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The Representation of Law Student Information Literacy Definitions in Legal Research

Textbooks: A Comparative Content Analysis

A thesis submitted in partial satisfaction

of the requirements for the degree

Master of Library and Information Science

by

Domonique LaVon Roberts

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ABSTRACT OF THE THESIS

The Representation of Law Student Information Literacy Definitions in Legal Research

Textbooks: A Comparative Content Analysis

by

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Master of Library and Information Science

University of California, Los Angeles, 2012

Professor Anne J. Gilliland-Swetland, Chair

This study traces the development of the American Association of Law Libraries' (AALL) Law Student Information Literacy (LSIL) 2011 Standards, and tests how the Standards might be incorporated into legal research textbooks. In 2009, an informally organized group of law school legal research educators began developing information literacy principles in response to calls for more robust assessment mechanisms across legal education. The group soon submitted a draft of their Law Student Information Literacy (LSIL) Standards to the American Association of Law Libraries' (AALL) Executive Board, which agreed that the publication of such standards would help advance discussions concerning legal research pedagogy. The Board then appointed a Law Student Research Competency Standards Task Force, which completed another draft of the LSIL Standards and solicited feedback from stakeholders in the legal

academy and members of the National Conference of Bar Examiners. After further revision, the Standards were adopted by the AALL Executive Board in March 2011. This study employed a quantitative content analysis methodology to compare the content of law student legal research textbooks to the AALL LSIL Standards. The research strategy portion of the LSIL Standards was compared to the strategy portions of two well-regarded legal research textbooks. Intercoder reliability was, unfortunately, not high enough to draw statistically significant conclusions. For several categories, however, coder agreement was above eighty percent, and intercoder reliability for the "analysis" category suggests that the traditional distinction between process-oriented and bibliographic textbooks may be valid.

The thesis of Domonique LaVon Roberts is approved.

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2012

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I. Introduction

This study traces the development of the American Association of Law Libraries' (AALL) Law Student Information Literacy (LSIL) Standards and explores how the Standards might be implemented by textbook authors through a comparison of legal research textbooks to the AALL LSIL framework. The Standards were created to "foster the development of different models and eventually best practices" (AALL Law Student Research Competency Standards Task Force, 2011). From their inception, the Standards were intended to be a living document. The Task Force which formulated the Standards was charged to "recommend a method for [their] periodic review" (AALL Law Student Research Competency Task Force, 2011). Legal research strategy was an important component of the LSIL guidelines. In their initial charge to the Task Force, AALL also stated that the Standards, " might address, among other items, how to analyze a research problem, selection of appropriate resources, research methods, evaluation of the sources and information retrieved, and application of the results to the problem" (AALL Law Student Research Competency Task Force, 2011). In June 2011, AALL appointed a Law Student Research Competencies Task Force to "develop law student research competencies based on the Law Student Research Principles" (AALL Executive Board, 2012). A draft of the Competencies was completed and circulated for comment among law librarians and other stakeholders in April 2012 (AALL Executive Board, 2012).

The LSIL Standards are, thus, part of an ongoing effort by the AALL leadership to support the educational roles of law librarians at law-student-serving institutions, such as law schools and organizations that employ currently enrolled and recently graduated law students. Of note, however, is the fact that the LSIL Standards began as part of an informal collaboration among law librarians. By the end of April 2011, an informal group of law librarians had already

formed and submitted a draft of their LSIL Standards to the AALL Executive Board (AALL Law Student Research Competency Task Force, 2011). After reviewing the group's submission, the Board members generally agreed that an AALL-endorsed LSIL Statement would be a good idea, and AALL's President appointed the June 2011 Board (AALL Law Student Research Competency Task Force, 2011). Additionally, a publicly available Wordpress blog was used to solicit comments on a draft of the LSIL Standards. One of the public comments taken into account by the Research Competency Task Force concerned the importance of pre-research analysis of legal research questions and factual scenarios (AALL Law Student Research Competency Task Force, 2011). Another comment eventually incorporated into the final draft argued in favor of the importance of calling the Statement one regarding "information literacy", as opposed to one only about "research competency" (AALL Law Student Research Competency Task Force, 2011). The members of the group which created the original LSIL framework and the law librarians who commented on the draft Standards were all members of AALL (AALL Law Student Research Competency Task Force, 2011). These occurrences evidence the grass-roots support for LSIL Standards among law librarians.

The Standards were intended for use in law schools, law firms, and any environments in which law students or new lawyers will need basic or advanced legal research skills to be successful. During their years in law school, students can use the LSIL framework as a tool to evaluate and reflect upon their learning experiences, and law professors can use it to help guide their curriculum development and evaluation. Law firms can use the Standards as a starting point for the development of in-house training and evaluation programs. The Standards are also intended to be useful to bar examiners and law school accrediting agencies (AALL Law Student Research Competency Standards Task Force, 2011). Recent discussions regarding the inclusion

of legal research on the multi-state bar exam have made the Standards more relevant to certification and accrediting bodies (Valentine, 2009). The Standards can also be utilized by continuing legal education providers to evaluate and expand their program offerings (AALL Law Student Research Competency Standards Task Force, 2011). Individual attorneys, also, may find the Standards useful for measuring their own level of research competency and planning future educational opportunities (AALL Law Student Research Competency Standards Task Force, 2011).

The LSIL Standards have already played an important role in the recent summer conferences on "Legal Information: Scholarship and Teaching" (aka "Boulder conferences") (University of Washington Legal Scholarship, 2011). These conferences were organized independent of AALL, but included principally AALL members (Boulder Conference , 2009). Conference participants were chosen based upon their submission of scholarly works or works-in-progress related to legal information (Boulder Conference, 2010). Articles on topics ranging from the coverage of important legal research citators to the usefulness of adopting Bloom's Taxonomy to classify legal research skills were presented. The conference organizers also sought articles and projects specifically tied to legal information literacy (University of Washington Legal Scholarship, 2011). In the call for papers posted on the University of Washington Legal Scholarship blog and the AALL Academic Law Libraries listserv, the conference organizers stated that they were also seeking to compose a statement related to 2007 Carnegie Report (University of Washington Legal Scholarship, 2011). Specifically, they intended to write a Signature Pedagogy Statement which corresponded with the pedagogical distinctions recognized in the Carnegie Report (University of Washington Legal Scholarship, 2011).

The Signature Pedagogy Statement and the Boulder Statement on Legal Research

Education were developed at the first and second "Legal Information: Scholarship and Teaching" conferences (University of Washington Legal Scholarship, 2011). These conferences, which occurred in the summers of 2009 and 2010, were created to foster the growth of scholarship surrounding legal research education. They encouraged participants to consider the cognitive aspects of legal research in terms of the paradigms which are meaningful to law school deans and curriculum committee members (University of Washington Legal Scholarship, 2011). The Boulder Statements were drafted with the specific recommendations of the Carnegie Report in mind (Boulder Conference, 2010). In particular, the Statements focus on the sections of the Carnegie Report which discuss the three apprenticeships of legal education and the tacit and shadow pedagogies of legal education (Boulder Conference, 2010). The authors apply the general concepts found in these sections of the Carnegie Report to the context of legal research education: its content, attendant skills, and place in the law school curriculum (Boulder Conference, 2010).

The Boulder Statements also outline and reflect many of the general principles underlying the LSIL Standards. For example, the importance of students understanding the "professional and ethical norms implicated by their research" is a key part of the first Boulder Statement (Boulder Conference, 2009). The idea of understanding the ethical ramifications of research activities is also a key part of AALL's LSIL Standards (AALL Law Student Research Competency Standards Task Force, 2011). Generally, the LSIL Standards and Boulder Statements both emphasize the cognitive skills and background knowledge necessary to competently carry out legal research over the more mechanical aspects of the research process (Boulder Conference, 2009). The first principles in the LSIL Standards concern background knowledge necessary to competently carry out legal research, and the subsequent principles

elaborate upon the knowledge of the tools and processes which are essential to legal research (AALL Law Student Research Competency Standards Task Force, 2011). Due consideration is also given to the discrete skills needed by researchers and the demands of the varied contexts in which researchers utilize their analytical skills (AALL Law Student Research Competency Standards Task Force, 2011). The Boulder Statements contain similar messages about the content and aims of legal research education.

The LSIL Standards also have relevance to recent discussions surrounding law school accreditation standards (AALL Law Student Research Competency Standards Task Force, 2011). Recently, the ABA's comprehensive review of its Standards for Law School Accreditation have brought various concepts related to assessment of student learning outcomes to the forefront of discussions regarding legal education. Two important needs have emerged: the identification of specific, measurable student learning objectives for law students and the development and implementation of assessment mechanisms which accurately reflect student educational attainment (Valentine, 2009). Additionally, the ABA has increasingly focused on the importance of legal skills education during law school (Valentine, 2009). Law librarians have submitted multiple comments to the ABA Section on Legal Education which emphasize the importance of legal research skills education (AALL Special Interest Sections, 2011). In one letter, the AALL Academic Law Libraries Special Interest Section plainly states that, "Legal research is an essential skill for any legal career, but the "legal research literacy," or "information literacy" skills of law students and practitioners have been a matter of concern for some years", particularly in light of the ever-changing and expanding legal research environment (AALL Special Interest Sections, 2011). The ALL-SIS letter also stresses that the Carnegie and Best Practices for Legal Education Reports state that " one of the core commitments of a law school

should be preparing students for practice" (AALL Special Interest Sections, 2011).

Standard 302 of the American Bar Association's standards for law school accreditation includes legal research as one of the "learning outcomes" that must be "identif[ied], define[d], and disseminate[d]" (Student Learning Outcomes Subcommittee, 2011). In their correspondence with the ABA, law librarians have supported the enactment and adoption of this goal: "as part of either Standard 302 or as a new Standard, we recommend a requirement that each school draft and adopt minimum legal research information literacy expectations for its students" (AALL Special Interest Sections, 2011). The ALL-SIS also states that it is essential for the legal research standard to be paired with an assessment mechanism which can be used to measure the rate of student attainment of research learning outcomes (AALL Special Interest Sections, 2011). The ABA's standards also include a provision which requires that the law library itself have sufficient resources, human and capital, to support student learning and inquiry. In keeping with its support for legal research instruction, ALL-SIS also advocates for a library director who has sufficient expertise in law and librarianship to direct a coordinated program of legal research instruction (American Bar Association Standards Review Committee, 2011). Likewise, the SIS advocates for law librarians with adequate training and knowledge to competently instruct law students in the basic and advanced legal research courses offered through law schools (AALL Special Interest Sections, 2011). Additionally, the Gen X/Y Caucus of AALL urged the ABA to support specialized degree requirements for law library directors to support the advancement of scholarship and practice related to legal research education (AALL Special Interest Sections, 2011).

