

PRINCIPLES AND STANDARDS FOR LEGAL RESEARCH COMPETENCY

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INTRODUCTION

The importance of research competency is widely acknowledged in disciplines within and beyond the legal community, as supported by academic research findings and studies documenting essential skills for the twenty-first century workplace.¹ This literature shows notable evidence of lagging skills in many research-intensive areas, including the field of law. In its call for a systematic revision of legal education, the Carnegie Foundation's 2007 report, *Educating Lawyers*,² advocated for the incorporation of practical instruction which was echoed by practitioners demanding minimum competencies in pragmatic abilities.³ A year later, the *Carnegie Report* findings were reinforced by a report of the American Bar Association Section of Legal Education and Admissions to the Bar recommending "a more overt reliance on outcomes measures" in law school accreditation standards.⁴

The American Association of Law Libraries (AALL) has developed a set of principles and standards for legal research competency, drawn from information professionals' deep involvement in legal research within academe, law firms, the courts, government agencies, and other related settings, as well as the literature of the legal profession indicating that research competency directly impacts professional efficiency and effectiveness.⁵

THE PRINCIPLES FOR LEGAL RESEARCH COMPETENCY

The principles advanced by the American Association of Law Libraries are:

- I. A successful legal researcher possesses foundational knowledge of the legal system and legal information sources.
- II. A successful legal researcher gathers information through effective and efficient research strategies.
- III. A successful legal researcher critically evaluates information.
- IV. A successful legal researcher applies information effectively to resolve a specific issue or need.

¹ In fact, the foundation for these *Principles* stems from 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, as well as the significant body of literature on information literacy that has developed over the years. <http://www.ala.org/ala/mgrps/divs/acrl/issues/infolit/overview/intro/index.cfm>.

² WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW* (2007) (hereinafter, *Carnegie Report*).

³ See A.B.A. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *REPORT OF THE OUTCOME MEASURES COMMITTEE 13-15* (July 27, 2008), available at http://www.albanylaw.edu/media/user/celt/outcome_measures_final_report.pdf.

⁴ *Id.* at 1.

⁵ See AALL Legal Research Competency section at <http://www.aallnet.org/legalresearchcompetency> for additional information targeted to specific constituent groups (such as practicing attorneys, legal educators, bar examiners and admission regulators, national and state bar associations, educational accrediting authorities, libraries and library associations, *et al.*), along with documents and reports chronicling the development of the *AALL Principles and Standards for Legal Research Competency* and supporting research discussing information literacy and legal research skills.

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- V. A successful legal researcher distinguishes between ethical and unethical uses of information, and understands the legal issues associated with the discovery, use, or application of information.

LEGAL RESEARCH DEFICITS

In a 2007 survey, law firm partners indicated a general dissatisfaction with new associates' legal research skills, an evaluation shared by academic and law firm librarians who identified an erosion of the same skills.⁶ A recent article offers a review of the legal research literature that catalogs unsatisfactory assessments of legal research skills by legal employers, educators, librarians, externship field supervisors, and even U.S. Supreme Court Chief Justice Roberts.⁷ At a moment in time when expansive legal information is widely available, especially to organizations and businesses that pay for access, evidence demonstrates very clearly that legal professionals often lack fundamental research skills. The issue is complicated, involving many aspects of quality and efficiency of research. Complaints include, for example, an inability to find relevant material, inefficient online search strategies, failure to hone in on the basic facts or concepts of a research problem, and limited skill in evaluating the validity and authority of sources.⁸

Analytical skills and other research competencies become even more essential given the proliferation of online legal information, multiple systems through which to access it, and the high cost of mistakes. As long ago as 1986, but still relevant today, Bob Berring noted that "[f]ree-text searching ... deprives the researcher of context."⁹ When a legal researcher is deficient in the mechanics of online searching or in the ability to evaluate the utility, reliability, and relevance of a source, the resultant recommendations will be flawed.

