive research as if it were Google," their "shocking tendency to want to 'Google' everything," their "reflexive desire to jump right online for every research issue," and their "'shotgun approach' to legal research where they just fire away (run searches) until they hit something").

106. *See* THOMSON WEST, *supra* note 3, at 2.

107. *Id.* The study found that a first-year associate typically spends about 80% of her time researching. *Id.* That number remains high between the second and fourth

clients' increasing refusal to pay legal research costs.[108] In fact, a recent survey of cost recovery in law firms found that "[l]egal research leads [to] client pushback and refusal to pay."[109] Based on the observed trend toward a decreased net realization for legal research costs in recent years, the authors of the survey predicted the extinction of legal research recovery by 2022.[110] New associates' lack of cost-awareness and preparation in performing cost-effective legal research can have significant financial implications for employers.

Even when clients are willing to pay, new lawyers' inability to conduct cost-effective research can have significant implications for providing equal access to justice.[111] The financial costs of computer-assisted legal research pose an insurmountable financial burden "to all but the wealthiest of clients and the lawyers who represent them."[112] To ensure access to justice for all clients, including clients who cannot afford to pay, lawyers must be able to perform both competent and cost-effective research.[113] They must be able to adequately research the law to fulfill their ethical obligations for competent representation,[114] and they must remain cognizant of how the cost of performing legal research impacts clients.[115] Otherwise, the pursuit of justice itself could be affected by recent law school graduates' lack of sufficient preparation in legal research.

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year as well, with associates spending about 70% of their time conducting legal research. *Id.*

108. *See, e.g.*, *Mattern & Associates Announces 2016 Cost Recovery Survey Results: More Firms Recovering Traditional Costs, More Firms Outsourcing*, MATTERN (Oct. 19, 2016), https://matternassoc.com/mattern-associates-announces-2016-cost-recovery-survey-results-firms-recovering-traditional-costs-firms-outsourcing/ (finding that clients' pushback and refusal to pay for legal research is increasing).

109. *Id.*

110. *Id.*

111. *See* Deborah K. Hackerson, *Access to Justice Starts in the Library: The Importance of Competent Research Skills and Free/Low-Cost Research Resources*, 62 ME. L. REV. 473, 474 (2010) (arguing that the ability to perform competent and cost-effective research is one of the most important skills students should learn to ensure access to justice for all clients, irrespective of a client's ability to pay).

112. *See* Ian Gallacher, *"Aux Armes, Citoyens!:" Time for Law Schools to Lead the Movement for Free and Open Access to the Law*, 40 U. TOL. L. REV. 1, 3 (2008) (discussing the high cost of computer-assisted research and the impact of that cost to ensuring equal access to justice).

113. *See* Hackerson, *supra* note 111, at 478.

114. *Id.* at 474.

115. *Id.*

### *C. The Reasons for Recent Law School Graduates' Lack of Preparation in Legal Research*

Given the critical role legal research plays in the practice of law and the serious consequences for inadequate research performance, one would expect legal research instruction to hold a primary place in the law school curriculum. Unfortunately, that is not the case.[116] While all law schools require some legal research instruction, the amount of time devoted to legal research instruction varies greatly among schools. In most law schools, legal research is integrated into the first-year legal writing curriculum.[117] Introduction to legal research is taught independently in less than a quarter of law schools, and only 7% of law schools require an advanced legal research course in their upper-level curriculum.[118] The most commonly cited reasons for law schools' failure to prioritize legal research in the overall law school curriculum are lack of time, lack of qualified personnel, and lack of agreement on the proper pedagogy for teaching legal research skills.

To begin, developing competent legal research skills in students requires a significant amount of time.[119] Yet, when research instruction is available only through the first-year legal writing

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116. *See generally* U. COLO. L. SCH., THE BOULDER STATEMENT ON LEGAL RESEARCH EDUCATION: SIGNATURE PEDAGOGY STATEMENT (2010) (stating the law school curriculum "often does not recognize legal research as a necessary, intellectual skill" and noting "[l]egal research instruction is not appropriately integrated within the curriculum"); *see also* Kaplan & Darvil, *supra* note 19, at 162 (explaining that while "the importance of legal research is often stressed, most law schools are not properly training students to perform this essential lawyering task").

117. *See* ASS'N OF LEGAL WRITING DIRS., ANNUAL LEGAL WRITING SURVEY: REPORT OF THE 2017–2018 INSTITUTIONAL SURVEY 26 (2018). The survey provides information about legal research and writing programs and courses for 182 law schools, or about 90% of the law schools in the United States. *Id.* at i. The results of the survey showed that 79% of law schools integrate introduction to legal research in the first-year legal research and writing program and only 5% of schools offer legal research outside of a coordinated curriculum. *Id.* at 2; *see also* Barbara Bintliff, *Legal Research: MacCrate's "Fundamental Lawyering Skill" Missing in Action*, 28 LEGAL REFERENCE SERVS. Q. 1, 5 (2009) (stating that while other fundamental lawyering skills identified in the MacCrate report enjoy "distinct program[s] with specialized faculty," legal research is instead treated as a subset of legal writing).

118. *See* ASS'N OF LEGAL WRITING DIRS., *supra* note 117, at 21.

119. *See* Genevieve B. Tung, *Collaboration Between Legal Writing Faculty and Law Librarians: Two Surveys*, 23 J. LEGAL WRITING INST. 215, 256 (2019); *see also* Osborne, *supra* note 9, at 408 ("If graduates are expected to possess good research skills, adequate time to learn how to productively use those tools and methods is essential.").

program, the time devoted to research seems to take a back seat to the time spent on teaching legal writing and analysis skills.[120] The emphasis on writing and analysis in the legal writing classroom may be necessary,[121] but this does not change the reality that research instruction receives inadequate time in the first-year law school curriculum.[122] The inclusion of additional lawyering skills (interviewing, counseling, and negotiation, for example) in the legal writing curriculum—often without additional credit hours—has further decreased the time available for legal research instruction.[123] Even when schools offer a stand-alone research course in the first year of law school, the time spent on research instruction is far less than what is needed to sufficiently develop students' research skills.[124] The trend of deprioritizing and deemphasizing research instruction continues after the first year, with only 7% of law schools requiring an advanced legal research course in the upper-level curriculum.[125] Thus, while time is key to helping students develop the fundamental legal research skills required for the practice of

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120. *See* Osborne, *supra* note 9, at 409 ("Research is most frequently buried in a writing or general skills class that is already crowded for time and must teach a multiplicity of basic skills"); *see also* Roy M. Mersky, *Legal Research Versus Legal Writing Within the Law School Curriculum*, 99 LAW LIBR. J. 395, 396 (2007) (noting legal writing professors "have been forced to embrace legal research, legal writing, remedial writing, basic writing, grammar, legal method, advocacy, counseling, and a whole smorgasbord of other activities").