LSIL standards can aid legal research instructors seeking to develop and implement learning outcomes, assessment tools, and collections that comply with Standard 302 (Valentine,

2009). They are particularly useful as a model for structuring and integrating skills-based areas of the law school curriculum, such as legal research and citation practice. Additionally, legal research can serve as a practical application of problem-solving skills, since legal research is essentially a problem-solving process (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). The Standards can also be utilized as a helpful starting point for further research and elaboration, and may be especially helpful to legal research educators as they collaborate with law school deans and others responsible for curriculum oversight. The LSIL Standards may be a particularly appropriate document to refer curriculum committees to since it is based upon documents such as the MacCrate Report and Carnegie Report, which are important foundational statements for modern curriculum development. In addition, the LSIL Standards allow law librarians to draw upon the extensive literature related to information literacy when discussing curriculum changes (AALL Law Student Research Competency Task Force, 2011). This is particularly helpful since information literacy has been the basis for various successful learning outcome assessments, including the popular Project SAILS instrument (Kim-Prieto, 2010).

The central aim of this study is to contribute to the scholarly discussion fostered by AALL's LSIL Standards by bringing the standards into conversation with law student legal research texts. More specifically, this study is an analysis of how the content of the LSIL Standards is reflected, or not, in the examined textbooks. Legal research texts were chosen for the content analysis since they are prominent teaching tools and are kept up-to-date fairly regularly. Also, legal research textbooks may contain discussion of issues not contemplated by the LSIL Standards, and the issues represented in textbooks which are also present in the Standards are likely to receive a fuller treatment in the textbooks. In this way, textbooks can be

utilized to inform and update the Standards. This is a new direction since the AALL LSIL standards were developed primarily based upon analyses of the Association of College and Research Libraries' (ACRL) IL standards and the *Statement of Fundamental Lawyering Skills and Professional Values* contained in the American Bar Association's (ABA) *MacCrate Report* (AALL Law Student Research Competency Standards Task Force, 2011). The relationship between the LSIL Standards, the ACRL IL Standards, and the MacCrate Report is explored more fully in the literature review introducing the LSIL Standards.

II. Literature Review

Scholarly literature regarding law student information literacy has developed in two main streams (1) texts describing, often anecdotally, the general need for increased information literacy skills, and (2) works focused on describing specific solutions intended to meet the need for information literacy. Some texts have explored both: the problems associated with researchers who lack IL skills and possible solutions. To provide background for the review of literature specific to the AALL LSIL Standards, both discourses will be introduced here.

The Need for LSIL

The literature focusing on the need for LSIL is often similar to prior literature focusing on the need for legal research skills. A significant difference between legal research skills and LSIL is that LSIL takes into account the paradigm shift from printed to digital information. Thus, literature which discusses this paradigm shift--especially before the term IL was widely applied to law student research skills--is particularly relevant to discussions describing the need for LSIL, even though such literature does not use the same terminology as more recent publications. In *Legal Research as a Fundamental Skill: A Lifeboat for Students and Law*

Schools, Valentine identifies several issues facing today's legal researchers: the rapid growth of the administrative state; the increasing importance of international and foreign law as globalization continues; how the internet has broadened the type of information that courts and attorneys rely on; how technologically advanced research tools affect the structure of American law (Valentine, 2009). Although Valentine uses the term "information literacy" to describe the research skills that current law students need, she cites literature dealing with the shift from book-based to computer-assisted legal research which does not refer to IL (Valentine, 2009). For example, in "Electronically Manufactured Law" Katrina Fischer Kuh identifies three important differences between the electronic and print research processes: (1) "electronic researchers are not guided by Key System information to the same extent as print researchers with respect to identifying relevant theories, principles, and cases"; (2) "electronic researchers do not encounter and interpret individual cases through the lens of Key System information to the same extent as print researchers; and (3) "electronic researchers are exposed to more—and different—case texts than print researchers" (Kuh, 2008). Thus, according to Kuh, electronic information will bring about two major shifts in the structure of U.S. law: (1) "increased diversity in framing - divergence in the selection of the legal theory or theories through which to conceptualize facts, arguments, and cases," and (2) "more tilting at windmills - the advancement of marginal cases, theories, and arguments" (Kuh, 2008).

Similar to Valentine's list of the skill sets needed by modern legal researchers, Wegner (2009) identifies several challenges facing legal research instructors: understanding professionals and their work from an educational perspective; understanding learning; understanding teaching; addressing gaps; embracing assessment; fostering progression and integration; and encouraging institutional innovation (Wegner, 2009). The first challenge identified by Wegner--understanding

professionals and their work from an educational perspective--is one of the key processes law librarians hoped to further in the Boulder Statements on Legal Research Education (Wegner, 2009). Law librarians seek to accomplish this particular pedagogical goal, in part, by leveraging the diverse experiences of librarians in law schools, law firms, public and private corporations, courts, and public law libraries. The several challenges identified by Wegner are based primarily upon the *Carnegie Report* (Wegner, 2009). The challenges are also drawn, in part, from the Best Practices document published by the Clinical Legal Education Association (CLEA) (Wegner, 2009).

Most of the additional literature discussing LSIL does not describe a distinctively legal framework for information literacy. Instead, it seeks to measure incoming law students' information literacy levels based upon the ACRL IL Standards. Studies conducted by Kathryn Hensiak, et. al. and Ian Gallacher are representative examples of this trend. Hensiak's 2003 study of entering first-year classes at three law schools focused tested the hypothesis that "students begin law school without basic research skills" (Hensiak, Burke, & Nixon, 2004). She found that students did indeed lack foundational research skills: they struggled with knowledge of Boolean operators, citation indexes, and library catalogs (Hensiak, Burke, & Nixon, 2004). Similarly, in a 2007 article, Ian Gallacher describes the results of his study of incoming law students (Gallacher, 2007). He found that law students were very confident in their research abilities, despite studies of law student information literacy which indicated that their information literacy skills were lacking (Gallacher, 2007).

In Jayasuriya and Brillantine's 2007 article, "Student Services in the 21st Century: Evolution and Innovation in Discovering Student Needs, Teaching Information Literacy, and Designing Library 2.0-Based Student Services," literature concerning law student research skills

is reviewed and the authors set forth a brief definition of law student information literacy (Jayasuriya & Brillantine, 2007). Information literate law students must first meet the ACRL requirements for information literacy; they must be able to:

- determine the nature and extent of information needed,
- access information effectively and efficiently,
- evaluate critically the source of the information and incorporate the information into the person's knowledge base,
- use information effectively to accomplish a specific purpose, and
- understand the ethical and social issues regarding the information and use the information ethically and legally. (Jayasuriya & Brillantine, 2007).

Additionally, information literate law students must also possess subject expertise in legal research:

- The legal authority underlying each document as well as the hierarchy of legal authorities. For example, the information literate should know that a regulation must be authorized by a statute which must be authorized by a constitution, and the student must be able to use that knowledge to gain a better understanding of the law.
- The legal authority given to each law-making body. The Constitution grants federal courts far different authority than Congress grants to regulatory agencies. By understanding that distinction students can more easily grasp the dissimilar legal significance of decisions from the federal court and from a federal agency's appeals board.
- The various kinds of information that is available in each type of

legal document. For example, the student should know that the Federal Register has background information about each federal regulation and that Congressional hearing transcripts are significant sources of public policy considerations about legal problems.

- The appropriate usage of information from other disciplines and the legal significance of that information. For example, a good researcher knows when to look for a social science resource to predict the best interests of the child in a custody case, but one who is information literate understands the value of learning what kinds of social science has been persuasive in past custody litigation and searching for similar types of information. (Jayasuriya & Brillantine, 2007).

Although it is not as fleshed out as the AALL LSIL Standards, this definition of legal information literacy provides an interesting counterpoint to the AALL LSIL Standards. One element missing from this definition that is typically present in LSIL statements is the concept of a research design.

LSIL Solutions

According to Kim-Prieto, AALL's LSIL Standards are a useful tool for re-shaping legal research education (Kim-Prieto, 2010). They provide legal research educators with an outline of major topics to cover in basic and advanced legal research courses. In *How Law Student Information Literacy (LSIL) Standards Address Deficits Identified by the MacCrate Report and the Carnegie Report, and What They Mean for Legal Research Education & Training*, he traces the Standards' development and argues that they should be consulted during the creation of standardized assessments, to aid in the development of curriculum standards, and to provide a

framework for legal research skills inquiry (Kim-Prieto, 2010). Kim-Prieto hopes that assessments developed based upon legal information-specific standards will be more effective in assessing law student information literacy than more generic tests, such as ACRL's Project SAILS instrument (Kim-Prieto, 2010). Kim-Prieto had previously used Project SAILS in an AALL grant-funded study to test law student information literacy, and he found it to be insufficiently specialized to measure the specific knowledge and skills related to law-related research (Kim-Prieto, 2010). He concluded that a law-specific measurement tool needed to be developed (Kim-Prieto, 2010).

Gire (2010) tests Kim-Prieto's theories as she describes how academic law librarians at the Franklin Pierce Law Center developed and gained approval for an information literacy plan (Gire, 2010). Before they began drafting the plan, they conducted a review of the existing literature related to LSIL. After noting that this literature was sparse, Gire reviews more general information literacy literature, especially the kind aimed primarily at librarians working with undergraduate populations (Gire, 2010). Thus, she and her colleagues first compared the contents of their current legal research instructional materials with the Association of College and Research Libraries' *Information Literacy Competency Standards for Higher Education* (Gire, 2010).

