Legal Research: Should Students Learn It or Wing It

Robert C. Berring
Berkeley Law

Kathleen Vanden Heuvel
Berkeley Law

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Legal Research: Should Students Learn It or Wing It?*

Robert C. Berring**
Kathleen Vanden Heuvel***

The authors reply to a recent article by Christopher and Jill Wren on the teaching of legal research, arguing that the Wrens misinterpreted the writings of Frederick Hicks and the bibliographic method of teaching. The critique is followed by suggestions for an alternative method for teaching legal research in law schools.

I. Introduction

Christopher G. and Jill Robinson Wren's recent article, "The Teaching of Legal Research," presents a wide-ranging critique of legal research instruction. The Wrens are especially critical of what they call the "bibliographic method" of instruction, which they trace to the writings of Frederick Hicks, a law librarian who wrote, among other things, an article entitled "The Teaching of Legal Bibliography" in 1918. As an alternative to the bibliographic approach, the Wrens propose that law schools employ a "process-oriented" approach, which they believe will teach students how to do legal research, as opposed to teaching them the contents of books. The Wrens set out some ground rules for using process-oriented instruction and provide a few examples of it.

The Wrens take the problem of legal research instruction seriously. Their article, which contains 177 footnotes in 55 pages of text, presents a detailed examination of the substantial body of literature on the teaching of legal research. The Wrens are also the authors of a widely used and well-respected book, The Legal Research Manual: A Game Plan for Legal Research, so the ideas espoused in their article certainly reach beyond

** Director of the Law Library and Professor of Law, University of California School of Law Library, Boalt Hall, Berkeley, California.
*** Kathleen Vanden Heuvel, Librarian, University of California School of Law Library, Boalt Hall, Berkeley, California.

scholarly debate to a far wider audience. We feel compelled to write this reply because we are concerned that the implementation of the Wrens' proposals will have long-term, negative repercussions. The Wrens are profoundly incorrect in their analysis. Acceptance of their methods will cause the already bleak legal research picture to become a cold and forbidding landscape. Their theories, as expressed in their article and book, are dangerous and misguided, and play into the hands of those who think legal research training is a minimalist's enterprise best handled in a cheap and easy manner. We reject the contention that research training has to be devoid of intellectual or substantive content in order to be effective, and argue that without a solid understanding of the intellectual underpinnings of legal research, practical training is a futile enterprise.

We also take strong exception to the Wrens' characterization of the "bibliographic" method of teaching legal research. They identify the most dismal approach to research training as the norm and then associate the worst elements of this approach with law librarians. Most law librarians will find the Wrens' analysis quaint, if not downright offensive. Even more egregiously, they interpret the work of Frederick Hicks so perversely that they accomplish metamorphosis, turning a brilliant scholar who possessed a grand and complex vision of legal research training into the father of the most incompetent, mundane approach to legal research training imaginable.

Our reply is in three parts. The first is a revisit to the work of Frederick Hicks, to demonstrate Hicks's genius and to argue that if law school faculties had understood or paid serious attention to Professor Hicks, we would not have the debilitated legal research programs we are left with today. Second, we examine the Wrens' process-oriented model and show that it is really only a variation on the laissez-faire approach currently used by most law schools. Finally, because the Wrens neglect to examine the innovative and exciting possibilities for teaching legal research, we set out our own model of a legal research training program that holds real potential for success.

II. Frederick Hicks Reconsidered

The Wrens chose to attack what they call the bibliographic teaching of legal research by pinning its creation on Professor Frederick Hicks (1875-1956). In the third section of this article, we question the distinction that the Wrens draw between the "bibliographic" approach and the "process-oriented" approach; at this point, we wish to demonstrate the inaccuracy of the Wrens' portrayal of Professor Hicks. We do this for two reasons. First, we have a deep respect for Professor Hicks's work, and second, the way in which the Wrens have misread and mischaracterized Professor
Hicks is part of the larger pattern in which they have mischaracterized the teaching of legal research.

Professor Hicks was Law Librarian at Columbia and later at Yale. He wrote an influential teaching text, *Materials and Methods of Legal Research*, and is generally credited with legitimizing legal research courses in the first-year law school curricula. The name Frederick Hicks should be known to every law librarian. He was a gifted administrator, bibliographic theorist, productive scholar, and graceful writer. The impact that he had on those who knew him can be found in the tributes printed at the time of his death. He left the legacy of his ideas and his written works for all future generations of law librarians. *Materials and Methods of Legal Research* is an invaluable repository of information about the nature of legal literature and is still one of the best treatments of the subject of legal research. Another of his works, *Men and Books Famous in the Law*, published in 1921, is a wonderful account of how the “great books” of the common law were produced. It serves as a reminder that legal research books are the results of choices made by the people who produce them.