121. *See* Osborne, *supra* note 9, at 404 (acknowledging the critical need for students to learn legal writing skills, but noting legal research instruction has been "sacrificed at the altar of a more vigorous writing curriculum").

122. *See* Kaplan & Darvil, *supra* note 19 ("Because of the limited amount of time devoted to teaching legal research and the superficial nature of that instruction, law students graduate and fail to perform at the level required of them by their employers.").

123. *See id.* at 163 (noting legal research instruction often is squeezed into first-year "lawyering skills" courses because professors are expected to cover additional subject areas without an increase in the required number of credits); *see also* Vicenç Feliú & Helen Frazer, *Embedded Librarians: Teaching Legal Research as a Lawyering Skill*, 61 J. LEGAL EDUC. 540, 550 (2012) (suggesting the focus on legal writing negatively impacts the time and attention devoted to legal research instruction in the first-year legal writing curriculum).

124. *See* Osborne, *supra* note 9, at 415 (describing survey results indicating the insufficient amount of time in a one-credit research course is one of the challenges to teaching legal research effectively); *see also* ASS'N OF LEGAL WRITING DIRS., *supra* note 117, at 35 (noting that the stand-alone required research course is only a one-week, intensive course in January).

125. *See* ASS'N OF LEGAL WRITING DIRS., *supra* note 117, at 21.

law, the actual time law schools seem to devote to legal research instruction is far less than desirable to achieve that goal.[126]

Related to the lack of time devoted to research instruction in the first-year legal writing curriculum is the lack of qualified personnel offering the instruction. Teaching legal research effectively requires subject-matter expertise, passion for the subject, and recognition of the subject's importance.[127] But for all their talent and skills, legal writing professors are typically not the most qualified experts in legal research at their institutions.[128] Instead, the most qualified researchers at every law school are the law librarians and, specifically, law librarians with dual degrees—the so called "lawyer librarians."[129] These lawyer librarians make ideal research instructors because they are not only "information professionals, skilled in information retrieval theory and practice," but also because they are "licensed attorneys who understand legal analysis and the content of law-related sources and are able to apply that knowledge in both academic and practical environments."[130]

Yet, these expert researchers are not involved in teaching legal research at the majority of law schools. Recent data shows that it is, in fact, legal writing faculty who are primarily responsible for legal research instruction in the first-year curriculum,[131] even though

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126. *See* Kaplan & Darvil, *supra* note 19, at 162–64 (explaining that the increased requirements for what topics should be covered in the first-year legal writing curriculum precludes legal writing professors from teaching legal research "in depth at the only point in law school where it is required," and criticizing the relatively minimal amount of time law schools devote to providing legal research instruction in the curriculum).

127. *See* Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 104–05 (2002).

128. *See* Bintliff, *supra* note 117, at 2 ("Writing faculty are, by and large, writing and communications experts and not research experts."); *see also* Valentine, *supra* note 6, at 200 ("If law school is to provide a place where the legal profession not only communicates knowledge from expert to beginner, but also communicates ethics and values, then legal research education must be taught by experts and better integrated into the entire curriculum."); Osborne, *supra* note 9, at 412 (arguing that legal research should be taught by those who have expertise in the subject—librarians with dual degrees).

129. *See* Mersky, *supra* note 120, at 401 (describing a "lawyer librarian").

130. *Id.*

131. *See* ASS'N OF LEGAL WRITING DIRS., *supra* note 117, at 36 (noting 67% of respondents indicated that legal writing faculty provide the legal research instruction in the first-year courses and 25% of law schools outsource legal research instruction to commercial vendors); *see also* THOMSON WEST, *supra* note 3, at 9 ("While there are many different models for research and writing programs, most are

legal "[w]riting faculty are, by and large, writing and communications experts and not research experts."[132] This observation should not be read to suggest that legal research instruction be outsourced entirely to law librarians. Rather, given employers' continued dissatisfaction with the research skills of new lawyers, this observation should signal that not having the research experts involved in teaching research is problematic and has likely contributed to law schools' failure to produce graduates who are competent legal researchers.[133]

Another contributing factor for the documented deficiencies in new lawyers' research capabilities could be the lack of agreement on the most effective pedagogical approach for developing research skills. For decades, legal research instruction has utilized one of two pedagogical approaches—the bibliographic method and the process method.[134] Under the bibliographic method, the focus is on teaching students the available legal research resources and how to use them.[135] By incorporating "treasure hunt" type assignments, the bibliographic method attempts to teach legal research skills through "a series of discrete legal tools or tasks."[136] This approach, however, has long been criticized for failing to place legal research in a contextualized setting—one of intricate and integrated problem-

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controlled from the legal writing side. . . . [t]oo often [legal writing faculty and law librarians] . . . are not on the same page").

132. *See* Bintliff, *supra* note 117, at 2; *see also* Valentine, *supra* note 6, at 202 ("[T]hose who teach in legal research and writing courses are generally not expert researchers, which limits their ability to provide the necessary level of legal research education").

133. *See* Carol A. Parker, *How Law Schools Benefit When Librarians Publish, Teach, and Hold Faculty Status*, 30 LEGAL REFERENCE SERVS. Q. 237, 241 (2011) (arguing the ongoing dissatisfaction with recent law graduates' research skills shows the recent trend of giving legal writing faculty primary responsibility for research instruction has not "yielded the hoped-for outcomes"); *see also* THOMSON WEST, *supra* note 3, at 9 (advocating for "[b]etter, bigger, and more productive alliances" between legal writing faculty and law librarians in an effort to increase the effectiveness of legal research instruction); Kaplan & Darvil, *supra* note 19, at 188 (arguing for research to "be taught by someone who is trained in research methodology and involved with legal research materials on a regular basis").

134. *See* Feliú & Frazer, *supra* note 123, at 547.

135. *Id.*

136. *See* Valentine, *supra* note 6, at 201; *see also* Nancy E. Vettorello, *Resurrecting (and Modernizing) the Research Treasure Hunt*, 109 LAW LIBR. J. 205, 210 (2017) (explaining the bibliographic instruction teaches students "what a resource is and how to use it" by asking students to use resources "in a small, discrete research task that involves limited analysis and no written component").

solving.[137] As a result, the process method has become the more prevalent and preferred approach to teaching legal research in recent years.[138]

Also referred to as a process-oriented method, this pedagogical approach attempts to place legal research into context by developing students' problem-solving skills and helping them recognize when to use certain resources.[139] Under this process-oriented approach, students are asked to research and rely on various legal sources to solve a larger problem and then present their solution and analysis in writing.[140] While certainly an improvement over the bibliographic method, the pragmatic, process-oriented approach has also been criticized for falling short of helping students learn effective and efficient legal research skills,[141] especially as technological advancements changed the landscape and increased the complexity of legal research.[142]

The lack of agreement on a comprehensive legal research pedagogy impacts student learning of the fundamental lawyering skill that is legal research. Some scholars have advocated for a reform in legal research education that includes the integration of legal research across the curriculum.[143] Some have emphasized the

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137. *See* Valentine, *supra* note 6, at 201.

