# Task Mastery in Legal Research Instruction[*]

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*This article's overriding message is that law students can come closer to mastering the skill of legal research in law school than any other skill. While a number of means might accomplish this goal, the training method suggested focuses on a goal orientation of task mastery.*

## Introduction

¶1 I have taught an advanced legal research course twenty-five times over the past eleven years. During the first class period for each of those twenty-five classes, I have told students that during law school they can come closer to mastering the skill of legal research than any other legal skill. I still believe this statement. Nevertheless, much of the literature focused on legal research skills of summer associates and newer law graduates contradicts what I tell my students. For years, commentators have concluded that law students simply lack basic research skills necessary for law practice.[1] Writers have long lamented the decline or simple absence of these research skills,[2] which in part precipitated a change in teaching methods at many law schools.[3] Most first-year legal research instruction now occurs in first-year legal research and writing courses, with the general satisfaction about the quality of instruction varying by the discipline of the critic.[4]

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1. *See, e.g.*, Donald J. Dunn, *Why Legal Research Skills Declined, or When Two Rights Make a Wrong*, 85 Law Libr. J. 49, 49–52 (1993).

2. *See, e.g.*, Robin K. Mills, *Legal Research Instruction in Law Schools, the State of the Art or, Why Law School Graduates Do Not Know How to Find the Law*, 70 Law Libr. J. 343 (1977).

3. *See* Helene S. Shapo & Christina L. Kunz, *Teaching Research as Part of an Integrated LR & W Course*, 4 Perspectives: Teaching Legal Res. & Writing 78, 79 (1996).

4. In 1996, Shapo and Kunz argued:

    We do not agree with the proposition that students learn less research than they did in some former—but unspecified—"golden age" of research instruction. Although they may spend fewer hours in the classroom listening (more or less carefully) to lectures on legal research sources, their retention of legal research information and methodology is better than it was 20 years ago because they are reading better-written textbooks, working better-designed exercises, and learning these research skills in the context of writing skills and assignments.

*Id.* at 80.

¶2 Nobody doubts that legal research is a skill that permeates nearly all other legal skills. Not only does the 1992 MacCrate Report, issued by the American Bar Association Task Force on Law Schools and the Profession, include legal research as a fundamental lawyering skill,[5] but legal research has also been said to be the only skill included therein that supports the nine other fundamental lawyering skills.[6] The MacCrate Report was certainly not the first instance where legal research has been included as an important skill or competency.[7] However, legal research has rarely been treated so distinctly in relation to other legal skills.[8] The MacCrate Report was followed more than a decade later by the publication of a report from the Carnegie Foundation for the Advancement of Teaching,[9] and *Best Practices for Legal Education: A Vision and a Road Map*, produced by the Clinical Legal Education Association.[10] These three reports have been described as the trilogy that constitutes the "legal education reform canon."[11]

¶3 Since the MacCrate Report's issuance, a rather staggering number of authors have addressed techniques and methods for teaching legal research classes.[12] Still, commentators such as Paul Callister have called for "new attitudes toward scholarship" regarding legal research pedagogy.[13] Recent efforts by groups of leading legal research educators have led to widely distributed statements on legal research education and a signature pedagogy for legal research education.[14] These efforts by scholars and professionals clearly indicate that effective legal research instruction in law schools is not a lost cause, yet the profession still needs to construct the

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5. Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar, Legal Education and Professional Development—An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap 138 (1992) (MacCrate Report).

6. Brooke J. Bowman, *Researching Across the Curriculum: The Road Must Continue Beyond the First Year*, 61 Okla. L. Rev. 503, 520 (2008). The nine other skills in the MacCrate Report are problem solving, legal analysis and reasoning, factual investigation, communication, counseling, negotiation, litigation and alternative dispute–resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas. Am. Bar Ass'n, *supra* note 5, at 138–40.

7. *See, e.g.*, Comment, Frank R. Strong, *Pedagogical Implications of Inventorying Legal Capacities*, 3 J. Legal Educ. 555, 556, 558 (1951) (listing legal research as one of the technical skills necessary to "act like a lawyer" as opposed to thinking like a lawyer).

8. *See id.* at 558 (describing legal research in terms of the "capacity for effective use of legal and related materials" without discussing the relationship of legal research to any other dialectical or technical skills).

9. William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law (2007) (Carnegie Report).

10. Roy Stuckey et al., Best Practices for Legal Education (2007).

11. Michelle J. Anderson, *Legal Education Reform, Diversity, and Access to Justice*, 61 Rutgers L. Rev. 1011, 1019 (2009).