THE BENEFIT AND THE CHALLENGE

The standards articulated here provide a concrete framework for the assessment of competency that can be applied at any point on the continuum of a legal professional's career and in any specific field within the legal profession. Whether an organization evaluates law students, recent graduates, practicing attorneys, paralegals, or any one of a number of other professionals, the legal research competencies identify a set of skills that are essential and measurable.¹⁰

It is the hope of the American Association of Law Libraries that the *Principles And Standards For Legal Research Competency* will provide value to the legal profession in these key ways:

⁶ Anne Ellis, *Attorney and Student Research Skills: Ideal vs. Reality*, THOMSON WEST TOWN HALL MEETING AT AALL, RESEARCH SKILLS FOR LAWYERS AND LAW STUDENTS (2007) at 6, 16.

⁷ Yasmin Sokkar Harker, "Information Is Cheap, but Meaning Is Expensive": Building Analytical Skill into Legal Research Instruction, 105 LAW LIBR. J. 79 (2013) at ¶12, ¶11.

⁸ *Id.* at ¶12-24.

⁹ *Id.* at ¶12 quoting Robert C. Berring, *Full-Text Databases and Legal Research: Backing into the Future*, 1 HIGH TECH. L.J. 27, 54 (1986). Robert Berring is the Walter Perry Johnson Professor of Law at the University of California Berkeley School of Law. He joined Berkeley in 1982 as a professor and director of the law library. From 1986 to 1989 he held a joint appointment as dean of the School of Library and Information Studies. Berring also served as interim dean of the law school from January 2003 to June 2004. He stepped down as director of the library in 2005.

¹⁰ See, *supra*, AALL Legal Research Competency section, <http://www.aallnet.org/legalresearchcompetency>.

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- To foster best practices in law school curriculum development and design;
- To inform law firm planning, training, and articulation of core competencies;
- To encourage bar admission committee evaluation of applicants' research skills;
- To inspire continuing education program development; and,
- To impact law school accreditation standards review.

In all environments, competency in legal research reaps benefits for the parent organization and for the clients or users of legal services. As an earlier AALL report explained,

[L]aw 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.¹¹

The legal professional acquires an understanding of these factors and develops legal research skills while in law school, but that awareness and those competencies require a lifelong commitment to skills acquisition and reinforcement in order to serve one's clients and organizations effectively and efficiently throughout one's career.

The American Association of Law Libraries asserts that the principles named here are applicable and desirable across the legal profession and beyond the law school experience. AALL invites law schools, law firms, continuing legal education providers, and professional organizations to engage in the implementation of these *Principles and Standards* in meaningful ways that will result in more competent, effective, and efficient legal research, thus impacting the bottom line and service positively.

The challenge to each entity within the legal profession – including law schools, CLE providers, bar examiners, paralegal and law office administrator associations, law firms, and others – is to embrace legal research competency as a necessary skill and to incorporate these standards and competencies into its own performance measures.

¹¹ Report, AALL Law Student Research Competency Standards Task Force for the AALL Executive Board Meeting, March 29-31, 2011, 2.

PRINCIPLES AND STANDARDS FOR LEGAL RESEARCH COMPETENCY

The **Principles** are broad statements of foundational, enduring values related to skilled legal research, as endorsed by the American Association of Law Libraries. The **Standards** provide a set of more specific applications of those norms or habits that demonstrate one's commitment to and attainment of the principles. The **Competencies** are activities that demonstrate knowledge and skill. Competencies provide concrete measures or indicators of successful achievement of the abilities required to meet the standards.

Principle I: A successful legal researcher possesses foundational knowledge of the legal system and legal information sources.

Standards:

- A. An information-literate legal professional considers the full range of potential sources of information, regardless of type or format.

Competencies:

1. Differentiates between primary and secondary sources, and recognizes how their use and importance vary depending upon the legal problem or issue.
2. Identifies and uses the most effective secondary sources to obtain background information, to gain familiarity with terms of art, and to put primary sources in context.
3. Recognizes differences in the weight of authority among sources and applies that knowledge to the legal research problem.