138. *See* Ellie Margolis & Kristen E. Murray, *Say Goodbye to the Books: Information Literacy as the New Legal Research Paradigm*, 38 U. DAYTON L. REV. 117, 118 (2012) (noting the pedagogical shift to a process-oriented approach for legal research instruction).

139. *See* Christopher G. Wren & Jill Robinson Wren, *The Teaching of Legal Research*, 80 LAW LIBR. J. 7, 9 (1988).

140. *See* Vettorello, *supra* note 136.

141. *See* Valentine, *supra* note 6, at 202 (explaining the deficiencies of the process method in legal research instruction); *see also* Michael J. Lynch, *An Impossible Task but Everybody Has to Do It—Teaching Legal Research in Law Schools*, 89 LAW LIBR. J. 415, 432 (1997) (acknowledging that process-based projects "are rarely designed to require a researcher to use multiple aspects of a research tool . . . .").

142. *See* Margolis & Murray, *supra* note 138, at 121–22, 152–56 (advocating for the use of information literacy to reframe legal research pedagogy); *see also* Vettorello, *supra* note 136, at 211 (noting the debate over bibliographic versus process method to teaching legal research became "largely overshadowed" by the necessity to incorporate computer-based research into the curriculum).

143. *See, e.g.*, Brooke J. Bowman, *Researching Across the Curriculum: The Road Must Continue Beyond the First Year*, 61 OKLA. L. REV. 503, 550–51 (2009) ("[I]ncorporating legal research instruction across the curriculum will only help to reinforce, refocus, and repeat the initial skills that the students learned in their first-year legal research and writing classes and set the students on the path towards

need to teach legal research as "an iterative and analytical process of problem solving" that accounts for the need to provide deeper training in information literacy and relies on proven and progressive pedagogies utilized in other skills courses.[144] Others have highlighted the positive impact collaborative learning, new technological tools, and resources may have on developing students' legal research skills.[145] A thorough discussion on the advantages and disadvantages of these proposals is beyond the scope of this Article. However, given the clear issues caused by the current prevailing trend of restricting legal research training to a limited portion of the first-year legal writing course, we accept the premise that the best solution to the problem of law students' graduating with inadequate legal research skills involves infusing research instruction throughout the curriculum. The remainder of this Article describes a cost-effective, pedagogically-sound method for doing so.

## IV. INTEGRATING VIDEO-BASED LEGAL RESEARCH MODULES INTO THE LAW SCHOOL CURRICULUM

Given the flaws in the current models of legal research instruction, a new approach is warranted—one that balances the necessity of increasing the amount of legal research training with the time and labor constraints involved in doing so. In this Part, we describe an innovative approach to integrating legal research not just into the first-year legal writing courses, but into the entire law school curriculum—video-based legal research modules. Although many law schools have been experimenting with adding some forms of legal research instruction via video modules, little attention has been paid to how such videos can be used outside of the confines of traditional legal research and writing courses.[146] The rest of this Article aims to fill that gap.

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research competency, while stressing the importance of ongoing research skills development . . . .").

144. *See* Valentine, *supra* note 6, at 213.

145. *See* Osborne, *supra* note 9, at 407.

146. *See, e.g.*, Anne L. Abramson, *Cross Border Teaching with Technology*, 36 CAN. L. LIBR. REV. 51, 51 (2011) (discussing the use of CALI videos in an international legal research course); Laurel E. Davis et al., *Teaching Advanced Legal Research in a Flipped Classroom*, 22 PERSPS. 13, 13–14 (2013) (discussing the creation of legal research videos in order to "flip" an Advanced Legal Research course).

The first Section in this Part describes methods and suggests best practices for creating a library of legal research video modules that can be used in virtually any law school course at strategic moments and also reviewed later on demand. The second Section explains why this method is so effective. In addition to providing an efficient, scalable means of integrating legal research into the law school curriculum with a minimal outlay of resources, it is also supported by pedagogical theory. In particular, legal research video modules model just-in-time learning theory, providing students with the ability to learn specific forms of legal research at the precise moment when the knowledge is needed, thus increasing motivation and, with it, retention.[147]

### *A. Legal Research Video Modules: Towards the Development of Best Practices*

Legal research video modules are exactly what they sound like: discrete, video-based legal research training units. As with other legal skills that law schools have realized need further integration into the overall curriculum, the difficulties with integrating legal research are both philosophical and logistical. What is the best method of integration? Who is going to teach it? How are faculty supposed to fit it into already-packed courses? What will be sacrificed to fit it in?

However, unlike—at least arguably—most other legal skills, legal research lends itself particularly well to digital teaching methods. First, much legal research today is conducted using online rather than print resources.[148] Indeed, a third of law schools do not even teach print legal research anymore.[149] Thus, even when taught in person, legal research instruction is often, at least metaphorically speaking, taught "online."

Additionally, because developing legal research skills involves the initial mastery of basic components and the repetition and practice of such skills, it requires less instructor intervention in the intermediate processes to ensure mastery. Indeed, the main way to evaluate legal research mastery is in the context of a final finished

147. *See* Davis et al., *supra* note 146.

148. *See* Feliú & Frazer, *supra* note 123, at 544–45 (discussing the proliferation of legal information online).

149. *See* Osborne, *supra* note 9, at 413 (reporting that 67% of law schools responding to a recent survey teach legal research skills through the use of print resources).

written product, which is why it is so closely associated with legal writing instruction.[150] While effective legal research requires strong legal analysis skills, those skills are best measured not by the research itself, but by the way in which the results of the research are communicated.