This use of the ACRL Standards is in line with their drafters' original intent. They were meant to, and have successfully, served as a model for many subsequent efforts (Kim-Prieto, 2010). For example, the Political Science special interest section of ACRL developed their own standards for information literacy based upon ACRL's original IL Standards (Kim-Prieto, 2010).

To successfully advocate for the adoption of their plan, Gire and her colleagues also needed to facilitate faculty collaboration, develop implementation deadlines, and focus on the

assessment of student research skills (Gire, 2010). Faculty support and collaboration was a key component to getting the information literacy plans implemented (Gire, 2010). Since efforts to advance legal research education fall under the large umbrella of law school curriculum reform, the cooperation of faculty members serving on curriculum committees is not only helpful, but essential.

Several key statements of LSIL principles have been generated:

a. Statement of Fundamental Lawyering Skills and Professional Values

This American Bar Association publication is part of the larger *MacCrate Report*. It is contained in Chapter 5 of the Report, and is intended to be used by a wide variety of constituents: law students, law schools, developers of continuing legal education programs, law offices, and individual attorneys (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). The *MacCrate report*, officially titled *Legal Education and Professional Development--An Educational Continuum* was authored in 1992 by the Task Force on Law Schools and the Profession: Narrowing the Gap, part of the American Bar Association's Section of Legal Education and Admissions to the Bar (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). In its introduction, the MacCrate Report states that both law schools and the practicing bar are "part of one legal profession" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). The skills and values possessed by "competent lawyer[s] are developed along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer's professional career" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). Chaired by Robert MacCrate, the Task Force's purpose was to examine, and make recommendations to help narrow, the gap between practicing lawyers and professional law

schools in university settings (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). Practicing lawyers, it is explained, lament that new attorneys "can't draft a contract,...can't write," and have "never seen a summons" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). Additionally, they believe that law professors are more interested in pursuing their own intellectual endeavors than in helping the legal profession address issues salient to the law practice, such as lawyering skills (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). Law schools' classic retort is that, "We teach them how to think, we're not trade schools, we're centers of scholarship and learning, practice is best taught by practitioners" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). Indeed, the academic focus of professors is reinforced and required by each university's own academic requirements, ABA-accreditation standards, and American Association of Law Schools (AALS) membership standards (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992).

One of the Report's key elements is its *Statement of Fundamental Lawyering Skills and Professional Values* located in Part II (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). The Statement was specifically intended to be used to generate and evaluate proposals to modify law school curricula (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). Its authors explain that it can be utilized as an aid to law students preparing for practice; especially insofar as students use it to play a more active role in shaping the learning opportunities available to them in law school (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). For instance, law students will be able to participate more knowledgeably and insightfully in school-wide curricular discussions (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). Law schools can use the

Statement as a guide for curricular development (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). They can, for example, look to it as a standard by which to measure proposals to modify their curricula to provide more extensive or integrated instruction in lawyering skills and values (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). Finally, the Statement can also be used by law schools conducting the self-study required by Standard 201 of the ABA Accreditation Standards. Overall, the *Statement* aims to be a "starting point for an ongoing exchange within the profession about the skills and values that a legal practitioner should have and about the types of education and training that lawyers should receive at various stages of their careers" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992).

The Statement is comprised of ten skills which fit into one of the following categories: foundational analytical skills, skills that are essential for a wide range of legal practices, skills required to employ or advise a client about the options of litigation and alternative dispute resolution, the skills involved in recognizing and resolving ethical dilemmas (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). Each section relating to a particular skill is divided into two parts, the delineation of specific components of the skill and commentary about the skill (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). In sections about skills, as opposed to values, the section which delineates the skill is much longer than the commentary, and contains the bulk of the analysis (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). The commentary section, though, provides background on the particular skill and the manner in which it is analyzed (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992).

Legal research is the third skill delineated in the Statement, and is categorized as a skill that is essential for a wide range of legal practices (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). In the brief commentary regarding the skill, the Task Force states that: "It can hardly be doubted that the ability to do legal research is one of the skills which any competent legal practitioner must possess" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). The Task Force also explains that a "broad definition" of the skills and knowledge necessary to competently conduct legal research was used (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). The Statement also defines several prerequisite areas of knowledge, which are familiar to skilled legal researchers. These areas include the nature of legal remedies and the processes for seeking them (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). To the authors of the Statement, legal research is "far more than a mechanical examination of texts; the formulation and implementation of a research design are analyzed as processes which require a number of complex conceptual skills" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992).

With this in mind, it is not difficult to see why the Task Force decided to describe the legal research process in a form which parallels the structure of their description of problem solving, the second skill named in the Statement (Sullivan, Colby, Wegner, Bond, & Shulman, 2007). The authors view legal research as a type of problem solving (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). Thus, the description of legal research and the description of the problem solving are both set forth within the following framework: "diagnosis of the problem; identification of the range of possible solutions; development of a plan of action;

and implementation of the plan" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992).

The legal research section of the Statement has been referred to as a "statement of law student information literacy" and was a prominent influence on the American Association of Law Libraries' *Law Student Information Literacy Standards* (Kim-Prieto, 2010). Within the *Statement*, adequate legal research skills are described as the ability to "identify legal issues and research them thoroughly and efficiently" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). These skills are supported by three knowledge bases: (1) "Knowledge of the Nature of Legal Rules and Institutions," (2) "Knowledge of and Ability to Use the Most Fundamental Tools of Legal Research," and (3) "Understanding of the Process of Devising and Implementing a Coherent and Effective Research Design" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992).

Under "Knowledge of the Nature of Legal Rules and Institutions", the authors state that competent legal researchers should understand: "the various sources of legal rules and the processes by which these rules are made"; "which of the sources of legal rules...tend to provide the controlling principles for resolution of various kinds of issues in various substantive fields"; and "the variety of legal remedies available in any given situation" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). The second main heading, "Knowledge of and Ability to Use the Most Fundamental Tools of Legal Research", includes the subheadings which indicate that: a lawyer should be familiar with the ways in which primary legal texts, secondary legal materials, and sources of ethical obligations are used. Under the last main heading, "Understanding of the Process of Devising and Implementing a Coherent and Effective Research Design", the subheadings explain that a lawyer should be familiar with the skills involved in:

"formulating the issues for research"; "identifying the full range of search strategies that could be used to research the issues, as well as alternatives to research"; "evaluating the various search strategies and settling upon a research design"; and "implementing the research design" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992).

b. Core Legal Research Competencies: A Compendium of Skills and Values as Defined in the ABA's MacCrate Report

This report was created by the AALL Research Instruction Caucus in July 1997. *Core Legal Research Competencies* is organized into five sections: Caselaw, Statutes, Administrative Materials, Procedural and Ethics Rules, and Non-official Expositions of Legal Rules (AALL Research Instruction Caucus, 1997). Each part contains content matched to the first two sections of the *MacCrate Report*: (1) Knowledge of the Nature of Legal Rules and Institutions and (2) Knowledge of and Ability to Use the Most Fundamental Tools of Legal Research. The third section in *MacCrate*, Understanding the Process of Devising and Implementing a Coherent and Effective Research Design, is not explicitly addressed.

c. End-User Electronic Information Competencies

Like *Core Legal Research Competencies*, this statement of basic skills grew out of the *MacCrate Report*. It "reformulates skills and values found in the MacCrate Report for electronic research" (Studwell, 1998). Electronic Information Competencies also relies upon a text titled, "Beyond Workplace 2000" and suggests that its readers may want to review the "Compilation of Core Information Literacy Competency/Outcomes for Undergraduates" published in the May 1998 issue of *College and Research Libraries News* (Studwell, 1998). A unique feature of this statement is that it not only acknowledges that there are skill sets needed by law students before they enter law school, but it enumerates them: "Skill Sets Required Before Entering Law

School[:] Basic Skills...Thinking Skills...Personal Qualities" (Studwell, 1998). The skill sets "to Be Acquired before Entering the Profession" are organized under several headings: information awareness and foundational skills, assessment and selection skills, searching and locating skills, evaluation and interpretation skills, manipulation and organizational skills, citation skills, communication skills (Studwell, 1998).

d. Boulder Statement on Legal Research Education

From June 21-22, 2009, legal research educators from across the United States gathered to discuss "legal information scholarship and instruction" (Boulder Conference , 2009). The *Boulder Statement* is modeled after a section in the Carnegie Foundation's *Educating Lawyers: Preparation for the Profession of Law*, which calls for three interrelated apprenticeships: practical, cognitive, and identity (Sullivan, Colby, Wegner, Bond, & Shulman, 2007). The AALL Academic Law Libraries Special Interest Section explains that the statement "expresses an ideal legal research educational experience, and may provide guidance to the [ABA] Standards Review Committee in its development of stronger standards for legal research instruction" (AALL Special Interest Sections, 2011). The practical apprenticeship involves developing fact-specific research strategies, while the cognitive apprenticeship deals more with helping students acquire an understanding of the legal system, become knowledgeable about secondary information sources, and develop an appreciation of the iterative nature of legal research (Boulder Conference , 2009). The identity apprenticeship focuses on ethical responsibilities to conduct thorough research and ethical uses of information (Boulder Conference , 2009).

e. Boulder Statement on Legal Research Education: Signature Pedagogy Statement

A second conference on "Legal Information Scholarship and Instruction" was held from July 8-10, 2010 in Boulder, Colorado (Boulder Conference, 2010). The *Pedagogy Statement* is

also based upon the *Carnegie Report* (Boulder Conference, 2010). The section of the *Carnegie Report* which describes legal education's signature pedagogy as comprising four distinct structures--surface, deep, tacit, and shadow--was used as a blueprint by the *Statement's* authors (Sullivan, Colby, Wegner, Bond, & Shulman, 2007). Briefly, the surface structure teaches "an intellectual process for the application of methods for legal research"; the deep structure recognizes that the surface structure "enables students to master analytic and metacognitive approaches" to several aspects of legal research; the tacit structure recognizes that the surface structure "models values, attitudes and norms of ethical professional behavior"; and the shadow structure identifies ways in which the surface structure can be limited (Boulder Conference, 2010).

f. AALL Law Student Research Competencies and Information Literacy Principles

The AALL LSIL Principles were developed in response to calls for more effective assessment mechanisms across legal education. Studies such as the MacCrate Report and the Carnegie Report identified the need for law schools to better prepare their students for the practice of law (Kim-Prieto, 2010). Other documents, including Best Practices from the Clinical Legal Education Association (CLEA), were also created to encourage law schools to adopt more practice-ready curriculums. Such curriculums would not ignore legal theory; rather, they would integrate experiences which introduce students to the theoretical, clinical, and ethical dimensions of legal practice. Along with the Boulder Statement on Legal Research Education and the Signature Pedagogy Statement, the American Association of Law Libraries' (AALL) Law Student Information Literacy (LSIL) Standards represent law librarians' response to education reforms called for in MacCrate and Carnegie (Kim-Prieto, 2010). An informally organized group of legal research educators began drafting the LSIL Standards in 2009 (Kim-Prieto, 2010).