- B. An information-literate legal professional understands the similarities, differences, and interrelationships among and between United States federal, state, and local legal systems.

Competencies:

1. Distinguishes between federal, state, and local systems of government; and understands the processes and the interrelationships among them on all levels.
2. Knows which legal information is produced, organized, and disseminated across levels and branches of government.
3. Identifies appropriate resources to locate the legislative, regulatory, and judicial law produced by the respective government bodies.
4. Understands and distinguishes between different types of primary law sources, and the weight, reliability, and binding or persuasive authority of each source.

- C. An information-literate legal professional understands the structure and interrelationships between and among foreign and international legal systems.

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Competencies:

1. Recognizes that there are diverse structural frameworks for the various legal systems within the global community.
2. Recognizes basic similarities, differences, and interrelationships among and between various types of legal regimes, e.g., United States law, foreign law, and international law.
3. Identifies information resources that will increase depth and breadth of knowledge regarding a specific legal system.
4. Recognizes that other countries and supranational organizations may produce, organize, and disseminate their legal information in different ways, and knows how to find the needed information for a particular legal system.

Principle II: A successful legal researcher gathers information through effective and efficient research strategies.

Standards:

- A. An information-literate legal professional selects appropriate research sources.

Competencies:

1. Identifies and analyzes the appropriate legal issues that need to be researched.
 2. Recognizes the authority or authorities governing particular legal issues.
 3. Knows which print or electronic, primary or secondary, sources contain appropriate and current content on the issue being researched.
 4. Recognizes how tools facilitate research tasks due to content or organization, such as use of controlled vocabulary, synopses, annotations, or headnotes.
 5. Knows how to check the content of sources and validate the completeness and currency of the selected sources.
 6. Supplements or validates preliminary results with additional tools.
- B. An information-literate legal professional constructs and implements efficient, cost-effective search strategies.

Competencies:

1. Articulates the precise legal issues that need to be researched, whether in the context of:
 - a. traditional litigation practice,
 - b. regulatory practice, or,
 - c. transactional practice.
2. Develops an appropriate research plan for each discrete issue.
3. Knows how to appropriately use available resources to research and understands the relative advantages of different methods of finding information.

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- a. Differentiates among various available online search platforms to employ those that are best suited to the task at hand, and
 - b. Understands the operation of both free and subscription search platforms to skillfully craft appropriate search queries.
4. Identifies the most cost-efficient sources, calculating cost of use against time on research.
- C. An information-literate legal professional confirms and validates research results, incorporating existing work product and expertise.

Competencies:

1. Understands the necessity of validating case holdings through the use of citators such as Shepard's, KeyCite, or other citation-based methods of updating case law.
 2. Analyzes research results using prior knowledge and experience on the topic in particular, as well as one's general knowledge of legal principles.
 3. Recognizes the benefits of requesting assistance from knowledgeable individuals, or an institution's knowledge management system.
 4. Understands when to stop the research process.
- D. An information-literate legal professional documents research strategies.

Competencies:

1. Records all pertinent information for future reference, such as:
 - a. resources and methods used,
 - b. information considered, and
 - c. reasons for selecting or rejecting various authorities or resources.
2. Understands and utilizes proper citation forms.

Principle III: A successful legal researcher critically evaluates information.

Standards:

- A. An information-literate legal professional knows that information quality varies.

Competencies:

1. Consistently applies criteria to evaluate the reliability of information, including but not limited to
 - a. Authority,
 - b. Credibility;
 - c. Currency; and
 - d. Authenticity

2. Understands that these criteria are relevant for both print and online, and legal and non-legal, sources.
- B. An information-literate legal professional evaluates legal information through cost-benefit analyses.

Competencies:

1. Understands that there are costs associated with legal research, regardless of type, publisher, or format.
 2. Demonstrates cognizance of the intersection of cost and efficiency in the selection of information format, and exercises professional judgment to choose the best source to serve the research parameters.
 3. Understands the costs and benefits of mediated and disintermediated searching, and uses this knowledge to revise research strategies when necessary.
- C. An information-literate legal professional understands the importance of reviewing information obtained.