That is not to say that legal research is easy or that students will just figure it out on their own. Indeed, as noted previously, numerous studies show exactly how little students are able to do the latter, at least as measured by their performance in their first few years as attorneys.[151] It is safe to say, though, that certain basic skills, such as what types of materials exist, what these materials include, and how to navigate various legal research databases, are severable from the higher-level analytic skills that must be taught in the context of other courses to be properly evaluated. Such higher-level skills are also a fundamental part of the legal research process:

> Legal research is a legal skill that teaches basic legal knowledge necessary for successful completion of law school. It also requires issue-spotting, legal analysis, and the application of law to facts. When taught as a legal skill, legal research reinforces and supports the learning of doctrine and analysis. Legal research is also a fundamental lawyering skill necessary for the practice of law. It is the lawyering skill that provides the knowledge necessary for other lawyering skills such as interviewing, writing, negotiation, and counseling. When taught as a fundamental lawyering skill, legal research can reinforce and support learning of additional lawyering skills.[152]

Thus, we do not claim that legal research video modules can replace instruction in these higher-level skills; instead, we believe there are, in a sense, "levels" of legal research skills. Further, the more rudimentary aspects can be outsourced to digital platforms, leaving more time and opportunity for professors to focus on the higher-level analysis in the context of other coursework.

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150. *See* Helene S. Shapo & Christina L. Kunz, *Teaching Research as Part of an Integrated LR & W Course*, 4 PERSPS. 78, 79 (1996) (describing the advantages of combining legal research and legal writing courses).

151. *See supra* Part III.A.

152. *See* Valentine, *supra* note 6, at 178.

In the remainder of this Section, we will describe basic, practical steps for creating such video modules in house.[153] Our goal is to begin developing the contours of a set of best practices for others who wish to use this method of legal research instruction.[154] By necessity, we do not cover every possible way in which such modules can be created. Instead, we write from the perspective of the resources available at our own institution with the understanding that the methods we propose are adaptable to other law schools with differing resources.[155] The standards we have developed cover five broad areas: (1) authorship (Who should create the modules?); (2) subject matter (Which subjects should the modules cover?); (3) timing (When should the modules be created?); (4) content (What sort of content should each module contain?); and (5) length (How long should each video be?). We also provide a brief overview of additional practicalities that one will need to consider, such as choosing recording software and determining access and storage options.

### 1. Authorship

A fundamental premise of this Article is that law librarians are the legal research experts in law schools and, as such, ought to have significant say in the structure of the legal research curriculum.[156] Thus, it will come as no surprise that we believe that law librarians are the best choice for authoring the modules. Law librarians, particularly reference librarians with dual degrees, have specialized training in legal research, are likely to be up to date on new legal

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153. In-house creation of the videos is ideal as it allows for tailoring to the specific needs of the law school's students. For law schools without sufficient human or technological resources to create the videos in house, though, it may be worth exploring videos that have already been created by either private companies or other institutions.

154. The practices we suggest are informed by both experience and research, but we do not claim an exhaustive analysis of the literature available regarding best practices in online education. Instead, our recommendations are limited very specifically to the context and purpose of increasing the teaching of legal research in law schools without overburdening resources.

155. We assume that virtually every law school will have available some type of course management system and some type of video creation and editing software.

156. *See supra* Part III.C (arguing that law librarians are legal research experts and that one potential reason for the lack of legal research skills among recent law school graduates is the failure to include law librarians more consistently in legal research teaching).

research tools, and typically have knowledge of legal research pedagogy.[157]

Nonetheless, there may be some obstacles to such a system. In schools with small library staffs, there may not be enough people to dedicate significant time to a major new project. Additionally, not every law librarian will have technological expertise in video creation and it may take a great deal of time to get them up to speed. Further, depending on who is managing the project, potential conflicts involving cross-management could arise. For example, if the project is being managed by a legal writing professor, law librarians may be receiving conflicting directions from that professor and their library supervisor as to how to manage and prioritize their time.

This latter concern makes it evident that a corollary to the choice of who will create the modules is who will manage the modules' creation. To ensure consistency, timeliness, and follow through, someone will need to manage the project and assign the tasks associated with the various components. The choice of manager should be someone who has the authority to direct the employees who are expected to create the videos. This is another reason why law librarians may be the best choice for authorship. Law librarians, even those on the tenure-track, tend to work in an environment where there is a stricter sense of hierarchy in determining workload than what is custom in traditional faculty positions.[158] They will be used to both assigning and being assigned projects.

Thus, in most cases, the person in charge of the project should either be a law librarian with a title such as "Head of Instructional Services," or, in smaller libraries, the Head of Reference, Associate Director, or Director. Investing control of the project in the library ensures that employees necessary to the creation of the videos are given appropriate time and training to complete their assigned projects while balancing their other library duties.

That said, law faculty—especially legal writing professors—must have a prominent say in what is being created. The modules are meant to serve law school professors who wish to integrate some legal research training into their courses and it is essential that

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157. *See generally* Tammy R. P. Oltz, *Relinquishing Legal Research*, SECOND DRAFT, Spring 2017, at 54 (describing the required legal research, technology, and teaching skills of law librarians).

158. *See* Thomas Sneed, *The Academic Law Library's Role in Cultivating the Rural Lawyer*, 64 S.D. L. REV. 213, 228–29 (2019) (describing the hierarchical organizational structure of academic law libraries).

those professors have input into the modules' creation. Additionally, as will be discussed in the following Section, other faculty are likely to be charged with the high-level assessment of legal research skills, even if they are not engaged in the initial training.[159] Hence, it is paramount that the modules are designed in a way that facilitates this assessment and teaches the skills the other faculty find necessary for the students to learn.

### 2. Subject Matter

Once responsibility has been assigned for creating the video modules, the next step is to determine which subjects to cover. In an ideal world, every imaginable legal research scenario would make its way into a module; in this world, though, law faculty and staff must carefully select where to put their time and energy. The selection of which subjects to cover should be based on the particular needs of the law school's students as informed by the faculty, the students' primary employers, and the students' reported experiences.

To determine these needs, as much information as possible should be gathered about the legal research strengths and weaknesses of the law school's students before the modules are created. If a law librarian were to approach a project like this without such outside input, she would likely start with case law research. After all, cases are the legal materials taught most often in law school, so it stands to reason that the ability to research those materials would be the most critical and modules in those areas would have the highest priority.[160] However, as discussed earlier,[161] most studies conclude that new law graduates are already well-prepared in researching case law, so it may be unwise to change how they are currently being taught unless a particular institution shows different results. While it certainly could not hurt to create modules focused on case law research, it may not be the best use of employee time.

Instead, program managers should think about what needs are not currently being fulfilled. Where are students weakest? What type of essential research instruction is hardest to integrate into the regular law school curriculum? As previously noted, employers

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159. *See infra* Part IV.B.

160. *See The Law School Case Method*, PRINCETON REV. (Apr. 11, 2015, 7:11 PM), https://www.princetonreview.com/law-school-advice/case-method.

161. *See supra* Part III.A.

regularly point to legislative history and administrative law as core research areas for which new associates are ill-prepared.[162] So, those may be two excellent areas in which to start.