The Wrens characterize the bibliographic method as a mechanical enterprise in which students only learn the internal components of individual research books. This is certainly not what Hicks meant when he talked about a bibliographic method of instruction. His understanding of legal research extended far beyond the contents of any individual volume or set. In his article “The Teaching of Legal Bibliography,” Professor Hicks stated: “Legal bibliography proper is not merely a description of books. It is also a study of the record of the jural life of a people. . . . Its very language, diction and style are products of contemporary literary taste. . . .” The Wrens quote the same passage at slightly greater length, using it to show that Hicks was not genuinely interested in the research process, only in books. At the risk of sounding like rival evangelists arguing about how a biblical passage should be read, we contend that the Wrens’ reading of the above statement is extremely superficial and unsound. Hicks was saying that to understand law books you must view them in context, in the information stream of the time and place in which they are published. He felt that it is possible to understand how to use the books only if one understands what they are, how they came to be created,

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5. For a comprehensive memorial to Professor Hicks, see Roalfe, Frederick C. Hicks: Scholar-Librarian, 50 Law Libr. J. 88 (1957). For Hicks’s obituary, see N.Y. Times, May 1, 1956, at 33.
6. Hicks, supra note 2, at 6.
7. Wren & Wren, supra note 1, at 27.
and what their role is in the universe of other research materials. His analysis anticipated much of the best modern information theory. Professor Hicks was willing to move beyond the simple description of case reporters and legal treatises. He certainly did not have, as the Wrens contend, a narrow vision of research. His view was panoramic. He saw legal literature and legal research at the center of legal education.

Both in his "Teaching of Legal Bibliography" article and in his textbook, Hicks argued for three phases of training in legal research. The Wrens focus mainly on Hicks's first phase, "legal bibliography proper," which they characterize as a mechanical study of legal reference books. They simply ignore the second phase of Professor Hicks's three-part system, which is actually much like the Wrens' own process-oriented approach. Hicks stated, "The second part of the subject is the one which makes the most direct practical appeal to the student. As soon as a case or statute is cited to him in class, he finds himself face to face with an elaborate system of reference which is new to him."

Clearly, Hicks knew the importance of learning research in response to specific, practical questions, but he also understood that systematic knowledge of the research books and considerable guidance by a research instructor were both essential elements in understanding legal research; without them the second phase of instruction, the process phase, would be far less successful.

In a notable passage from Professor Hicks's 1918 article, he states his ambitious agenda for teaching legal research:

Recurring to the three phases of the subject above outlined, it is evident that legal bibliography proper, the origin, history, and description of the repositories of the law, is susceptible of presentation in the form of lectures . . . . How to find the law is a problem best solved by trying to do it. But this attempt should be under proper guidance . . . . Each student must be given individual problems and must be carefully checked up by the instructor.

This agenda demonstrates that Hicks saw legal research instruction as an intellectual and a practical enterprise. The Wrens, on the other hand, take the intellectual phase of Hicks's analysis, strip it of substance, then propose in counterpoint a "new" approach that is based on Hicks's second phase of analysis. In reality, Professor Hicks had already puzzled these issues out in a more elegant fashion seventy-seven years ago. Indeed, he saw a third phase of instruction, which we will not explore, but which is of

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8. See Hicks, supra note 2, at 5-8; F. Hicks, supra note 4, at 16-20.
9. Hicks, supra note 2, at 6.
10. Id. at 8.
interest because it integrates legal writing, legal research, and appellate advocacy.

The Wrens' attack is especially off-target when they attempt to argue away evidence that Hicks's methods were more complex and intelligible than their own. They contend that Hicks's success with his legal research courses "camouflaged two deeply flawed assumptions underlying his campaign." The first is that Hicks believed law students need in-depth descriptions or histories of law books to understand research; the second, that Hicks artificially isolated instruction about law books from what lawyers actually do.

As to the first "flawed assumption," we believe the Wrens are simply wrong. Hicks did assume that students need a solid understanding of the nature of legal research systems before they can effectively solve actual research problems, but we find nothing in the Wrens' arguments to convince us that this assumption was flawed or incorrect. Studying the history of the legal research tools was important to Hicks for the same reason it is important now: it teaches lawyers to evaluate and judge sources, and to distrust the promises of simple solutions to complex questions. Historical inquiry also reveals the purpose of a legal research system. If students understand why a particular tool was developed—what problems the publisher wanted to solve—then it is much easier to figure out what can be accomplished with that research tool. The Wrens do not address the value of the historical and contextual approach, other than to insist that the process approach is better.