12. For a lengthy summary and list of resources focusing on legal research, see Bowman, *supra* note 6, and authorities cited therein. In 2009, *Legal Reference Services Quarterly* devoted an entire volume to articles about teaching legal research.

13. Paul D. Callister, *Time to Blossom: An Inquiry into Bloom's Taxonomy as a Hierarchy and Means for Teaching Legal Research Skills*, 102 Law Libr. J. 191, 192, 2010 Law Libr. J. 12, ¶ 3; *see also* Nolan L. Wright, *Standing at the Gates: A New Law Librarian Wonders About the Future Role of the Profession in Legal Research Education*, 27 Legal Reference Services Q. 305, 306–07 (2008).

14. Boulder Statement on Legal Research Education and Boulder Statement on Legal Research Education: Signature Pedagogy Statement, *available at* http://www.utexas.edu/law/faculty/pubs/bb26663_pub.pdf (last visited Apr. 6, 2011).

bridge between the pedagogical theories in this area and the many and varied methods employed to teach the relevant subject matter.[15]

¶4 Many researchers in the field of educational psychology have focused their attention on the motivational and performance consequences of different systems of instruction.[16] Several of these studies have focused on the goal of task mastery as a learning structure.[17] Task mastery is an individualistic motivational system in which "there is an independence of goals, that is, whether the goal (or reward) is attained by one student is not dependent upon another student's achieving the goal."[18] This research certainly has relevance to the topic of legal research instruction,[19] but the concept of task mastery might also relate to mastering the individual tasks that make up the process of legal research—for instance, selection of sources appropriate to answer a legal question, the use of proper finding tools (either in computer-assisted legal research or through print sources), the development of search strategies, and cross-checking sources to ensure accuracy and thoroughness.[20]

¶5 This article's overriding theme is that what I tell my students—that they can come closer to mastering the skill of legal research in law school than any other skill—is accurate. While a number of means might accomplish this goal, the method suggested here incorporates a goal orientation of task mastery.

## Qualities of Effective Legal Researchers

¶6 Even seasoned advanced legal research instructors might wonder just what an advanced legal researcher is. In this context, I am reminded of a fairly straightforward research project a summer clerk once had. A senior attorney delegated to this student a project focused on the *Texas Pattern Jury Charges*. The attorney thought that the charge contained an error and wanted the student to conduct research to find authority to support that argument. Part of the problem thus focused on whether a Texas court would presume that the pattern jury charge was correct as written.

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15. *See* Callister, *supra* note 13, at 191, ¶ 1 (noting that "[w]hile the literature in our field boasts considerable description of various methods for teaching legal research, noticeably absent is any theory drawn from leading pedagogues or educational theorists, particularly from outside of law and librarianship").

16. *See, e.g.*, Avi Kaplan, *Intrinsic and Extrinsic Motivation*, *in* 1 Psychology of Classroom Learning 513 (Eric M. Anderman & Lynley H. Anderman eds., 2009); M. Boekaerts, *Motivation, Learning, and Instruction, in* 15 International Encyclopedia of the Social & Behavioral Sciences 10112 (Neil J. Smelser & Paul B. Baltes eds., 2001).

17. *See, e.g.,* Carole Ames & Jennifer Archer, *Achievement Goals in the Classroom: Students' Learning Strategies and Motivation Processes*, 80 J. Educ. Psychol. 260 (1988); Martin V. Covington & Carol L. Omelich, *Task-Oriented Versus Competitive Learning Structures: Motivational and Performance Consequences*, 76 J. Educ. Psychol. 1038 (1984).

18. Carole Ames & Russell Ames, *Systems of Student and Teacher Motivation: Toward a Qualitative Definition*, 76 J. Educ. Psychol. 535, 538 (1984).

19. For a piece on the role of motivation in legal research instruction, see Kris Gilliland, *Motivational Perspective on First-Year Legal Research Instruction*, 28 Legal Reference Services Q. 63 (2009).

20. *See* Michael Hunter Schwartz, Expert Learning for Law Students 189 (2d ed. 2008).