Shortly after the group was officially recognized as a AALL Executive Committee, a draft of the principles was released for public comment (Kim-Prieto, 2010). After public discussion, the principles were adopted by the AALL Executive Board in March 2011 (Kim-Prieto, 2010).

In March 2011, the document which is the basis for this study was approved by the AALL Executive Board (AALL, 2011). Drafted by the AALL Law Student Research Competency Standards Task Force, the *Standards'* purpose is to "foster the development of different models and eventually best practices" (AALL Law Student Research Competency Standards Task Force, 2011). It is based upon five principles, which state that a successful researcher: (1) should possess fundamental research skills, (2) implement effective, efficient research strategies, (3) critically evaluate legal and non-legal information and information sources, (4) apply information effectively to resolve a specific issue or need, and (5) be able to distinguish between ethical and unethical uses of information and understand the legal issues arising from discovery, use, and application of information (AALL Law Student Research Competency Standards Task Force, 2011). The *Principles* are based upon the *Information Literacy Competency Standards for Higher Education* (2000), approved by the Association of College and Research Libraries (Association of College and Research Libraries, 2000).

In "The Road Not Yet Taken: How Law Student Information Literacy Standards Address Identified Issues in Legal Research Education and Training," Kim-Prieto explains how important the ACRL Standards were during the creation of the AALL LSIL Standards (Kim-Prieto, 2010). The best known standards for information literacy are the ones issued by the Association of College and Research Libraries (ACRL) (Association of College and Research Libraries, 2000). The five standards are: (1) determines the nature and extent of the information needed; (2) accesses needed information effectively and efficiently; (3) evaluates information and its sources

critically and incorporates selected information into his or her knowledge base and value system; (4) individually or as a member of a group, uses information effectively to accomplish a specific purpose; and (5) understands many of the economic, legal, and social issues surrounding the use of information and accesses and uses information ethically and legally (Association of College and Research Libraries [ACRL], 2000). The standards are meant to be tools of assessment and outcome measurements for information literacy instruction and to provide a basis for further research into the field. The LSIL Standards are essentially “a set of standards and performance indicators that are based on the ACRL standards described above, but tailored to fit the skills, tools, and work product that [educators] train law students to acquire, use, and create” (Kim-Prieto, 2010).

Principle 1

The first principle of the LSIL Standards states that, “A successful researcher should possess fundamental research skills” (AALL Law Student Research Competency Standards Task Force, 2011) This is a very broad statement which needs further elaboration to be effectively analyzed. The principle is broken down into three subpoints: “law students should have an understanding of the complexities of the legal system”; “law students should know how to effectively use secondary sources”; and “law students should have an awareness of the cost of research” (AALL Law Student Research Competency Standards Task Force, 2011)

The first subpoint, “...understanding of the complexities of the legal system” is present in some form in most statements of law student information literacy (AALL Law Student Research Competency Standards Task Force, 2011). The AALL Standards further elaborate that law students,

should know the processes and the interrelationships between the three branches of government and the legislation, regulations, and case law they produce. They should distinguish between official and unofficial sources of law and should place issues in context. (AALL Law Student Research Competency Standards Task Force, 2011).

The MacCrate Report puts it this way, “In order to conduct legal research effectively, a lawyer should have a working knowledge of the nature of legal rules and legal institutions” (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). In its legal research commentary section, the MacCrate Report explains that before competent research can be performed, the researcher must have an understanding of the nature of legal remedies and the procedures for seeking these remedies (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992, pp. 36-37).

The MacCrate Report breaks down its section about the "Knowledge of the Nature of Legal Rules and Institutions" into three sections, only one of which is present in the AALL LSIL Standards. According to the MacCrate Report:

[t]he identification of the issues and sources to be researched in any particular situation requires an understanding of: (a) The various sources of legal rules and the processes by which these rules are made...(b) Which of the sources of legal rules identified [above] tend to provide the controlling principles for resolution of various kinds of issues in various substantive fields...[and] (c) The variety of legal remedies available in any given situation. (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992, pp. 31-32).

Only subpart (a) "...sources of legal rules and the processes by which these rules are made," is

present in the AALL LSIL Standards. The directives contained in the MacCrate Report's subparts (b) and (c) may have been excluded from the AALL LSIL Standards because they cross the line from legal research into substantive law. Knowledge of substantive law principles, however, does greatly aid in legal research. This is particularly true when generating search terms. Another reason the AALL LSIL Standards authors may have excluded the more substantive-law-based principles delineated in the MacCrate Report is because of a difference in philosophy. The AALL LSIL Task Force may have believed that knowledge of available remedies and "which sources of legal rules tend to provide the controlling principles" for certain issues are the aims of the legal research process (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992).

The MacCrate Report also gives a more detailed description of the case law, legislation, and regulations that researchers should be aware of (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). The MacCrate Report's description of case law includes: "the organization and structure of the federal and state courts of general jurisdiction"; "concepts of jurisdiction and venue"; "rudiments of civil and criminal procedure"; "vestiges of the dual court [law and equity] system"; "common law decision-making by courts and the doctrine of stare decisis"; and the level of "'authoritativeness' of constitutional and common law decisions made by courts" at various levels (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). It is clear from the list of topics included in the MacCrate Report's description of case law that the Report's authors believed that procedural law is fundamental to legal research. Procedural law determines the jurisdiction a case could be filed in, and thus, has the potential to considerably narrow and refine the legal researcher's focus. In addition to fuller descriptions of case law, statutes, and administrative regulations, the MacCrate Report identifies several other

important sources of authority that a competent legal research should be aware of: decisions of administrative agencies, rules of court, and Restatements and similar codifications (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). Administrative agency decisions and rules of court are binding authority in their respective jurisdictions, but Restatements of the Law are non-binding. The inclusion of Restatements of the Law in a section about the sources of legal rules, rather than in a section about secondary resources, reflects the practical perspective of MacCrate's authors. Although the Restatement is, technically, not binding primary authority, it is included in the section about primary authority because it is part of the group of "non-official expositions of legal rules that courts tend to view as authoritative" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). The fuller descriptions in the MacCrate Report would be helpful to legal research instructors reviewing syllabi and checklists of topics to cover in introductory or advanced courses.

When the AALL LSIL Standards were in draft form, the five top-level statements were called "standards." They were changed to "principles" in the final version. Additionally, a separate "commentary" section accompanied the first four draft standards and several "examples of behaviors that indicate mastery" were explained under each standard's subpoints. The first standard in the Draft LSIL Standards is significantly different than the final version. The draft standard states that students should be able to: "identify the type and sources of information appropriate to the problem or issue at hand" (Kim-Prieto, 2010). The commentary related to the first standard states that it "requires that the student determine whether analysis of the problem presented requires applying constitutional authority, regulatory authority, common-law authority, [and/]or scholarship" (Kim-Prieto, 2010).

The current LSIL principle is quite different, as it requires that law students learn

background information, that they "possess fundamental research skills" (AALL Law Student Research Competency Standards Task Force, 2011). The draft LSIL Standard looked more like the first ACRL IL Standard, which requires that information literate students be able to "determine the nature and extent of information needed" (Association of College and Research Libraries, 2000). As Kim-Prieto states, the main difference between the draft standard and the ACRL principle is that the draft standards focus on legal research as a problem-solving process (Kim-Prieto, 2010). Thus, the draft standards refer to an information need in terms of "the problem or issue at hand" (Kim-Prieto, 2010). The problem-solving approach of the draft LSIL Standards echoes the MacCrate Report's conceptualization of legal research. The final version of the first principle in AALL's LSIL Standards, though, is patterned after a different aspect of the MacCrate Report. It adopts the MacCrate Report's emphasis on background knowledge in the first part of its section about legal research. The AALL LSIL Standards' emphasis on background knowledge can be seen most clearly when one looks at the subpoints of principle 1: "law students should have an understanding of the complexities of the legal system"; "law students should know how to effectively use secondary sources"; "law students should have an awareness of the cost of research" (AALL Law Student Research Competency Standards Task Force, 2011). The language of LSIL Standard subpoints does not include any mention of the end or aims of a specific research project. In contrast, the subpoints of the draft LSIL Standards state that students should be able to: "[i]dentify whether the issue at hand requires application of statute, case law, regulation, or other relevant information"; "[d]etermine which research tools are most appropriate for the problem at hand; and "[c]onsider the costs and benefits of acquiring the needed information" (Kim-Prieto, 2010). With phrases such as "issue at hand", "problem at hand," and "needed information" it is clear that the subpoints in the draft LSIL Standards are

focused upon how researchers handle the specific issues they are faced with.

This emphasis on specific issues also favors an application or hypothetical situation-based approach for measuring student attainment of learning outcomes over a more abstract, bibliographic approach to testing. A hypothetical approach is more in line with current law school and bar exams: it requires students to know black letter law, factual situations which trigger the application of independent or conflicting laws, and how to harmonize and apply abstract legal principles to particular situations. Similarly, a legal research student needs to know what the "hierarchical relationships between statutory authority, regulatory authority, and judicial opinions" are and how they apply to the particular factual circumstances the student is researching.