As to the second "flawed assumption," the Wrens mischaracterize Hicks by quoting him out of context. In a footnote to their article they refer to one of Hicks's own lectures, in which he explains why he thinks it is helpful to study the development of law books. The Wrens quote this passage to buttress their argument that Hicks's approach is inherently flawed:

This assumption [that students need descriptions or histories of law books] appears clearly in Hicks's description of his lectures at Columbia: the lectures did not deal with the "methods of using law books" but with bibliographic information, and "attempted to trace the development of the various classes of Anglo-American law books from their beginnings in England to their present-day descendants in the United States. Thus it was hoped that the students might gain perspective in regard to the literature of the law, enabling them to use books intelligently . . . ."

11. Wren & Wren, supra note 1, at 32.
12. Id. at 32 n. 81 (quoting Hicks, Instruction in Legal Bibliography at Columbia University Law School, 9 Law Libr. J. 121, 121 (1916).
Had the Wrens bothered to turn the page of the article in which the above passage occurred, however, they would have found that Hicks did not intend to limit research training to the history of books. On the very next page he states: “At the conclusion of the last lecture, encouraged by the continued attendance, it was announced that the law librarian would be glad to form seminars to meet weekly for the purpose of acquiring experience in the use of law books . . . . Over 100 students handed in their names. . . .”

The Wrens ignore the fact that Hicks instigated these weekly seminars to work through research problems and that he was well aware of the “intimate and vital” connection between legal bibliography and substantive law. In the end, all the Wrens have done is to indict Hicks for not using the process-oriented approach as his exclusive teaching method. Hicks’s actual research program, however, as well as his writings, meet the Wrens’ objections head on. He promoted an integrated method of teaching legal research, not a single bibliographic or process approach.

The Wrens accuse Professor Hicks of betraying his own ideals because the only course that he ever popularized concentrated on his first phase, “legal bibliography proper.” Yet, even if Hicks was unable to instigate all three phases of his program, he would not have taught any class that fit the Wrens’ description of legal bibliography. They claim, for instance, that an instructor employing the bibliographic method would discuss West headnotes and key numbers only in the context of a single reporter, perhaps with only a single reference to the digest. Such an approach would have been alien to Hicks. Instead, he would have explained the genesis of the headnote, what it meant, and what its place was in the stream of legal authority. The “bibliographic method” that the Wrens impute to Hicks bears as much relation to Fred Hicks as the “Greatest Hits of Pat Boone” do to the music of Little Richard. The Wrens have simply made Hicks the straw man of a bibliographic approach that has nothing to do with Professor Hicks’s work or with reality.

The Wrens believe that Hicks was defeated by a flaw in his thinking. They are wrong. Hicks’s ideas have not failed; they simply have not been tried. Hicks proposed a course in which students met thirty to forty-five times; a course that explored the history and interrelations of the research material; a course in which the problems of how to find the law were

14. Id. at 125.
15. Wren & Wren, supra note 1, at 13.
solved "by trying to do it."\(^{16}\) It is the law schools' failure to accord adequate treatment to such a legal research program that has doomed Hicks's ideas, not Hicks's failure to see the process-oriented approach as the exclusive solution to legal research training. The Wrens' book and their article offer a minimalist's approach, a fast and easy explanation of legal research that can be assigned as a tiny part of a program where only a few hours will be devoted to legal research. As such, their approach may do very well indeed, but their goal is far less valuable to law students than the goal Frederick Hicks had in mind.

The Wrens' assault on Professor Hicks promotes the dismissal or trivialization of skills training in law schools. The scorn heaped upon Professor Hicks and the courses supposedly based upon his methods is typical of a certain strain of modern pedagogical theory that purports to offer new ideas, but really buys into the existing conditions. It is Professor Hicks and not the Wrens who has genuinely new ideas about research training. Hicks's intellectual and contextual approach to the teaching of legal research deserves acclaim and consideration, not the summary treatment accorded it in the Wrens' article.

### III. The Wrens' Article

The Wrens attack the "bibliographic method" of teaching legal research, analogizing it to teaching house building by explaining the individual components of a house without providing assembly instructions.\(^{17}\) They present a model of the bibliographic method, in which students only learn the mechanical, internal characteristics of individual legal reference tools in an atmosphere of total isolation, and then contrast it to their vision of process-oriented research, in which legal research tools have no life apart from the legal problems that they are designed to solve.