Law schools should also conduct their own evaluations. One simple method for doing so would be to conduct a few simple surveys. Local employers can be asked what additional research training they wish new associates had received in law school.[163] Faculty can be asked what type of training would most assist the students in their courses. Students can be asked what type of research they conducted most often in their summer employment and what sorts of questions came up for which they wish they had had more information.[164]

The key is to think locally. The major benefit of in-house video creation is the ability to delve into the particular needs of a law school's students. If it turns out that students *do* have trouble with cases, then, by all means, start with cases. If most law students practice in the state where the law school is located, then it may be wise to prioritize state-specific research over federal materials. Additionally, if a state has a prominent, commonly used secondary source, such as California's Witkin practice guide series,[165] then a video on how to use that particular source is likely in order. On the other hand, if a state has no official secondary sources, as is the case in North Dakota, then the traditional "start with secondary sources" legal research mantra may be less useful as a starting place for module creation (though such videos could certainly be created as well, so long as high-need ones were prioritized).

This leads us to another crucial question that must be answered in creating a robust video module library: When should these videos be created?

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162. *See supra* Part III.A.

163. Career services staff may also have insight into this area; employers will often provide casual, but highly useful, feedback to career services staff when discussing potential job opportunities or speaking engagements.

164. The University of North Dakota School of Law Library conducts a survey of 2Ls and 3Ls annually in the early Fall to learn student perceptions of how well prepared they were for the legal research they needed to conduct in their summer employment.

165. *See generally Witkin Library*, THOMSON REUTERS, https://store.legal.thomsonreuters.com/law-products/law-books/legal-publishers/witkin (last visited Jan. 18, 2021). The Witkin series provides California law-specific practice guidance in both substantive and procedural law. *Id.*

### 3. Timing

The first portion of the title of this Article, "Legal Research Just in Time," refers to the ability to use video modules to provide on-demand legal research instruction at the moment when students will use it. Such on-demand instruction helps to ensure that students are motivated to learn the material, thus increasing their retention.[166] However, the concept of "just in time" is also helpful when thinking about when to create the videos, especially in law schools with scarce resources.

If a law library has a large staff with the ability to dedicate a significant amount of time to creating the video modules, then it may be appropriate to set up the modules' initial creation as a discrete project. This could also work for law libraries that have librarians dedicated solely or chiefly to instructional technology. In such cases, the diversion of resources to a new project is unlikely to harm other library services.

However, for many law libraries this kind of project-based model will be unrealistic. Law librarians have numerous other duties to accomplish and major law library projects are often scheduled for times when duties are lighter, such as during the summer months.[167] Thus, there is unlikely to be a convenient time to add on another major, time-intensive project, at least not without significant prior notice. A better method is to look at the video module program as an ongoing, long-term project that will grow and change over time, much like other library services.

In the spirit of "just in time," a good first step is to make a list of video modules that will eventually be created and then prioritize them, recognizing that their creation will often come on an as-needed basis. Given that legal writing professors are the most likely to initially use these videos, it makes sense to consult with them during the early drafting and prioritizing of the list and then to make tweaks later after the consultations with other stakeholders discussed above.

Start small. Depending on how legal research is currently taught, think first about where video modules might supplement

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166. *See infra* Part IV.C.

167. At the University of North Dakota School of Law, for example, the law library tackles projects from strategic planning to moving collections during the summer months to avoid interfering with day-to-day obligations to law faculty and students that take precedence during the academic year.

instruction rather than replace it. Creating the modules will be a trial-and-error process. It will take time to know which formats work best, how to appropriately use the software, and how to properly assess the students' learning. Therefore, it makes sense to start in an area where the stakes are low to provide room and time for making and correcting mistakes. As noted above, something like researching legislative history or administrative law, if students are not already exposed to these areas of research, might be a good area to begin as these are likely to be a helpful "add on" to the current curriculum rather than fundamental starting points. If this does not work for the legal writing professors, then it might be helpful to begin by consulting with faculty who teach Legislation or Administrative Law to see if they would be willing to "test drive" the modules.

Once the module creation process is fairly well-defined, videos can be created on an as-needed basis. Reach out to faculty and ask them if they would like to use a module in their course and, if so, on what topic. It would also be appropriate to cover core topics, such as cases and statutes, even if those are more likely to be used for review, rather than to replace in-class instruction.

Keep in mind that the videos will need to be periodically reviewed and updated. Given the rapidly changing legal research landscape, one cannot assume that a video created even just a year ago is up-to-date. We recommend assigning responsibility for updating the modules to the law librarians or other individuals who created them, along with reviewing and updating the modules at least once a year, preferably just prior to the semester in which the modules are most likely to be used in class. For example, basic legal research videos that will be used in first semester legal writing courses would be updated in July prior to the start of the fall semester (or November for those who do not begin legal writing until the spring semester). This schedule will provide the reviewer with enough time to make any changes or updates but will also be close enough to the date of use to greatly reduce the likelihood of unanticipated changes.

The key takeaway is that it is best not to attempt to implement video modules all at once and to be prepared to create new ones on request. Creating effective video modules is a multi-year process and updates and changes will inevitably need to be made. If creators try to anticipate all of the needs in advance, they are likely to waste time and perhaps not be able to complete the project at all.

### 4. Content

It is difficult to develop a universal rule for choosing what content to put in the modules. Ultimately, content selection is a pedagogical matter that should be driven by the teaching philosophy of those creating the modules as well as the faculty who will be using them. Nonetheless, there are a few key components that every module should contain to promote effective learning. Those include an introduction, examples, checkpoints, potential pitfalls, a wrap-up, and an initial assessment component.

The introduction could be either a separate, short video or prose that the student must read prior to continuing to the first video. The important part is that the introduction includes two key components: an explanation of the importance of the subject matter being covered and a roadmap of what the students will learn in the module. This structure helps to set the stage for students by framing the videos that follow and explaining where the particular topic fits into the greater legal profession. For example, an introductory video for a legislative history module might explain the use of legislative history in statutory interpretation and even explore some of the controversy surrounding this use.[168]

Each module should also include examples of the subject matter being taught. The easiest way to do this is to use video software that allows for screen capture so that the legal research instruction occurs as a demonstration.[169] For example, a module on researching a specific state's statutes could begin with an overview of how to find and search a table of contents and index as well as how to conduct a keyword search. After the initial overview, the module could present the students with a problem such as: "Imagine you own a small grocery store. Your fourteen-year-old niece would like to earn some extra money, and you would like to provide her with a job to do so. Is this allowed?" The video would then guide the students through the research process again using this concrete problem providing

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168. *See generally* Thomas W. Merrill et al., *Text Over Intent and the Demise of Legislative History*, 43 U. DAYTON L. REV. 103 (2018) (providing an overview of the controversy surrounding the use of legislative history in statutory interpretation).