Despite the different focus of the final AALL LSIL Standard principle 1 and the draft LSIL standard 1, many of the "behaviors which indicate mastery" seem to fit under either version of the Standards. For example, "articulating the processes of legislation, regulation, constitutions, and case law, including the theories that underlie the authority of each process" is listed under subpoint 1 of standard 1 of the draft LSIL Standards (Kim-Prieto, 2010). Another behavior which indicates mastery is "[e]xplaining the hierarchical relationships between statutory authority, regulatory authority, and judicial opinions" (Kim-Prieto, 2010). Other examples of behaviors which indicate mastery that refer to background information include: "[f]inding authoritative sources for legal authority: knowing how and when to refer to constitutions, knowing to find cases in reporters or case law databases, statutes in statutory compilations, and regulations in administrative codes"; "[d]istinguishing between official and unofficial publications for each type of legal authority, and describing the advantages of each type of publication"; and "[d]emonstrating a basic familiarity with the costs of online or computer-

assisted legal research" (Kim-Prieto, 2010).

Principle 2

The second principle listed in the LSIL Standards states that "a successful researcher should implement effective, efficient research strategies" (AALL Law Student Research Competency Standards Task Force, 2011). This principle directly corresponds to the third section of the MacCrate Report's statement of legal research skills: " Understanding of the Process of Devising and Implementing a Coherent and Effective Research Design" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). The importance of research design is further emphasized in the MacCrate Report's commentary section: "the formulation and implementation of a research design are analyzed as processes which require a number of complex conceptual skills" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). Research design is particularly key to the MacCrate Report's understanding of the legal research process, because its authors view legal research as a problem solving process consisting of four steps: diagnosis, identification of solutions, development of a plan, implementation of the plan (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). The legal research planning and implementation process, therefore, comprises half of the research process. According to the MacCrate Report, the planning process consists of four main steps: formulating research issues, identifying possible research strategies and alternatives to research, evaluating search strategies and choosing a design, and implementing the design (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992).

Jayasuriya and Brillantine's definition of law student information literacy did not include research design. His conception of LSIL appears to be more focused upon specific types of legal information, rather than the process of legal research (Jayasuriya & Brillantine, 2007). It is a

more bibliographic approach to legal information.

The Boulder Statement on Legal Research Education places the concept of research design within its statement regarding a "cognitive apprenticeship": "[t]hrough this apprenticeship the student will synthesize information about legal systems and resources to identify the best research plan for a given question" (Boulder Conference , 2009).

Principle 3

The next AALL LSIL principle explains that, "a successful researcher should critically evaluate legal and non-legal information and information sources" (AALL Law Student Research Competency Standards Task Force, 2011). This particular skill is not specifically mentioned in the MacCrate Report's commentary regarding legal research. The skill of evaluating legal information sources is, however, mentioned in the main text of the MacCrate Report (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). In section 3.2(b)(1) of the MacCrate Report, "Knowledge of and Ability to Use the Most Fundamental Tools of Legal Research," the authors mention that lawyers should be familiar with: "specialized techniques for reading or using [primary legal texts]" and the "breadth, depth, detail and currency of coverage, the particular perspectives, and the relative strengths and weaknesses...found in the various kinds of secondary sources so that he or she can make an informed judgment about which source [to use]" (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). The MacCrate Report does not include statements about the evaluation of non-legal information.

In this case, the difference between the MacCrate Report and the AALL LSIL Standards illustrates that the standards have a greater emphasis on legal information itself than the MacCrate Report. Additionally, the LSIL Standards acknowledge the importance of non-legal

information. The LSIL Standards seem to set a higher bar, since they require that law school graduates know about non-legal information in addition to traditional legal information sources. This difference between MacCrate and the LSIL Standards may also be a function of the increased availability of legal information and internet access since the MacCrate Report was published in the 1990s. Because legal information is more widely available, and mixed in with and dependent upon non-legal information sources, knowing more about legal information itself is more essential.

In contrast with the MacCrate Report, the evaluation of legal and non-legal information sources is at the heart of Jayasuriya and Brillantine's model of LSIL. Two of their four principles concern the evaluation of legal information: "[students should know] [t]he legal authority underlying each document as well as the hierarchy of legal authorities" and "the various kinds of information that is available in each type of legal document" (Jayasuriya & Brillantine, 2007). The last principle they propose is focused upon non-legal information: "[students should know] [t]he appropriate usage of information from other disciplines and the legal significance of that information" (Jayasuriya & Brillantine, 2007).

Principle 4

The fourth AALL LSIL principle states that "a successful researcher should apply information effectively to resolve a specific issue or need" (AALL Law Student Research Competency Standards Task Force, 2011). The language of this principle is not present in the MacCrate Report. This skill seems to border upon the domain of legal writing and analysis, skills treated separately in the MacCrate Report. Although this skill is not present in the subject-specific portion of Jayasuriya and Brillantine's definition of LSIL, a generic version of the skill is in the ACRL IL Standards, which Jayasuriya and Brillantine reference (Jayasuriya & Brillantine,

2007). The fourth top-level ACRL Standard requires that an information literate researcher "use information effectively to accomplish a specific purpose" (Jayasuriya & Brillantine, 2007). The ACRL and AALL LSIL language points researchers towards their end goal: satisfying a particular information need. The Boulder Statement on Legal Research Education does not focus upon correctly applying information to solve a problem, but does address the goal of finding a solution to a legal problem: "[t]he students will also learn to continually re-evaluate their progress and results to arrive at the optimal answer to the legal problem" (Boulder Conference , 2009). The Boulder Statement on Legal Research Education: Signature Pedagogy Statement, has a substantial focus on finding the answers to legal questions. It encourages teaching which will enable students to "master analytic and metacognitive approaches to: ... synthesize knowledge of the legal resources and institutional structures to implement research design, and evaluate and communicate the results" (Boulder Conference, 2010).

The End-User Electronic Information Competencies document contains information relating to the effective application of research results under the headings "Manipulation and Organizational Skills" and "Communication Skills" (Studwell, 1998). The specific End-User Electronic Information competencies include: "ability to organize information for practical and counseling applications, including creating documents such as World Wide Web pages"; "understanding of how to integrate new information into an existing body of knowledge"; and "understanding how to communicate the results of research to clients and others" (Studwell, 1998). The inclusion of "creating documents such as World Wide Web pages" in the Electronic Information Competencies document distinguishes it from other LSIL Standards. The authors of Electronic Information Competencies mixed general statements about non-legal research and the methods of legal research with specific competencies related to electronic information.

Subsequent statements of LSIL left out specific electronic competencies and have taken a more format-neutral approach.

Principle 5

The last AALL LSIL principle states that "a successful researcher should be able to distinguish between ethical and unethical uses of information and understand the legal issues arising from discovery, use, and application of information" (AALL Law Student Research Competency Standards Task Force, 2011). When the draft AALL LSIL Statement was released for public comment, one commenter wrote, "Thank you for including the principle regarding student mastery of information ethics" (AALL Law Student Research Competency Task Force, 2011). As implied by that comment, the AALL LSIL Task Force incorporated a large body of non-legal information into the Standards, when it referenced the ethical use of information. The MacCrate Report does not include a broad statement about the ethical and unethical uses of information in its commentary or main text regarding legal research. It does, however, include a statement about sources of ethical information for lawyers in section 3.2(a)(iii):

with respect to each of the following fundamental tools of legal research, a lawyer should be generally familiar with the nature of the tool, its likely location in a law library, and the ways the tool is used...sources of ethical obligations of lawyers, including the standards of professional conduct (the Code of Professional Responsibility and the Model Rules of Professional Conduct), and collections of ethical opinions of the American Bar Association and of state and local bar associations. (Task Force on Law Schools and the Profession: Narrowing the Gap, 1992).

Thus, descriptions of ethical and unethical uses of information contained in sources of ethical obligations of lawyers are referenced by the MacCrate Report's legal research statement.

However, ethical and unethical uses of information which are not mentioned sources of ethical obligations are not referred to.

Ethical use of information is also referred to in the ACRL IL Standards. The fifth standard states that information literate students will "understand the ethical and social issues regarding the information and use the information ethically and legally" (Association of College and Research Libraries, 2000). The ethics involved in using information is also a key theme of the Boulder Statement on Legal Research Education. The Boulder Statement explains:

Throughout the process, students will learn to apply the professional and ethical norms implicated by their research, which will reinforce their apprenticeship of identity and purpose. For legal research instruction, this includes an ongoing examination of professional standards including the identification of ethical responsibilities, the avoidance of plagiarism, and the fulfillment of the ethical duty to conduct adequate and thorough research. (Boulder Conference , 2009).

The Boulder Statement on Legal Research Education: Signature Pedagogy Statement emphasizes ethical behavior, but does not refer specifically to the ethical use of information. It states that in the context of legal research education, law students should receive instruction in "professional duties, both while representing clients and researching for other purposes, which consist of but are not limited to accountability, honesty, thoroughness, cost- and time-effectiveness, and balancing competing duties" (Boulder Conference, 2010). Both Boulder Statements share the MacCrate Report's focus on the professional responsibility of lawyers. Information ethics and explicit instructions regarding professional responsibility are both absent from the End-User Electronic Information Competencies document. The AALL LSIL Standards, therefore, significantly depart from other LSIL Standards when they include a broad provision about the

ethical use of information. The broad language used by the LSIL Standards is evidence of the influence of the last principle of the ACRL IL Standards.

III. Research Design

This study was designed to investigate how the research strategy portion of the AALL LSIL Standards is represented in the strategy chapter of legal research textbooks.

Analytical Framework

A quantitative content analysis methodology was employed to compare the LSIL Standards to the research texts. Content analysis is a suitable methodology since this study centers around the ideas expressed in textual material (Babbie, 2002, p. 312). Coding categories were developed based upon the research strategy portion of the AALL LSIL Standards, and coders were asked to apply those categories to the strategy chapters of two legal research textbooks. The research plan is, thus, comprised of four principal elements: (1) selecting the textbooks to be studied, (2) developing and (3) applying a coding schema to analyze the textbooks' content, and (4) analyzing the results.