The basic problem with their argument is that the bibliographic method of teaching legal research has long been discredited. Scholars have published truckloads of literature criticizing the "laundry list" approach to instruction, where the teacher rolls in a book cart and describes volume after volume, treating each set as an isolated bibliographic event. The Wrens collect much of this critical literature in the footnotes of their article. If, indeed, there are still instructors employing this approach, then the Wrens' distress makes sense. Such instruction is foolish and misplaced. We seriously doubt, however, that any law librarian or experienced legal research instructor who cares about his or her craft would choose to use

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16. Hicks, supra note 2, at 7-8.
17. Wren & Wren, supra note 1, at 18-19.
this mode of instruction. What the Wrens have done in their article is to isolate the worst possible teaching method, identify it as the norm, then set upon it with abandon and glee. Next to the terrible picture of legal research instruction they portray, a law school would be hard-pressed not to choose the Wrens' process-oriented method.

By attacking the current state of legal research training and dressing it in the clothing of substantive courses in legal bibliography, the Wrens simply use sleight of hand to make us believe that their process approach is new and better. But the current state of legal research instruction is quite different from the integrated method advocated by Frederick Hicks and other legal research educators. The Wrens not only make a false connection between Hicks's and their versions of the bibliographic method, they also make a false connection between Hicks's integrated, substantive approach and the current state of legal research training in most law schools. Because virtually everyone agrees that research training is uniformly miserable, the Wrens' approach looks like an improvement. All the Wrens really argue is that the process-oriented approach is better than the dismal, ineffective programs now in place at most law schools. If the process-oriented approach is to prevail on more than a default basis, however, it should face a more muscular challenge.

We do not deny that most current legal research training is abysmal. But the problems that plague most research programs today are not the result of the machinations of law librarians or the failure of research instructors to teach by the process method; they are the result of severely emaciated research programs. First-year law students are not groaning under the burden of too much bibliographic detail; they are floundering in their attempts to divine which research tools can answer their questions. Law schools simply have been unwilling to accord reasonable status, compensation, and time to legal research training. Regular faculty members generally do not teach a research course, and when they do decide to teach one, the results are almost invariably disastrous. Most law faculty members cannot teach legal research because they do not understand it themselves. If compelled to teach the course, they rebel. This is why Professor Marjorie Rombauer's admirable experiment at the University of Washington foundered. Programs staffed by second- and third-year law students or by recent graduates, distinguished by good grades in traditional law school subjects but untrained in research, are similarly doomed to produce meager, often negative results. If research instruction is to improve, law schools must begin to examine how well their legal research teachers understand and teach legal research skills, not merely as ancillaries to some other skill, but as viable and important components of law school education.
The Wrens’ *Legal Research Manual* is adopted and used in many programs that employ what we have termed the “minimalist’s approach” to legal research. Schools that have these minimalist programs work on the assumption that learning legal research will not occupy much of the first-year student’s time. The most expedient course of action is to have students buy a book that is inexpensive and easy to read. This may be coupled with two or three hours of lecture. The hope is that students will take time to read the book, and since they will not be too put out by the size or cost of the book, they may actually be in the proper frame of mind to get something out of it on their own. A book like the Wrens’, which is an excellent outline of legal research, can be exploited by law schools that refuse to devote time and resources to the actual study and understanding of research. We find it particularly troubling that the Wrens have chosen to give credence and authority to this minimalist approach by attacking the long-discredited bibliographic method. Their arguments, based on a false assumption about what *can* be taught in law schools, offer the law schools a way to rationalize the use of the minimalist approach not simply as expedient, but as a major pedagogical improvement.

Many law schools have no separate, required research program, only a voluntary program or a few hours of lecture grafted onto a legal writing course. These schools already employ the process-oriented approach, though without the benefit of an instructor. Students supposedly learn how to use research tools in response to problems as they come up in their traditional courses or at their jobs. In reality, however, there is little practical difference between this type of self-instruction and instruction aided by a teacher using only or primarily the process-oriented approach. Both teach the very type of flawed skills that have plagued law students for years. They produce the most dangerous kind of learning, because they constrict the students’ research universe. Students learn to do only “A to B” research, in which they solve a research problem using tool “A” to find answer “B.” Because they never learn how the tools work together or why certain types of information are found in certain types of research tools, students come to assume that tool “A” can only be used in one particular way, for one particular purpose: to reach point “B.” A process-oriented research program gives students tunnel vision. They learn only the narrowest, and often most ineffective, paths to solving their research questions because they have no idea what the larger picture of legal research looks like. Students will not, as the Wrens claim, extract all the information they need about the research books merely by engaging in the process of research, any more than they have been able to extract “the law” through the process of reading and digesting cases. We should lay to rest the tired myth that engaging in the mere *process* of answering legal
questions can teach students how to develop effective and practical research strategies.

While the Wrens might reply that given enough time, a competent instructor, and interested students, the process-oriented approach can be a rich and fulfilling experience, our contention is that if law schools devote enough time to research training and support competent instructors who are able to attract interested students, the law school will have already overcome the major problems: lack of resources, time, and status. Competent, well-supported instructors will not limit themselves to one single approach, either bibliographic or process-oriented.