169. *See* Philip J. Guo et al., *How Video Production Affects Student Engagement: An Empirical Study of MOOC Videos*, ASS'N FOR COMPUTING MACH., Mar. 2014, at 41, 45. Note, however, that students stay more engaged in videos that feature the instructor, so, if possible, the speaker should be shown on the screen in some fashion or the video should alternate back and forth between the screen and the speaker.

repetition while maintaining engagement which, together, promotes learning.[170]

On the topic of maintaining engagement—another component that should be included in every module is "checkpoints." A checkpoint is simply a short, interactive break in the module to allow students to check in on their progress. For example, most recording software available in education institutions will include the ability to insert a quiz question at various places in videos. The purpose of these checkpoints is not assessment per se, although the checkpoints do allow for some limited self-assessment. Instead, the purpose is to test student learning of some key topic—one per checkpoint is ideal—in the moment, allowing for students to pause and go back if they realize that they do not know an answer. Such checkpoints help students stay engaged in the learning process and also mirror the spirit of just-in-time learning by allowing students to receive immediate feedback and correct course early.

Another essential component to include in the modules is a video on potential pitfalls that students may face in the research process for a given subject area. At first glance, this may not seem like an obvious inclusion. Why would one want to include an entire video on what not to do? And yet, most law librarians and law professors observe that students make common errors in the course of their research. For example, students conducting case research may fail to ensure that cases are in the correct jurisdiction or fail to notice if a case is unpublished.[171] Including a video covering common pitfalls in the research process is a time-friendly way of helping students avoid those pitfalls; it is akin to providing group feedback on common errors in writing assignments when one does not have time to comment on each individual paper. However, the feedback comes closer in time to the moment when the potential mistake may be made, potentially even heading it off.

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170. *See* Mary Brabeck et al., *Practice for Knowledge Acquisition (Not Drill and Kill),* AM. PSYCH. ASS'N, https://www.apa.org/education/k12/practice-acquisition (last visited Jan. 26, 2021) (discussing the role of deliberate practice—a process of "attention, rehearsal[,] and repetition" that facilitates learning).

171. Depending on one's jurisdiction, citing to an unpublished opinion may or may not be appropriate. *See* Tyler Atkinson, *Citation to Unpublished Cases: A Brief Comparison of Federal and California Practices*, MCMANIS FAULKNER BLOG (Nov. 29, 2018), https://www.mcmanislaw.com/blog/2018/citation-to-unpublished-cases-a-brief-comparison-of-federal-and-california-practices (noting that California state courts prohibit citations to most unpublished cases whereas the Federal Rules of Appellate Procedure now allow citations to unpublished opinions issued after January 1, 2007).

Each module should also include a video "wrapping up" what has been discussed in the prior videos. This is as simple as it sounds—just a brief summary of what the prior videos covered—but it is essential. The wrap up functions as another piece of repetition, a crucial building block to learning.[172]

Finally, each module should include an initial assessment component. For the reasons explained later in this Article,[173] video modules are not the place for high-level assessment of student legal research skills. However, a brief quiz to help ensure that students have mastered the content of the videos, at least in the moment, is appropriate. Such a quiz differs from the checkpoint quizzes in that it should be comprehensive and summative. That is, rather than serving to check in with a student to see if she understood one key point, the final quiz would provide insight into whether the student understood the entire subject area. Although such quizzes could technically be used for grading purposes, we recommend that they serve simply as self-assessment instead and that students be able to take them as many times as necessary to get the answers correct. Such quizzes are simply not designed to assess high-level mastery of legal research skills but merely the rudimentary basics and using them for grading purposes risks incentivizing an approach to teaching legal research that does not fully integrate it into the classroom—which is the entire point.

### 5. Length

Another somewhat mundane but nonetheless important consideration in the creation of the video modules is how long to make the videos. Indeed, the reader may have been asking before this point why "modules" were needed at all. Why not create one long video for each legal research subject and be done with it?

There are a variety of reasons for creating multiple short—ideally five to seven minutes maximum—videos rather than one longer video.[174] First, and most importantly, experts in instructional technology agree that shorter videos are more effective in promoting engagement and retention.[175] Studies show that students lose focus

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172. *See* Brabeck et al., *supra* note 170.

173. *See infra* Part IV.B.

174. *See* Guo et al., *supra* note 169 (recommending that instructors create videos less than six minutes in length).

175. *See id.* at 44–45; *see also* CYNTHIA BRAME, EFFECTIVE EDUCATIONAL VIDEOS 3 (2015) (citing research explaining that "[s]egmenting is the chunking of

if a video is too long.[176] This is particularly true when material is new, complex, and detailed, as is likely to be the case with most legal research subjects. Imagine trying to explain how to find legislative history to a student by beginning with what legislative history is and how it has been historically used in courts and going all the way to the intricate details of how to find marked up versions of a bill, all in one video. Even the most diligent student is unlikely to be able to retain all of that information at once.

Additionally, on a practical level, using short videos makes the modules easier to update and allows the videos to be used in chunks rather than as a whole, if desired. Adding and deleting videos or correcting mistakes is much easier when the videos are divided into discrete topic areas.

### 6. Other Practicalities

In addition to all of the considerations above, there will also be certain practicalities that need to be worked out depending on the resources available at a given law school, both human and technological. Such areas include determining which software to use, where to store the modules, and who may view the modules. While an overview of all of the potential options in these areas is beyond the scope of this Article, an explanation of how we made—and are making—these decisions at the University of North Dakota may be instructive.

Choosing which software to use and where to store the videos was initially a stumbling block. While the University provided access to a few different options, the law librarians who were charged with making the videos had differing levels of comfort with and expertise on the platforms, and the platforms had differing levels of technological sophistication. For example, two of the law librarians were adept at creating PowerPoint videos, but the file sizes were large and difficult to edit, particularly on Macs. Another law librarian was quite adept at a software program that had a sophisticated editing tool, but it had a steep learning curve and was licensed on an individual rather than institutional basis, meaning that not everyone had access to the software. Our initial plan was to

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information to allow learners to engage with small pieces of new information," including making shorter videos to increase both student engagement and student learning).

176. *See* Guo et al., *supra* note 169, at 44–45.

store the videos on a TWEN page, but TWEN file-size and storage limits, combined with our limited software options, made it a hassle to upload and store the videos.

Thankfully, these issues were solved for us when the University opted to purchase YuJa and integrated it into Blackboard. YuJa is a simple video recording software with fairly intuitive editing capabilities; it makes it easy to create a video of one's self and one's screen and to edit out any errors.[177] Additionally, the integration into Blackboard essentially eliminated the storage issue.[178] We did not need to become experts in compressing files or converting them to a more convenient format; instead, videos recorded on YuJa can be stored automatically on a specific "legal research" Blackboard page.