Textbook Selection

For the purposes of this study, the population of legal research texts was limited to texts which are: in-print, primarily for student use in a U.S. law school legal research course, and focused primarily on basic U.S. legal research. The population parameters were chosen to ensure that the textbooks analyzed are aimed at the same audience as the LSIL standards. A purposive sample of two textbooks was chosen from textbooks within the population. The sample included the most highly recommended textbook created by a law librarian and the most highly recommended text authored by a legal writing instructor. The textbooks were also chosen based

upon currency and the strength of their process or strategy components. To determine which texts were the most recommended and had the strongest sections about process, the following articles and compilations were consulted: Nancy P. Johnson, *Should You Use a Research Textbook to Teach Legal Research?* 103 *Law Libr. J.* 415 (2011); AALL-Research Instruction and Patron Services-Special Interest Section (RIPS-SIS) Legal Research Annotated Bibliography 2011; AALL Academic Law Libraries-Special Interest Section Legal Research Roundtable 2008; and Joan Shear & Kelly Browne, *Which Legal Research Text is Right for You?* 10 *Perspectives: Teaching Legal Research & Writing* 23 (2001). Based upon the above criteria, *Basic Legal Research* (2009) by Sloan and *Fundamentals of Legal Research* (2009) by Barkan, Mersky, and Dunn, were chosen for this study.

The time constraints and resources available for the study necessitated limiting the study to a population sample. Because of this limitation, textbooks that include a fuller exposition of research strategy might have been omitted. The method of sampling chosen, however, sought to minimize these risks because it was assumed that the textbooks with fuller and more nuanced discussions of legal research methods are more likely to receive favorable reviews.

Coding Categories

The coding categories were designed to enable a comparison of the concepts contained in the textbooks and the AALL LSIL Standards even if the textbooks and LSIL Standards used non-identical but equivalent language in passages regarding legal research strategy. The categories were developed to reflect the research strategy portion of the LSIL Standards. Scholarly literature from *Law Library Journal*, *Legal Reference Services Quarterly*, and other scholarly journals containing articles related to legal research were used to aid in the creation of the category descriptions.

Coding

After the initial coding categories were developed, pilot coding was conducted. Two coders helped assess the reliability of the coding categories by test coding selected portions of the research strategy chapters contained in the textbooks chosen for the study. The results of the pilot coding and feedback from the coders were used to help clarify the Coding Instructions. The pilot testers reported that the strategy category was too broad and difficult to apply, and that the analysis category needed more explanation. In response to their feedback, examples were added to the analysis category and the strategy category was removed. Upon completion of the test coding, two new coders were chosen to code the full textbook chapters. Coding was performed at the sentence level. The decision was made to allow coders to record consecutive sentences coded with the same category as one instance on their coding sheet. This was allowed primarily to ease the recording burden of the coders and to decrease the likelihood of fatigue. Coding results are examined in the following section.

IV. Results

Table 1 provides a summary of the coding instructions, the full contents of which are available in Appendix A:

Categories & Matching Text from LSIL Standards	(1) Analysis: "Law students should first break the problem down into its components and determine an approach to each of them" (2) Efficiency & Effectiveness: "They should draft research plans and timelines that include identifying the most cost-efficient sources" (3) Using Resources: "appropriately using available resources to perform the research" (4) Validating & Updating: "using supplemental materials to validate and update results"
Coding Level	Sentence: line numbers will be used to identify sentences
Exclusivity	Coding categories are not exclusive: one sentence may be coded with more than one category

Table 1. Summary of Coding Instructions

The following table is a summary of the coding results for Basic Legal Research:

Coding Category	Percent Agreement $PA_o = A / n$ PA _o = proportion agreement, observed A = the number of agreements between both coders n = the total number of units both coders have coded	Krippendorff's alpha $\alpha = 1 - \frac{D_o}{D_e}$ D _o = disagreement, observed D _e = disagreement, expected
Analysis	.94 = 452 / 483	.643 = 1 - (31/86.94)
Efficiency & Effectiveness	.86 = 417 / 483	.159 = 1 - (65/77.28)
Using Resources	.71 = 341 / 483	.215 = 1 - (144/183.54)
Validating & Updating	.95 = 459 / 483	.172 = 1 - (24/28.98)

Table 2. Basic Legal Research Coding Results

Krippendorff's alpha is a measure of intercoder reliability which indicates the percentage of coder agreement above what can be expected by chance. Generally, meaningful conclusions can be drawn from coding schemes with a reliability above .8, and highly tentative conclusions may be drawn from variables with a reliability between .67 and .8 (Krippendorff, 1980, p. 147). Unfortunately, the data obtained in this study does not reach the .67 standard of reliability, despite levels of percentage agreement in the 90s for some variables. This finding is discussed further in the next section.

Table 3 summarizes the coding results for Fundamentals of Legal Research:

Coding Category:	Percent Agreement: $PA_o = A / n$ PA _o = proportion agreement, observed A = the number of agreements between both coders n = the total number of units both coders have coded	Krippendorff's alpha $\alpha = 1 - \frac{D_o}{D_e}$ D _o = disagreement, observed D _e = disagreement, expected
Analysis	.56 = 163 / 289	- .147 = 1 - (126/109.82)
Efficiency & Effectiveness	.90 = 261 / 289	.031 = 1 - (28/28.9)
Using Resources	.82 = 237 / 289	.182 = 1 - (52/63.58)
Validating & Updating	.79 = 228 / 289	.188 = 1 - (61/75.14)

Table 3. Fundamentals of Legal Research Coding Results

V. Analysis

As stated above, meaningful conclusions cannot be drawn from the study results since the intercoder reliability measure indicates that coder agreement was not significantly above what could be expected by chance. A low alpha suggests that the patterns of disagreement among the coders were random. The results may support the conclusion that the AALL LSIL Standards are not suited to content analysis in their current form; a finding that would be supported by the pilot coders' feedback (see section III.). The Standards may be too general and inclusive for coders to reliably distinguish between text which contains related language and text which does not. In future analyses utilizing the LSIL Standards, this issue may not exist since efforts to create more specific LSIL Research Competencies to accompany the LSIL Standards are nearly complete. In addition to the general terminology used in the LSIL Standards, another problem may have been

that identifying and delimiting specific parts of the legal research process is inherently difficult since it is an iterative process comprised of highly interdependent components.

Limitations of the research design, such as the small sample of textbooks, may have also contributed to low reliability measurements. The validity of the coding categories may have also been negatively impacted by the decision to allow coders to record consecutive sentences coded with the same category as one instance of a category. This decision was made in order to decrease the likelihood of coder fatigue by reducing their recording burden. Permitting coders to abbreviate their recording in this way, however, may have caused some ambiguity and confusion regarding the unit of analysis. Differences in the background knowledge possessed by coders may have caused disagreement in the interpretation and application of coding categories. One coder had a general background in librarianship and the other worked as a law librarian. In future studies, I would recommend that researchers obtain coders who possess similar legal backgrounds. Additionally, other methodological approaches might also be employed for analyzing the content of legal research texts. Such approaches, perhaps taking a grounded theory approach, might include preliminary examinations of the textbooks to determine which concepts emerge, rather than searching the instructional materials for concepts developed in different contexts.

Interestingly, though, the intercoder agreement for the coding variables was generally higher (according to percent agreement and Krippendorff's alpha values) for coding completed in "Basic Legal Research"--the textbook which is purportedly more "process-oriented." According to the Krippendorff's alpha measure, the analysis category was the most reliable category in the process-oriented Basic Legal Research text, and the least reliable category in the more bibliographic Fundamentals of Legal Research. This suggests that the traditional distinction

made between process-oriented and bibliographic texts may be valid: process-oriented texts focus more upon the steps, such as analysis, which need to be completed during legal research, than do bibliographic texts. Basically, analysis as defined in the LSIL Standards may be represented clearer in process-oriented texts.

VI. Conclusion

The growing importance of specific, measurable learning outcomes in legal education will increase the need for evaluations of the AALL Law Student Research Competencies. Such evaluations could take a form similar to this study: they could compare current legal research teaching tools and the text of the LSIL Standards. In addition to textbooks, such tools may include Computer-Assisted Legal Instruction modules, legal research course syllabi, course presentations, in-house training materials, and other standards related to legal research education. This study's literature review outlines some key points of comparison between the AALL LSIL Standards and other statements related to law student legal research skills.

Two recurring themes in the literature review of LSIL Standards are 1) a competency-based approach to legal research instruction, and 2) that knowledge of the structure of the U.S. legal system and the attributes of primary legal authority is considered fundamental. The second assertion is generally accepted, but the first assertion is not as widely agreed upon. The LSIL Standards, MacCrate Report, and End-User Electronic Information Competencies all explicitly take a competency-based approach to instruction: they try to delineate what a competent practitioner *needs* to know. This approach can be distinguished from an idealized approach to legal research which would focus on competing notions of what law students *should* know. Additionally, a competency-based approach emphasizes the importance of legal research

instruction by its assertion that specific knowledge and a certain set of skills must be acquired in order for a practitioner to be professionally competent. For law librarians, though, knowledge of idealized approaches to legal research is integral to professional success since librarians are looked to as professionals who, among other functions: teach legal research; manage complex research projects; and create, evaluate, and select legal research tools. Thus, the most in-depth approaches to legal research education seem more appropriate for library school students than for law students preparing to practice law.

Future analyses of legal research instructional materials will be greatly aided by the development of AALL's Law Student Research Competencies, which will specify measurable learning outcomes based upon the LSIL Standards used in this study (AALL Executive Board, 2012). At AALL's Spring 2012 Board Meeting, which took place from March 30-31, 2012, the Law Student Research Competencies Task Force reported on their plans to submit their draft competencies to stakeholders and their intention to submit their final report and recommendations for Board approval in July 2012 (AALL Executive Board, 2012). Specific competencies will enable more granular analyses of legal research instructional tools, which will in turn help ensure the currency of the LSIL Standards and provide insight into which areas of legal research education need to be explored in more depth. Inquiry into the content of legal research instructional materials can also aid in: law school curriculum development, law firm articulation of core competencies, and bar admission committee evaluation of applicant's research skills (Barkan, 2008; Meyer, 2009; Student Learning Outcomes Subcommittee, 2011).

Like the AALL Law Student Research Competencies, the Signature Pedagogy and Legal Research Education Statements developed at the summer Conferences on Legal Information: Scholarship and Teaching represent an important effort to improve legal research education that

has developed in tandem with the initiatives which led to the creation of the AALL LSIL Standards. At the upcoming fourth Legal Information: Scholarship and Teaching conference in Boston, MA from July 19-21, 2012, the attendees will finish strategies for the implementation of the "signature pedagogy" for teaching legal research and present works-in-progress (University of Washington Legal Scholarship, 2011). As law schools implement policies to comply with ABA Standard 302, discussed above in section I., the Signature Pedagogy Statement and AALL's Law Student Research Competencies are poised to become important components of legal research educators' response to the need for measurable learning outcomes.