¶7 What skills would an advanced legal researcher display in solving this problem? Consider the knowledge and abilities that might be necessary or otherwise help to solve this problem from a research perspective:

- Physical location of a copy of the *Texas Pattern Jury Charges*
- Ability to use the index of the *Texas Pattern Jury Charges*
- Knowledge of how the charges are organized,[21] how the comments relate to the charges, and so forth
- Knowledge that the *Texas Pattern Jury Charges* are drafted by a committee of the State Bar of Texas and are relied upon heavily by the bench and bar
- Knowledge that *Texas Pattern Jury Charges* are available in print and CD-ROM but not on Westlaw or LexisNexis
- Knowledge that there is a practice-oriented treatise focusing exclusively on jury instructions in Texas civil litigation[22]
- Knowledge that this question might be addressed directly in another practice-oriented treatise[23]
- Knowledge of which practice-oriented litigation sources are available on Westlaw or LexisNexis
- Appreciation of the costs associated with using Westlaw or LexisNexis databases to obtain the information that might be readily available in a print format

¶8 I would suggest that all of this knowledge would have helped the student to solve the problem more efficiently and effectively. However, it is not at all clear that the knowledge helpful or needed to solve this problem falls within widely accepted opinions of what constitute core research competencies:

- The MacCrate Report does not directly address jury instructions as part of its coverage of the fundamentals of litigation and alternative dispute resolution.[24]
- A report produced by the Research Instruction Caucus[25] of the American Association of Law Libraries in 1997 provided a lengthy description of the legal research skills and values identified in the MacCrate Report.[26] Jury instructions were the very last item mentioned in the report.[27]

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21. The *Texas Pattern Jury Charges* are arranged in a numbering system that does not use section symbols. Thus, citations to these charges include references to that system rather than sections. *See* The Greenbook: Texas Rules of Form § 18.4 (12th ed. 2010). This can cause some confusion.

22. T. Ray Guy, The Jury Charge in Texas Civil Litigation (Texas Practice Series, vol. 34, 3d ed. 2003).

23. The research for the question focused on an error in the charge is relatively straightforward, as one of the more popular litigation treatises addresses the possibility of error in the *Texas Pattern Jury Charges*. 8 William V. Dorsaneo III, Texas Litigation Guide § 122.04(1) (2011). This source provides citations to Texas Supreme Court decisions that have addressed errors in these jury charges. *See, e.g.,* Ford Motor Co. v. Ledesma, 242 S.W.3d 32, 41–44 (Tex. 2007).

24. *See* Am. Bar Ass'n, *supra* note 5, at 194 (listing the skills and processes a lawyer needs to know for effectively conducting a trial but not mentioning jury instructions as a specific item).

25. This caucus was integrated into the Research Instruction and Patron Services Special Interest Section in 1995. *Research Instruction and Patron Services SIS*, Am. Ass'n of Law Libraries, http://www.aallnet.org/sis/research.asp (last visited Apr. 12, 2011).

26. Research Instruction Caucus, Am. Ass'n of Law Libraries, Core Legal Research Competencies: A Compendium of Skills and Values as Defined in the ABA's MacCrate Report (Ellen M. Callinan ed., 1997), *available at* http://www.aallnet.org/sis/ripssis/PDFs/core.pdf.

27. *Id.* at 106–08.

• A Texas practitioner may think it is self-evident that any Texas lawyer would know what the *Texas Pattern Jury Charges* are and how they are used. However, even if this were true, it is not universally accepted that the ability to conduct state-specific research is a core research competency, especially for law students.[28]

¶9 The ability to perform legal research undoubtedly requires knowledge and information about the tools used in the process. Substantive knowledge about Texas jury charges likewise clearly would have helped the researcher in this process.[29] The fact is, though, that the experts in legal research—law librarians—are rarely experts in a field of substantive law, but this lack of expertise seldom hinders their ability to perform legal research tasks. In the problem described above, my own ability to help the student to accomplish the research task had less to do with my training as a lawyer and far more to do with my familiarity with the resources. Even without extensive knowledge of all of these sources, if the student simply knew what the *Texas Pattern Jury Charges* were, she could still be in a position where she could conduct the research both efficiently and effectively, assuming that she also had other basic research skills.