Competencies:

1. Clarifies or refines the research question as needed.
2. Updates or expands the research.
3. Identifies and addresses any contradictory authority.

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

Standards:

- A. An information-literate legal professional synthesizes research problems in an analytical approach to legal research.

Competencies:

1. Synthesizes legal doctrine by examining cases similar, but not identical, to cases that are the current focus of research, in order to articulate how courts should apply current authoritative and relevant case law.
 2. Uses research results to craft or support arguments that resolve novel legal issues lacking precedent, when appropriate.
- B. An information-literate legal professional modifies initial research strategies as necessary.



Competencies:

1. Understands research as a recursive process, and expands or narrows research queries after discovering unanticipated results.
 2. Reflects on the successes or failures of prior strategies for integrating new information into the analysis; and utilizes concepts, theories, and facts from prior research to continue the process.
 3. Identifies historical sources or scholarship from other disciplines relevant to resolving a specific issue.
 4. Recognizes when specific questions within the larger research problem have not been answered with the information compiled, by either:
 - a. Recognizing when the ultimate questions presented have not been fully answered through the research already obtained, or
 - b. Realizing when sufficient research has been completed to address the legal issue or information need.
- C. An information-literate legal professional understands when research has answered all questions posed, and when it provides sufficient background to explain or support a conclusion.

Competencies:

1. Identifies unresolved issues and incorporates analogous background as appropriate if research has not clearly resolved all ambiguities or uncertainties within the issue posed.
 2. Identifies scholarship from other disciplines relevant to resolving a specific issue.
 3. Understands how courts or other legal decision-makers have applied materials from other disciplines in the past, and determines when material from these disciplines might be persuasive in resolving a particular issue.
 4. Locates background information to help answer a legal issue or need by using resources such as:
 - a. records of constitutional conventions,
 - b. legislative histories,
 - c. administrative histories,
 - d. trial or appellate briefs, or
 - e. economic, policy, business-specific, social, psychological, historical, or other inter-disciplinary research.
- D. An information-literate legal professional applies and integrates research into a persuasive document.

Competencies:

1. Cites authority consistent with locally accepted rules, ensuring that cited references can be located by the reader.
2. Organizes and integrates content, quotations, or forms, and paraphrases in a manner that supports the argument, brief, analysis, or transaction.



- a. Chooses an appropriate communication format and style for the intended audience; and
- b. Integrates charts, maps, or photos into the document or presentation for maximally persuasive effect, when appropriate.

Principle V: A successful legal researcher distinguishes between ethical and unethical uses of information, and understands the legal issues associated with the discovery, use, or application of information.

Standards:

- A. An information-literate legal professional understands and articulates the factors that determine the ethics and legality of information use in conformity with a lawyer's obligations to the court, the bar, and society.

Competencies:

1. Comprehends and complies with laws and organizational (firm, school, court) rules on access to information resources and storage and dissemination of information.
 2. Understands intellectual property issues such as licensing, copyright, and fair use of copyrighted material.
 3. Accurately articulates privacy, confidentiality, security, diligence, and other ethical issues related to research and practice in accordance with the Model Rules of Professional Conduct, the Model Code of Professional Responsibility, or the prevailing local law governing legal ethics.
- B. An information-literate legal professional understands the laws, rules, and other legal authority that govern a lawyer's use of information in the course of practice.

Competencies:

1. Uses citation of sources to respect authors' intellectual property rights and accurately indicates where the words and ideas of others have been used.
 2. Comprehends and complies with license and subscription agreements.
- C. An information-literate legal professional understands that research skills are among the set of professional skills that are continuously learned and re-learned throughout one's professional life.

Competencies:

1. Understands local requirements for continuing legal education.
2. Affirmatively undertakes training on research platforms as new iterations reach the market.

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3. Comprehends that legal research skills, like legal standards, are 'moving targets' subject to further refinement and development as the universe of legal knowledge (and legal research tools) expands.

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