APPENDICES

Appendix A: Coding Instructions

Coding Instructions

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General Instructions

- Goal is to match the categories (defined on pages 2 - 8 of this document) to the text of legal research textbooks
- Coding is at the sentence level
- If consecutive sentences are coded with the same category, then this should be noted as one instance. For an example, see the "Analysis" coding sheet on page 12 of this document.
- Line numbers will be used to identify sentences, except in the case of sentences within charts (those sentences have been individually numbered).
- One sentence may be coded with more than one category
- Some sentences may not contain any categories

Filling in the Coding Sheets

If a coding category clearly does not apply to a portion of text, then no marking needs to be made.

If a coding category does apply, then under the first column note the page number of the text, under the second column write the line number(s) where the sentence(s) begin(s) and end(s), make a check mark under the "Yes" column, and under the "Explanation" column write one or more of the words and phrases which trigger the coding category.

If a coding category was almost applied, then under the first column note the page number of the text, under the second column write the line number(s) where the sentence(s) begin(s) and end(s), make a check mark under the "Close" column, and under the "Explanation" column write two categories of information: (1) "Pro": reasons/keywords which support this sentence being placed into the category, and (2) "Con": reason(s) why this sentence was not ultimately included in the category.

Purpose of Study

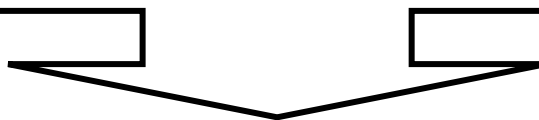
The goal of this content analysis research is to find out how the concepts contained in the "research strategy" portion of the *American Association of Law Libraries' (AALL) Law Student Research Competencies and Information Literacy Principles* are represented in legal research textbooks. The coding categories listed at the end of this page, and elaborated upon in subsequent pages, will be applied to pre-selected portions of two legal research textbooks.

AALL Law Student Research Competencies and Information Literacy Principles

Principle II: A successful researcher should implement effective, efficient research strategies

Sub-point 2: Law students should construct and implement efficient, cost-effective search strategies.

Text of Sub-point 2: Law students should first break the problem down into its components and determine an approach to each of them. They should draft research plans and timelines that include identifying the most cost-efficient sources, appropriately using available resources to perform the research, and using supplemental materials to validate and update results.



Text used to develop coding categories.

Category Names:

1. Analysis
2. Efficiency & Effectiveness
3. Using Resources
4. Validating & Updating

1. Analysis

Note: The analysis category should be coded when all of the elements listed below (identify/separate, re-organize, issues, problem) are discussed together as part of the beginning research process (the "re-organize" element, however, need not be explicit). Since the elements of analysis are usually discussed under the same heading or under consecutive headings, *the coding for analysis will likely end-up being on a multi-sentence or multi-paragraph level.*

Original Text: "Law students should first break the problem down into its components and determine an approach to each of them."

Concept Definition: Identify/separate and then re-organize the issues present in a research problem.

Terms Which May Indicate Presence of Concept:

Identify/separate and then re-organize the issues present in a research problem.



Dissect, extract, research interview, who/what/when/ Where/why/how, <u>TARP</u> (<u>t</u> hing/ subject matter, cause of <u>a</u> ction, <u>r</u> emedies/relief sought, <u>p</u> arties involved), heuristic, schema, framework, checklist	re-constitute, structure, organize	Components, questions presented, research terms, subject descriptors, topics, key words, areas of law, operative facts	fact pattern, situation, assignment, circumstances
--	------------------------------------	--	--

1. Analysis, continued

Example:

Taken from Callister, P. D. (2010). Time to blossom: An inquiry into Bloom's Taxonomy as a hierarchy and means for teaching ordered legal research skills. *Law Library Journal*, 102 (2), 191-219.

Figure 1: Complex Research Problem Needing Analysis

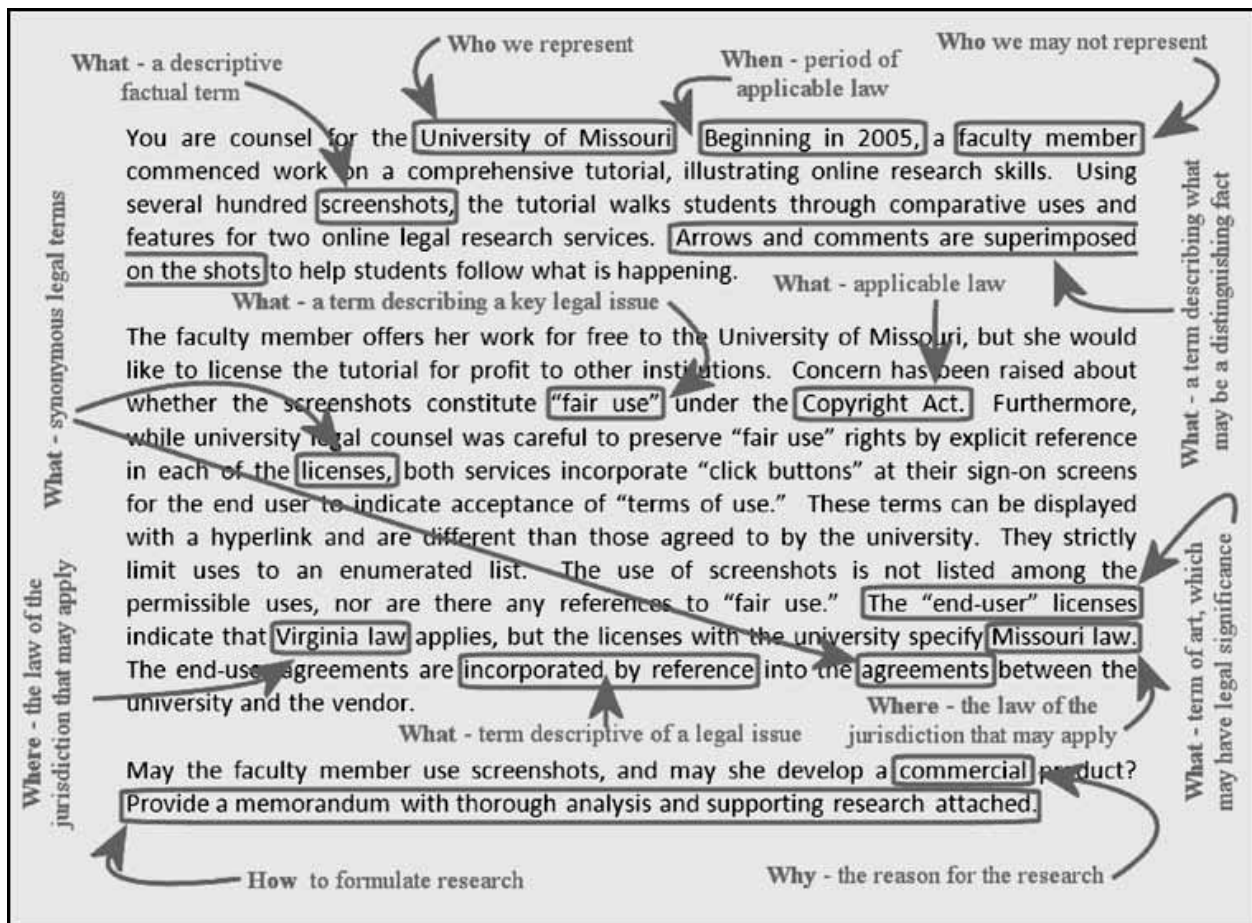
You are counsel for the University of Missouri. Beginning in 2005, a faculty member commenced work on a comprehensive tutorial, illustrating online research skills. Using several hundred screenshots, the tutorial walks students through comparative uses and features for two online legal research services. Arrows and comments are superimposed on the shots to help students follow what is happening.

The faculty member offers her work for free to the University of Missouri, but she would like to license the tutorial for profit to other institutions. Concern has been raised about whether the screenshots constitute "fair use" under the Copyright Act. Furthermore, while university legal counsel was careful to preserve "fair use" rights by explicit reference in each of the licenses, both services incorporate "click buttons" at their sign-on screens for the end user to indicate acceptance of "terms of use." These terms can be displayed with a hyperlink and are different than those agreed to by the university. They strictly limit uses to an enumerated list. The use of screenshots is not listed among the permissible uses, nor are there any references to "fair use." The "end-user" licenses indicate that Virginia law applies, but the licenses with the university specify Missouri law. The end-user agreements are incorporated by reference into the agreements between the university and the vendor.

May the faculty member use screenshots, and may she develop a commercial product? Provide a memorandum with thorough analysis and supporting research attached.

1. Analysis, continued

Figure 2: Possible Research Issues and Descriptors Resulting from Analysis



1. Analysis, continued

Figure 3: Organized List of Possible Research Issues and Subject Descriptors

- General: Fair Use Privilege under Copyright
 - Narrow: Does it cover “screen shots” as a “transformative use”?
 - Narrower: Effect of added arrows and commentary
 - Narrower: Number of slides
 - Narrower: Commercial use
 - Narrow: Does copyright law trump state contract law governing licenses?
- General: Electronic Licensing under State Law
 - Narrow: What law governs the license? *Missouri v. Virginia*?
 - Narrower: Why did the vendors choose Virginia?
 - Narrower: What kind of law for licensing might apply? UCC Article 2, UCC Article 2A, UCITA, or common law of contracts?
 - Narrower: Assuming applicability of state law, what is the relationship of federal copyright to state contract law?
 - Narrow: Enforceability of terms under state law
 - Narrower: Incorporation by reference and manifestation of assent for amendment via end-user licenses
 - Narrower: Void as against public policy or as unconscionable for eliminating fair use privileges under federal copyright law

2. Efficiency & Effectiveness

Original Text: "They should draft research plans and timelines that include identifying the most cost-efficient sources,..."

Concept Definition: Identifying the most cost-efficient sources and using sources in a cost-efficient manner. Cost-efficiency refers to saving time, money, and/or effort. E.g. This strategy saves more time, money, or effort than other methods.