Adherents to the process-oriented method often claim that the involvement of a faculty member, even if that involvement is remote from the actual research class, will somehow enhance the research experience, give it prestige. In this particular research scenario, first-year students, guided by a second- or third-year student who usually has no systematic knowledge of research or its methods, are taught to perform specific research tasks in conjunction with a first-year “substantive” class. We believe that such an approach spells disaster for the research program, which will almost certainly take a backseat to whatever is occurring in the “substantive” class. Merely putting a “real” faculty member’s name in the research program will not elevate the research course to the level of the substantive courses. The message that research is on the periphery of the first-year experience, that research is not highly valued, will come through loud and clear if it is treated as a servant of a first-year course. The research program will die of marasmus long before the end of the semester.

There are other objections to the process-oriented approach as well, no matter who is in charge of the class. The Wrens provide little guidance as to the essential elements of the process-oriented method, other than that the students learn by doing. While they do discuss the foundation part of the course, in which they present the sources of law, this is a part of almost every course taught by any method. They continually tell us why process-oriented instruction is better, but they tell us little else, other than it involves problem solving. This “learn-by-doing” method, without more structure than the Wrens give us, seems to come dangerously close to the old “treasure hunt” methods that the Wrens themselves belittle. Without a great deal of vigilant instruction, students will learn one way to solve each problem and will only occasionally discover the abstract principles and categories that could make their future research so much easier. The Wrens never explain why students should be put through this process, when a great deal of the information could be explained from a bibliographic perspective beforehand.

What the Wrens really advocate is learning research “on the fly,” not a new and better method of research training. The real problems of research
training cannot be solved using the Wrens’ process-oriented approach, or any other single method. If the number of hours allotted to research training is insignificant, switching to a new method of training will not improve that training. And if those teaching the legal research course do not really understand the research tools, a process-oriented approach will not magically untangle the mysteries of how or when to use them.

The biggest danger of the Wrens’ process-oriented approach is that law schools will tout it as a panacea, using it as an inexpensive excuse to maintain vestigial research programs. Clutching the Wrens’ text like an amulet, students will magically become adept researchers, thus relieving the law schools of their responsibility to teach. Under the guise of a new teaching method, law schools will once again have found a way to avoid the larger problem: their inability and unwillingness to recognize that legal research is a complex discipline that cannot merely ride on the coattails of the first-year experience. Law schools will continue to send new lawyers into practice without the skills they need to evaluate and use the expensive and evergrowing number of research tools available to the law firm market. Although the Wrens would have us believe that their method will improve legal research training, adoption of their theories may send research programs plummeting to as yet uncharted depths. In effect, the Wrens give up the battle for serious research instruction when they advocate the process-oriented approach. They do not fight for the vitality of research programs or bother to identify the aspects of research that can be systematically taught. Instead, they cast their lot with the people who have traditionally ignored legal research.

But we could not criticize if we had no better solution. We believe that legal research can be systematically taught, but do not think that a first-year program should be used as the primary vehicle. In the final section of this essay, we set out our proposal to use advanced legal research to accomplish our goal.

IV. The Advanced Legal Research Solution

Trying to teach systematic research during the first year is trying to teach the wrong people the wrong material at the wrong time. Genuine instruction in legal research can be accomplished only in the second and third year of law school. First-year law students need some basic sessions orienting them to the library, some general lectures on sources of law, and perhaps a bit of help on legal citation practice. Couple such measures with a book such as the Wrens’ own Legal Research Manual or Morris Cohen’s Legal Research in a Nutshell,¹⁸ and you will be giving first-year students a

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decent grounding in the basics. This level of time commitment is probably what most law schools currently manage anyway, although they often employ instructors who are unable to assist students with even these basic needs. We already know from countless articles and speeches that schools will not give up precious hours in the first-year curriculum to structure a real course. We also believe that most first-year students lack the needed context to profit from a fully integrated course. Students need a grounding in legal jargon before they try to understand the indexing and organizational systems used by legal research tools; and they need some substantive law training so they can understand the conceptual arrangements of the different research tools. If the phrase "learning to think like a lawyer" has any meaning, it is that it describes the imprinting process that takes place in the first year of law school; students learn jargon and how to frame issues according to some version of legal doctrine. Until students are properly "imprinted," legal research will not make sense. No matter how it is taught, students will perceive it as disjointed data. The first-year component of legal research is important and should be handled better and more systematically than it is now, but it should only be considered the first step to a real research program.