Determining who may view the modules will also affect the storage option chosen. In our case, we prefer to keep the videos internal to University of North Dakota Law, as many of the videos will be designed specifically for our students (e.g., videos about researching North Dakota legislative history or videos designed for a specific professor's course). Blackboard was thus a good option for us. However, those who would like to share the videos more widely might think about creating a YouTube channel. For example, the North Dakota State Library maintains a YouTube channel to provide instruction in the many databases available to libraries around the state.[179] Some schools may also wish to look into a hybrid model, such as using both a course management system and a more publicly available system to provide alumni with the ability to review the videos as well.

### *B. Assessing Students' Legal Research Skills Under the Module Approach*

Assessing legal research skills is not an easy task. This is because legal research is rarely an end in itself; it is both a means to the end of legal analysis and writing and part and parcel of the two.[180] Indeed, one cannot be characterized as "good" at legal

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177. *See Video CMS and Lecture Capture Platform for Higher-Ed*, YUJA, https://www.yuja.com/industry-solutions/higher-ed-video-platform/ (last visited Jan. 22, 2021).

178. *See* BLACKBOARD, https://www.blackboard.com (last visited Jan. 22, 2021).

179. *See NDStateLibrary*, YOUTUBE, https://www.youtube.com/channel/UCcLK-QjLcfNrA1KHhAVMsjA (last visited Jan. 22, 2021).

180. *See* Feliú & Frazer, *supra* note 123, at 547.

research without considering one's abilities in these other two fundamental areas.

Accordingly, the ultimate assessment of student legal research skills can only occur within the context of their use. Legal research skills cannot be assessed in isolation as the skills can only be demonstrated by the products the skills produce. Assessment of those products—chiefly, written legal analysis[181]—must take place not in the modules themselves, but in the classroom where the skills taught in the modules are applied. If the modules were to include a high-level assessment component, such as a written final product, they would also require videos providing instruction in the skills required to create that product. At some point, they could no longer be fairly characterized as supplemental modules; instead, they would be online courses with all of the intensive labor—and questions about who is best suited to it—that such courses entail.

It is true that because of the necessity of this high-level assessment occurring within the context of the classroom, whether or not it occurs will depend upon the buy-in of the faculty members who use the modules. Legal writing professors who use the modules will be able to assess their students' research skills the same way they do now—based on the quality of the sources used and the analysis provided in their students' memos and briefs. But professors who do not traditionally assign written work may leave an assessment gap. For example, an administrative law professor might assign a module devoted to researching administrative regulations. However, whether the students have processed and can apply this information will only be evident if the professor assigns some sort of assessment that allows the students to prove those skills and transfer them to new fact patterns.

Unfortunately, if professors who use the modules are unwilling to incorporate a research and writing component into their courses, true assessment will be difficult. Due to the scaffolded, contextual nature of legal research skills, there is no easy way to assess them without commitment from one's colleagues and law school. Thus, those who care about assessing the legal research skills of their students must argue for more classroom research and writing assignments and perhaps even an end-of-year writing project that crosses courses.

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181. *Id.* at 548 (explaining the process method of legal research instruction and noting that "students will learn the complexities of legal research as they work through problem solving and produce a written document").

Still, this does not mean that all assessment is impossible in the modules. Indeed, traditional methods of assessment, such as quizzes and even the much-maligned "treasure hunts," can be effective interim self-assessment measures for students so that, at the very least, they get a sense of what they do and do not know.

One potential strategy for assessment would be to borrow from that used in the Legal Technology Assessment.[182] The Legal Technology Assessment measures students' skills in basic technology, such as Microsoft Word and manipulating PDFs.[183] Students complete tasks in the various software programs that are tested and are ranked on a scale from beginner to expert based on both the accuracy of the students' performance and the time it takes students to complete the task.[184]

Those adopting legal research modules could use a similar method of assessment. Law librarians could determine how quickly a good researcher *should* be able to complete a certain task and then create timed tests in the modules that assess the students' performance accordingly. This would be an improvement over ordinary, untimed quizzes which might allow students to find all of the answers but would not test for how efficiently they did so.

Ultimately, responsibility for the assessment of legal research skills will need to be undertaken by the faculty as a whole. The modules should be seen as a tool for increasing students' exposure to legal research techniques and sharpening their skills; however, the modules do not and cannot replace the essential function of professors to evaluate the implementation of those skills.

### *C. Why Video-based Legal Research Modules Work*

Now that we have explained how to create video-based legal research modules, we want to explain why they are so effective in integrating legal research into the curriculum. While there can no longer be any doubt that law schools need to provide more legal research instruction, it is not necessarily obvious that video-based modules are the most effective way of doing so. Yet, when one begins to consider the alternatives, the benefits quickly become apparent.

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182. *See Legal Technology Assessment*, PROCERTAS, https://www.procertas.com/products/lta/ (last visited Jan. 22, 2021).

183. *Id.*

184. *Id.*

Virtually every other alternative to further integrate legal research into the law school curriculum requires a large outlay of resources. For example, consider the idea of requiring advanced legal research courses. While some large law schools can do so, many simply do not have enough qualified professors to teach such courses; further, the more required upper-level courses to which students are subjected, the less freedom they have to shape their own legal education. Other options, such as having law librarians teach a research unit in person, do not include one of the key benefits of the modules—the ability to review them on demand in the moment when the student needs to use the tools taught.[185]

Finally, other options for integrating legal research into the law school curriculum require a large amount of faculty buy-in to work; faculty must proactively reach out to the law librarians to provide instruction, and many may not do so. While the video modules also work best with faculty buy-in, especially in the area of providing accurate assessment, assuming that they are accessible to the entire student body at any time, the modules can also be used by students even if faculty are not interested in incorporating them formally into a class. In short and as explained below, using video modules to help integrate legal research into the law school curriculum is both efficient and, even more importantly, pedagogically sound.

### 1. Efficient

One of the major benefits of using video modules to solve the problem of deficient legal research instruction is that, especially compared to other potential solutions, video modules are highly efficient.

First, over time, using video modules will save massive amounts of time and labor. While developing an initial library of video modules will be time-consuming, once the library is created the videos will be able to be used repeatedly, cutting out the time needed to prepare and give multiple legal research lectures. Additionally, because the videos will be available for review on demand, they will likely cut down on the number of student questions as well as the instructor effort in repeating material that was already covered. Even the most diligent student is bound to miss or forget something

185. *See* Simon Canick, *Legal Research Assessment*, 28 LEGAL REFERENCE SERVS. Q. 201, 205 (2009) ("[I]t is axiomatic that legal research instruction is most successful when it comes at the point of need").

stated in a one-time lecture; with the video modules, questions that have already been covered can be answered by reviewing the video.