Terms Which May Indicate Presence of Concept: efficient, cost-effective, save (time, money, effort), economical

3. Using Resources

Note: "Resources" should be interpreted to mean particular resources (e.g. American Law Reports, Corpus Juris Secundum, etc.), certain types of resources (e.g. annotated codes, citators, etc.), and general instruction in how to use tools included in resources (pocket parts, indexes, etc.).

Original Text: "...appropriately using available resources to perform the research,..."

Concept Definition: How to appropriately use available resources to perform research (interpreted broadly).

Terms Which May Indicate Presence of Concept: "read ____ carefully", "skim", "use Resource A after using Resource B", "examine the table of contents or index of", "use this resource to accomplish a specific purpose", "read the annotations in."

4. **Validating & Updating**

Original Text: "...and using supplemental materials to validate and update results."

Concept Definition: Using supplemental materials to confirm that results are consistent with established authority and are still good law.

Terms Which May Indicate Presence of Concept: verify, confirm, use a citator (such as: Shepard's, KeyCite, BCite, Google Scholar's How Cited, LoisLaw's GlobalCite), citate/Shepardize, (check the) pocket part, cross-checking, up-to-date, supplements, recent developments, still good law/not bad law, not overruled, in line with established authority.

Coding Example

Textbook excerpt from Legal Research Methods by Murray and DeSanctis, p.207:

Chapter 8

Bringing it All Together: Strategies for Research and Determining When You are Finished

1 This chapter is a capstone for the research process. We will review
2 the planning and strategizing required for research, we will give you addi-
3 tional hints on how to use the fee-based research services and free internet
4 sources effectively and efficiently, and we will discuss research plans for
5 when you have less than an infinite amount of time to complete your
6 research and report your results. Lastly, we will give you some practical
7 pointers for how to determine when you are finished with a given research
8 project.

9 We begin with a summary of the research strategies first intro-
10 duced in Chapter 1, including the stages of planning for research and the
11 execution of the plan.

12 I. INITIAL ASSESSMENT OF THE PROBLEM

13 Your first job is to assess the problem so as to identify the issues—
14 the specific legal questions that need to be answered—and then to deter-
15 mine if additional facts are needed from the client or other sources, and
16 finally to put together a plan of action to find the legal sources necessary
17 to answer the questions.

18 A. What is at issue?

19 You may have an idea about which areas of the law are implicated
20 by the problem (*e.g.*, this sounds like a fraud case, or this is probably a
21 copyright case), but you often will not necessarily know enough about
22 these areas and their fundamental background principles, claims, defen-
23 ses, and policies to be able to determine the specific legal questions you
24 will need to answer. You may not even know the general areas of the law

Coding Example, continued

Coding Sheet: Analysis in Legal Research Methods

Coder Name: Domonique Roberts

Page #	Line # or Line # __ to __	Does category apply?		Explanation
		Yes	Close	
207	12-24	✓		"first... assess the problem" "identify the issues" "determine the specific legal questions"

Coding Example, continued

Coding Sheet: Efficiency & Effectiveness in Legal Research Methods

Coder Name: Dominique Roberts

Page #	Line # or Line # __ to __	Does category apply?		Explanation
		Yes	Close	
207	1-6	✓		effectively, efficiently "amount of time"

Coding Example, continued

Coding Sheet: Using Resources in Legal Research Methods

Coder Name: Domonique Roberts

Page #	Line # or Line # __ to __	Does category apply?		Explanation
		Yes	Close	
207	1-6	✓		"how to use the _____ and _____"

Coding Example, continued

concept not found, short excerpt

Coding Sheet: Validating & Updating in Legal Research Methods

Coder Name: Domonique Roberts

Page #	Line # or Line # __ to __	Does category apply?		Explanation
		Yes	Close	

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Murray, M. D., & DeSanctis, C. H. (2009). *Legal research methods*. New York, NY: Thomson Reuters/Foundation Press.

Appendix B: AALL Law Student Research Competencies and Information Literacy

Principles

AALL Law Student Research Competencies and Information Literacy Principles

Introduction

The Law Student Research Competency Standards Task Force of the American Association of Law Libraries (hereinafter Task Force) presents this paradigm of general research competency principles to foster the development of different models and eventually best practices.¹

There is a growing body of literature and a lively discussion among members of the legal academy and the practicing bar about the research competency skills of law school graduates. This dialogue among stakeholders is essential to forge change. In our discussions, we determined that continuing communication and collaboration between law schools, legal employers, and the law school accrediting body² is fundamental to any efforts to address and improve the research skills of law students.

To this end, law school programs should reflect the realities of the legal field. In particular, an understanding of the many varied legal practice business models is vital. In today's environment, law firm success hinges on billable time, effective time management, effective communication, effective peer collaboration, and cost recovery. Similarly, efficient research habits in governmental and nonprofit settings ultimately benefit those employees and the public. Highly competent research skills, effective problem solving skills, and critical thinking skills are keys to success in all areas of legal practices of today and the future.

The Task Force is confident that this paradigm of general research competency principles will engage more stakeholders in the dialogue about the need to establish benchmarks in this area. These benchmarks should include the development of a detailed list of required skills to reflect the needs of the legal employers of the 21st century.

We offer our five Law Student Research Competency Principles for consideration, and for use in the following discussions:

- law school curriculum development and design;
- law firm planning, training and articulation of core competencies;
- bar admission committee evaluation of research skills of applicants;
- continuing legal education program development;
- law school accreditation standards review.³

¹ The foundation of the Task Force's Principles are the *Information Literacy Competency Standards for Higher Education (2000)*, approved by the Association of College and Research Libraries (ACRL) and endorsed both by the American Association for Higher Education and the Council of Independent Colleges. Information Literacy as defined by ACRL is the set of skills needed to find, retrieve, analyze, and use information. <http://www.ala.org/ala/mgrps/divs/acrl/issues/infolit/overview/intro/index.cfm> A significant body of literature on information literacy has developed over the years.

² The Section on Legal Education and Admissions of the American Bar Association administers the law school accreditation process.

³ The Section on Legal Education and Admissions to the Bar is discussing student learning outcomes in proposed Standard 202.

Principle I: A successful researcher should possess fundamental research skills.

- **Law students should have an understanding of the complexities of the legal system.** They should know the processes and the interrelationships between the three branches of government and the legislation, regulations, and case law they produce. They should distinguish between official and unofficial sources of law and should place issues in context.
- **Law students should know how to effectively use secondary sources.** They should distinguish between primary and secondary sources of law. They should identify and use secondary sources for background information, to gain familiarity with terms of art, and to put primary sources in context.
- **Law students should have an awareness of the cost of research.** They should understand the costs associated with research using all formats. Further, they should identify where cost and efficiency intersect in the selection of format.

Principle II: A successful researcher should implement effective, efficient research strategies.

- **Law students should select appropriate sources for obtaining required information.** Based on the authority governing the issue, law students should determine which research tools are best suited to analyze the issue, and then they should validate the completeness and appropriateness of the selected sources.
- **Law students should construct and implement efficient, cost-effective search strategies.** Law students should first break the problem down into its components and determine an approach to each of them. They should draft research plans and timelines that include identifying the most cost-efficient sources, appropriately using available resources to perform the research, and using supplemental materials to validate and update results.
- **Law students should confirm and validate research results, incorporating existing work product and expertise.** Law students should confirm the validity of their results by consulting prior work product, when appropriate and available. They should also seek out knowledgeable legal researchers for guidance, when necessary, considering ethical obligations.
- **Law students should document research strategies.** They should record all pertinent information, such as resources and methods used, for future reference. They should produce accurate citations and reference lists using appropriate documentation style.

Principle III: A successful researcher should critically evaluate legal and non-legal information and information sources.

- **Law students should critically evaluate the validity and credibility of information sources.** They should know the different purposes and the relative strengths and weaknesses of different types and formats of information sources. They should be able to translate skills used for familiar information sources in order to master new information resources.
- **Law students should critically evaluate retrieved information.** They should distinguish between binding and persuasive authority and distinguish otherwise binding authority from the facts at hand. They should recognize and address contrary authority and incorporate factually dissimilar yet legally relevant authority by drawing parallels to the facts.
- **Law students should synthesize the results of their research to construct new concepts applicable to resolving the problem at hand.** They should draw analogies between their situation and other areas of the law, when appropriate.

Principle IV: A successful researcher should apply information effectively to resolve a specific issue or need.

- **Law students should understand the context for the legal issue under analysis.** They should research background or historical information, such as legislative or administrative histories, where that context can inform the analysis. They should apply scholarship from other disciplines, consistent with the use made of non-legal materials by courts and other decision-makers in the past.
- **Law students should modify the initial research strategy as suggested by preliminary results.** They should incorporate additional concepts when implicated by preliminary results, and expand or narrow research queries when they retrieve unanticipated results due to the coverage of research tools or the operation of search engines

- **Law students should determine when research has provided sufficient background to explain or support a conclusion.** They should ensure that all questions posed are answered. They should identify unresolved issues and incorporate as appropriate analogous background where research did not clearly resolve the issue posed
- **Law students should use the results of their research to formulate their legal analysis and to prepare their work product.** Law students should apply principles of relevance and priority to the authority cited, taking care to choose a format and style that is appropriate for the audience and that best supports their analysis. They should organize and integrate the results of research into a persuasive document. They should also cite authority consistent with locally accepted rules, ensuring that cited references can be located by the reader.

Principle V: A successful researcher should be able to distinguish between ethical and unethical uses of information and understand the legal issues arising from discovery, use, and application of information.

- **Law students should have a mastery of information ethics and should be able to articulate the factors that determine whether an information use is ethical.** They should understand that the analysis of information ethics includes determining the lawyer's ethical obligations to the court, the bar, and society. They should also understand the organization's (firm, school, court, corporation) rules on access, storage and dissemination of information.
- **Law students should apply laws, rules, and other legal authority that govern a lawyer's use of information in the course of practice.** They should understand the principles of intellectual property, copyright, and fair use. They should also use source citations properly, to accurately indicate where the words and ideas of others have been found, and they should understand and comply with license and subscription agreements and other limitations.

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