On the other hand, second-year students are the best candidates for learning legal research. They have the necessary grasp of legal jargon and a basic understanding of a few substantive areas of law. And the maraschino cherry on the sundae is that they are motivated. Most second-year students have worked in some law-related job during the summer between first and second year; their discomfort at being unable to perform legal research at their jobs is fresh in their minds. They are ripe for being taught because they are aware of what they don't know. They have had the opportunity to try the process-oriented method firsthand and generally have found it to be a trial-by-ordeal. They are often angry that their first-year research class left them unprepared and misinformed. They want a course that explains legal research and is a regular part of the curriculum, a course that covers everything from nominative court reporters to CD-ROM products, a course that uses modern information theory to place online database searching into a meaningful context. Our experience is that a course in advanced legal research meets their needs. Drawing on theories that trace all the way back to Frederick Hicks, we have constructed a broad-ranging approach to legal literature and research that includes how to use the CFR's List of Sections Affected and the relation of LEXIS to Critical Legal Studies.

In this setting, legal research can be taught as a discrete set of principles and methodologies, a marriage of modern information theory and legal bibliography. Students cannot learn to perform complicated research tasks without understanding the nature of the tools involved, and it insults the
intelligence of both the students and serious legal research instructors to contend that a few basic methods will suffice. We should not be satisfied with setting students loose to learn the process when we have the intellectual tradition, knowledge, and practical skill to give them a broad and genuine understanding of legal research.

This does not mean, as the Wrens suggest, that teaching legal research as a distinct discipline requires that it be isolated. Research should only be taught by integrating real questions with the materials designed to answer them. But it is necessary to see research as more than solutions to a series of disassociated questions. Research can be taught much more effectively if it is approached conceptually. One can explain, for example, the intellectual underpinnings of the West publication system without presenting a laundry list of information about headnotes and case reporters. Instead, one can study the development of the West Publishing Company and the unique set of marketing and economic forces that made case reporters what they are today. One can examine case reporters, looking at the way West and other publishers take the raw materials distributed by the courts and legislatures and enhance them with headnotes, annotations, and subject classification systems that reverberate throughout the primary and secondary literature. One can attempt to make students understand that the legal materials with which they will be working in practice reflect intellectual choices about content and format, and that these choices have an enormous impact on the ongoing enterprise of legal scholarship and on the research tools that are and will be available in their law practices.

Students need to understand how a case reporting system functions, what it is designed to accomplish, and why certain features and research tools exist. They need to see how the headnotes placed at the beginning of each case infect the annotated codes and secondary sources and how the National Digest system has molded and narrowed the way we conceptualize law. Once they understand this, they can analyze any research tool found in any jurisdiction. This approach runs far beyond the model described by the Wrens. Using their house-building analogy, the Wrens argue that students will learn by doing; by building a few houses they will, by some mystical process, perhaps, learn everything they need to know. But at best students only learn how to build a few kinds of houses. What happens when they are confronted with a high rise or a completely different kind of building site? What if they have to use materials different from those previously encountered? Law students need to know the principles of structure and design of the legal research systems. They need to know enough about the scheme of research to evaluate the quality of the tools and the quality of the information they find in them. As lawyers, they must
be self-sufficient enough in research that they can at least evaluate their own work and the work of others, including that of their opponents. Students should understand the patterns in the publication of the materials and the patterns in the cross-referencing systems developed by publishers. Legal publishing companies have labored to develop research systems, with varying degrees of ability and success. We must try and teach legal materials as part of these research systems, or our students will waste vast amounts of time and effort trying to puzzle out research tools that only make sense in the context of a larger system.

Perhaps intelligent students, if left to their own devices, will eventually be able to extract the information they need. But why put them through such an agonizing process? Will they really learn better, or just more slowly, less effectively? This time-worn, trial-by-ordeal teaching technique does not build character, it just produces inefficient, ineffectual researchers. Fred Hicks's brilliance was that he understood that if you cannot explain the design and purpose of the research tools, then you will be forever condemned to relearn the research process for each new problem that arises.

It would be a bibliographic nightmare for law students to memorize the names and contents of all the legal research tools, but lawyers must have some knowledge of what is in the various research tools so that they can know where to begin a search and when to end one. In our advanced legal research course, we try to pose and answer a number of questions so that students have guidance when they are faced with research issues: Why do annotated codes look the way they look? Is there a standard for annotated codes? In what ways do they differ from jurisdiction to jurisdiction? Why do administrative agencies publish regulations, and how do they become codified? How do the statutes and the administrative regulations work together? Why were looseleaf services created, and how well do they fulfill their purposes? What are the functions of citators, and how does their original purpose affect the way they work today? Why did Frank Shepard choose to cite comprehensively to all cases in his citators, how did the citators evolve, and how do the newer Shepard's citators fit into the whole scheme? Do Auto-Cite and Insta-Cite have a different function from Shepard's citators? How can they be used in the research process? To what extent are these tools reliable? Is there anything essentially different about cases reported online and those reported in paper format? How do indexing theories and strategies affect the ways researchers gain access to cases and statutes?