Using video modules will also allow faculty who have not traditionally taught legal research to integrate legal research assignments into their courses more easily, without having to eliminate coverage of other important topics. Because the modules are designed to be completed out-of-class, professors can assign them along with the ordinary reading. While we highly recommend that professors include some sort of work product to properly assess student mastery of the skills taught, such work product need not necessarily be a full memo nor need it necessarily be graded.

For example, a professor teaching Family Law could integrate legal research into the course by asking students to review a module on state statutory and case research outside of class. The professor could then create an assignment asking students to explain what must be included in a prenuptial agreement to ensure that it is valid. Such an assignment would not be overly labor-intensive to grade, but the professor could also quickly read through the responses and provide group feedback rather than individual feedback or grading.

If a professor wanted a more intensive assignment, the modules would also allow for that. For example, that same family law professor might provide a fact pattern describing a custody dispute and then ask students to watch the video on state statutory and case research, research the best interests of the child factors, and apply them to the facts of the case.

Further, in terms of the labor involved in creating the videos, if most are created on demand rather than as part of a discrete law library "project," the time and labor used in their creation will be distributed efficiently and effectively amongst library staff. Indeed, employees may come and go even as the library of modules increases. Additionally, beginning with an initial focus on the most deficient legal research areas (as determined by surveys) will allow the modules to begin packing a punch even before a large collection has amassed.

In short, using legal research video modules provides a method of integrating legal research instruction across the curriculum without exacting an excessive price on the current course content or the faculty who teach it. Faculty interested in integrating a legal research component into their courses need only request that the law library (or other creators) create a video module or help guide them in choosing appropriate modules from those already created.

For example, a professor teaching Taxation might direct students both to "basic" videos, such as statutes, cases, and regulations, but might also request video modules specifically on researching the tax code and its accompanying regulations. Then as a quick assignment, the professor might ask her students to find the statute or regulation governing a given rule that will be discussed in class. Professors can reinforce student learning by asking students to do a simple, hands-on task to put the subject matter into practice. Meanwhile, students also get deeper training in legal research by learning a specific type of research on a specific topic as they have the need for it, promoting retention not only of the rule they found but also of the legal research process they used to find it.

Finally, a major benefit of using video-based modules to integrate legal research instruction across the curriculum is that they are scalable. Scalable is defined as "capable of being easily expanded or upgraded on demand."[186] Legal research video modules fit both of these criteria. A library of video modules can be easily expanded—both by the creation of new modules and via the addition of new videos to previously existing modules. They are also easily upgraded because the modules are made up of short, discrete videos, individual videos that can easily be updated as necessary without having to recreate the entire module.

### 2. Pedagogically Sound

In addition to being both time and labor efficient, developing and incorporating legal research modules into the law school curriculum is pedagogically sound. The idea is grounded in the principles of just-in-time learning. At the core of this learning theory is the concept that students learn better when there is an immediate need for the information they are receiving.[187]

> For adult learners, requirements for the optimum educational system are simple to state. Instruction for all subject matter should be available, when needed, at a level and with materials best suited for each individual. The system should provide feedback

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186. *Scalable*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/scalable (last visited Jan. 23, 2021).

187. *See* Lorri Freifeld & Bruce Tulgan, *Learning Just in Time*, TRAINING MAG. (Sept. 18, 2013), https://trainingmag.com/learning-just-in-time.

> about specific performance objectives as well as display a road map of past accomplishments.[188]

When students "encounter specific skill or knowledge gaps that prevent them from completing a task or achieving a desired tangible result," providing the necessary information to fill those gaps "just in time" enhances student learning.[189] Thus, just-in-time instruction has been described as a process in which "the required knowledge and skills are imparted for immediate application, to avoid loss of retention due to a time gap."[190]

This makes intuitive sense. Contrast two hypothetical scenarios. In one, a worker takes a required annual slip-and-fall training, solely to fulfill an employer requirement. In the other, a driving student is taught how to parallel park moments before being asked to do so. In the former scenario, the worker would likely have difficulty paying attention or retaining the information presented unless the job specifically carried a regular risk of that type of injury. On the other hand, the driving student would likely be rapt with attention, knowing she would be expected to parallel park within moments of hearing the instructions.

Those varying experiences help illustrate the theory on which just-in-time instruction is based: learners are more engaged and retain information better the closer in time the instruction comes to the point of need. Just-in-time learning works especially well for topics that are both dense and heavily reliant on practice, such as legal research instruction. Learning about how to conduct legal research in the abstract, say, through a lecture format, simply does not work; students need to engage in the process, even to fail at it, to retain the information that they are being taught. Not only that, but they also need to engage in the process at a point when it matters. In other words, simply asking students to conduct some research just after teaching them how to do so is minimally helpful if there is no consequence to conducting that research poorly. Instead, legal research instruction should be tied closely in time to assignments in which students will need the skills they are being taught in order to succeed.

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188. DeLayne Hudspeth, *Just-in-Time Education*, 32 EDUC. TECH. 7, 7 (1992).

189. *See* Freifeld & Tulgan, *supra* note 187.

190. *See* Asay, *supra* note 7, at 472 (quoting *Just in Time Instruction*, BUS. DICTIONARY, http://www.businessdictionary.com/definition/just-in-time-instruction.html (last visited Feb. 7, 2021)).

Indeed, in some ways, the video module approach to integrating legal research into the curriculum both combines the bibliographic and process methods discussed previously in this Article[191] and bypasses the debate over them all together. The modules themselves may be somewhat bibliographic in nature—focused on teaching students how to use resources and providing simple "treasure hunt"—like problems to assess student progress. But their integration into the curriculum at discrete, critical moments epitomizes the process method in which legal research instruction is taught, applied, and assessed in a more context-rich environment.

## V. CONCLUSION

Our students are struggling. Evidence consistently shows that they graduate lacking skills that are fundamental to the practice of law.

Even as we have attempted to improve legal education by integrating more training in certain skills, such as legal writing, into the classroom, other skills, such as legal research, have been left behind. But this need not be the case. Using video-based legal research modules provides an efficient, scalable, pedagogically-sound method for (re)integrating legal research across the law school curriculum. We need not give up the advances that we have made in providing other skills instruction; however, we must not continue to sacrifice one set of fundamental skills to instill others. Using video-based modules to provide legal research instruction can help recenter legal research instruction in legal education without disrupting the progress that has been made in other areas of skills instruction.

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191. *See supra* Part III.C.