Knowing the answers benefits legal researchers enormously. The whole purpose of building an historical, conceptual foundation is to show that research tools are not isolated bibliographic events, but are instead
elements of an overarching bibliographic framework that can be articulated, criticized, and analyzed in both historical and practical contexts. The researcher comes to understand, for example, that a case reporter is not arranged as it is because of a divine decree, but because of a series of intellectual and market choices. Such concepts can be discussed in a manner that makes them vital and interesting.

Consider the difference in the way a process-oriented instructor would describe Shepard’s citators and the way we suggest teaching them. Using what the Wrens call the “bibliographic” method, an instructor would describe the volumes’ coverage; then, using the Wrens’ own “process-oriented approach,” students would use Shepard’s citators in the course of a problem. We think that students become much better users of Shepard’s if we explain to them the dual functions of the citators, how the Shepard’s format evolved, and how it has affected the way we think about law. We emphasize the Shepard’s philosophy of providing every possible citation to a case or other cited material and discuss the different kinds of information available in the various Shepard’s. Students understand more than just the mechanics of shepardizing; they understand when to use it, when to trust it, and how to get the most out of it without being overwhelmed by the enormous amount of citing information presented to them.

There are many roads to the final goal of training knowledgeable and capable legal researchers. Like the Wrens, we want students to avoid the winding, disconnected backroads that characterize their version of the bibliographic method. But we also want students to understand that they are not proceeding down a freeway with clearly marked exits. Sometimes the place they need to get to will not bear any obvious relationship to the exit sign. Without an aerial view of the territory, they will never reach their destination. Law schools owe it to their students to give them that aerial view. Simply telling them they should be smart enough to find it on their own isn’t good enough, not when we have the ability to teach them. Certainly, students must use the research materials to put research concepts into a real-world framework; to assist them in doing this, we give them research questions that are open-ended, that allow students to be creative. It is the interplay between conceptual understanding of the tools and working through of research questions that engenders excellent research skills.

What really brings this kind of understanding of research into focus at Boalt Hall is the final advanced legal research project. Every student who enrolls for three units must complete a “pathfinder,” which is a guide to the research sources in a particular subject area. Students pick a topic of their own choosing, and gear the pathfinder to a particular audience. Their pathfinder may be a guide for an attorney who is unfamiliar with the
subject area, such as the pathfinder we recently received, *The Practical Aspect of U.S.-Soviet Trade Law*; or it may be a "how to" guide for someone completely unfamiliar with law, such as a pathfinder for musicians, which takes the user through the steps of negotiating club dates, signing with independent record companies, and obtaining copyright protection for their music and lyrics. Students are encouraged to see law as a catalyst for action and their research as a method for achieving change. We want them to use their research not just to find the law as it is, but also how it could be. A recent pathfinder on multilateral development banks and indigenous peoples' rights brought together research materials that are meant to be used by a lawyer interested in influencing the cultural and environmental policies of multilateral development banks.

Naturally, each topic presents a different array of sources. Some are heavily case- and statute-oriented, while others, such as those on medical subjects, barely include any strictly "legal" research at all. One favorite was *A Pathfinder to Becoming a Hermit*, which was a guide to the sources that you'd need to know about to truly cut yourself off from society. (It turns out it's not easy to do.)

Creating a pathfinder brings a great deal of knowledge and skill into play. Students must present all the important research tools and research information in an organizational structure that they tailor to their subject matter. They must give details of the research process, not just lists of substantive material. Thus, they discuss not only the relevant statutes, regulations, legislative history material, and looseleaf services, they also describe the best ways of tracking down these materials. They must evaluate both the research tools that are available in their subject area and the quality and value of the substantive information that they find. In addition, they must search out the relevant or helpful organizations, special interest groups, and experts in their field.

We encourage students to take a broad view of research, to try to imagine all the aspects of a problem, not just the legal aspects. We tell them not to be comprehensive. We do not want to see every case or journal article, we only want to see the ones that are significant. This is because we want them to practice using their judgment, not just their ability to collect resources. When they are practicing law, they will have to make research choices based on cost and deadlines. The pathfinder gives them an opportunity to develop the intuition they will need when they are lawyers.

An added benefit is that students are thrilled to actually exercise their long-dormant judgment skills. Advanced legal research is probably one of the few courses in law school where students are rewarded for thinking broadly and creatively about a subject. For many students creating a pathfinder is a rich experience. In at least one case, it changed the course of
a student’s career; he is now a recognized expert in the field for which he wrote his pathfinder.

The advanced legal research course allows us to teach research in a way that could never be done with first-year students. It is a capping, integrative experience that trains students to truly understand the research process. We view courses like this as the only realistic answer to the legal research problem.

But will law schools accept such a course, or are we doomed to accept a process-oriented approach designed mainly to keep enfeebled research programs from gasping their last breath? At Boalt Hall, advanced legal research is a three-unit class that was taken by approximately 250 students during the 1988-89 academic year. Although the majority of students at Boalt now take the class as an elective, there is an administrative proposal to make it a required course. Advanced legal research classes are being offered at Harvard, Yale, and a growing number of law schools, which is at least circumstantial evidence that legal research does have a place in the regular law school curriculum.

Here at Boalt, the course is offered in a lecture format with unlimited enrollment. Most other advanced legal research courses are seminars. While we agree that research seminars are a wonderful idea, we think there should be at least one advanced research course offered in the lecture format. Although the problems associated with trying to give students enough attention in a large class are sometimes enormous, the ability to do and to evaluate research should not be limited to a few extremely interested students. We have found that once students have a strong, conceptual understanding of the research tools, they are better able to engage in the process aspect of research. We are extremely fortunate at Boalt to have highly skilled reference librarians who not only know how to find the law, but also how to teach it. Thus, when advanced legal research students are working on problems, they have the assistance of true experts in the field, librarians who genuinely understand how to use research materials and how to convey that information to students. Although this cannot duplicate the small research seminars that Hicks had in mind, it goes a long way towards easing the problems associated with lecture classes.

Teaching a large number of students means a substantial commitment on the part of the law library, but it also gives law librarians, who are the most knowledgeable, experienced, and capable researchers at any law school or law firm, a chance to expand their own opportunities to teach law students how research really should be done. Because the research questions in advanced legal research are open-ended, the librarians can actually demonstrate a variety of research techniques to students, rather than direct them on the traditional first-year treasure hunt for the nugget
of fools' gold buried in an out-dated volume of CJS. To insure the success of the advanced legal research approach to instruction, however, law schools must come to understand the value of the education that law librarians can provide to law students. Law librarians have the ability to give law students the high quality, effective training that they need, but the law schools must provide the support, in terms of status, compensation, and time, if librarians are to achieve the goal of training law students to become competent, skilled researchers.

Our experience at Boalt Hall affirms our belief that research classes should be part of the regular law school curriculum. Law schools must recognize the value of these courses in the marketplace of classes and encourage the students to include a research class as part of their substantive coursework. Second- and third-year students are ready and willing to learn about legal research. Now law schools must enable students to learn what they need and want to know.

IV. Conclusion

The Wrens exerted a great deal of energy attacking a bibliographic method that was essentially a figment of their imagination. Neither Frederick Hicks nor anyone since who cares about research instruction has advocated teaching legal research by isolating the books from the problems they were designed to solve. The Wrens are the true isolationists. With their judgment fettered by their apparent bibliophobia and anti-intellectualism, the Wrens spent fifty-five pages sword-fighting a phantom. The integrated, bibliographic method, conceived of by Hicks and advocated by us, provides an excellent and effective way to teach legal research.

We do not favor a heavily footnoted, historical approach to legal research any more than the Wrens do, and we readily agree that books are not the whole story. Often the most important thing we can do is to disillusion students, to show them the flaws as well as the useful features of books. Law students can only gain from an understanding of the origins and evolution of their law books and other research tools. It is in legal research class that law students have an opportunity to step back and look at how the bits and pieces of law thrown at them in their other classes actually fit together. It is in legal research class that they can see the impact of West Publishing Company's method of categorizing law, and can be made aware of the stronghold that the West system still has on their ability to conceive new ideas about law. It is in legal research class that they can learn how to find and evaluate information. And perhaps most importantly, it is in legal research class that law students learn to take legal research seriously.

The method advocated by the Wrens devalues all but one element of research, the process of doing it. But doing research is not the whole
picture. Research must be planned: certain research tools chosen, others ruled out. Lawyers also have to know when they have covered enough research ground so that they can stop researching. Without a conceptual understanding of how the research tools work, lawyers will be less competent researchers, because they will have no framework in which to judge their work. Hicks's philosophy of legal research is still the best in all respects—historical, intellectual, and practical. He wanted lawyers to comprehend the complexity of law as it was affected by and reflected in the legal research tools, to question legal authority, to integrate their conceptual understanding and practical skills, and to recognize that there are not always answers to every research problem. This is a profound, enduring approach to legal research, one worth fighting to preserve.