¶10 The treatise *Litigating Tort Cases* includes a list of habits possessed by highly effective researchers.[30] The discussion in this treatise is interesting not only because of this list of habits, described below, but also because the authors focus their discussion on those who need to delegate research tasks.[31] The authors explain:

> Effective delegation of analytic legal research projects requires an ability to identify attorneys who can perform high quality work at a reasonable cost. Top research attorneys typically develop and nurture certain habits that turn the potential for outstanding legal analysis into the ability to consistently produce high quality, cost-effective work products. The . . . seven habits combine to produce first-rate legal research, analysis, and writing.[32]

### Habit 1: Practice Makes Perfect[33]

¶11 Just as lawyers are becoming proficient at legal research and writing, they start devoting more time to other tasks. "As a result, only a small percentage of lawyers continue to perform sufficient research, as part of their daily professional lives, to achieve and maintain a high degree of research, writing proficiency, and efficient use of research technology."[34] Newer attorneys, though, should expect to spend a higher percentage of time on research projects. This further supports the conclusion that newer attorneys should focus more attention on these skills as law

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28. *See* Victoria K. Trotta & Beth DiFelice, *State-Specific Legal Research Instruction: Curricular Stepchild or Core Competency?*, 28 LEGAL REFERENCE SERVICES Q. 151, 151–52 (2009).

29. *See* Barbara Bintliff, *Context and Legal Research*, 99 LAW LIBR. J. 249, 258, 2007 LAW LIBR. J. 15, ¶ 36.

30. 1 LITIGATING TORT CASES § 4:10 (Roxanne Barton Conlin & Gregory S. Cusimano eds., 2010).

31. *Id.*

32. *Id.* at 4-16.

33. All seven habits listed here are adapted from *id.* § 4:10.

34. *Id.* at 4-16. The authors suggest that those delegating research tasks should "[d]etermine the level of experience of [the] research attorney or research firm, measured in terms of years and by a count of high-quality, effective research projects completed." Managers should "[a]sk for sample work product, examples of successful work, and references from clients with similar matters."

students even if these are not skills that lawyers will necessarily use throughout their careers.

## Habit 2: Being Curious, Confident, Creative, and Competitive

¶12 This habit is rather self-explanatory, but it demonstrates that some intangible qualities can affect the ability to conduct research. As the authors of this treatise note, "Confident researchers attack an issue with an inner conviction that they will find supporting authority, which makes them more likely to succeed at finding it. That same confidence extends to being accurate in their conviction that no supporting authority is available after conducting extensive research."[35] Likewise, effective research sometimes requires the researcher to make difficult analogies—to "think outside the box," which requires curiosity and creativity.[36] Moreover, what often drives an effective researcher is knowledge that she has something to lose (the case, the motion, etc.) if her research efforts fail.[37]

## Habit 3: Using Effective Strategies and Seeing the Big Picture

¶13 The ability to devise and implement an effective research strategy is without question one of the more important abilities of an effective legal researcher. The MacCrate Report, for instance, treats this as a distinct research skill, complete with several subpoints focusing on this skill.[38] In the MacCrate Report, a lawyer's "[u]nderstanding of the [p]rocess of [d]evising and[i]mplementing a [c]oherent and [e]ffective [r]esearch [d]esign" includes the following abilities:

- Formulating issues for research;
- "Identifying the full range of search strategies that could be used . . . as well as alternatives to research";
- Evaluating search strategies and choosing a research design; and
- Implementing a research design.[39]

## Habit 4: Covering the Details

¶14 As a general matter, an effective researcher pays close attention to detail. The authors of *Litigating Tort Cases* note that examples of a "wide range of essential activities" in a polished brief or memo may include

- Accurately synthesizing the facts;
- Distinguishing adverse authority (rather than ignoring it); and
- Thoroughly updating all cited cases.[40]

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35. *Id.* (emphasis omitted).
36. *See id.* at 4-16 to 4-17.
37. *See id.*
38. Am. Bar Ass'n, *supra* note 5, at 160–63.
39. *Id.* at 160–62.
40. Litigating Tort Cases, *supra* note 30, § 4:10, at 4-17.

## Habit 5: Passion for Knowledge, Writing, Advocacy, and Technology

¶15 The research tools that were so standard for many years are constantly evolving. Westlaw and LexisNexis will continually undergo significant changes, which will require legal researchers to adapt. Highly effective legal researchers will embrace this new technology and use the technology to make themselves even more efficient and effective.[41]

## Habit 6: Cost-Consciousness

¶16 Firm librarians frequently point out that one skill new associates should possess is the ability to conduct cost-efficient legal research.[42] This is often introduced in the context of decisions about whether to use online or print sources,[43] but it often also affects the scope of the research conducted. The authors note:

> Highly effective legal researchers are intensely aware of the time and budget constraints of each project. Severely limited budgets require extra creativity, so research experts develop an intuition for when and how to cut corners reasonably. For example, if a budget is severely limited, research might be confined to the annotated statutes without additional case law research beyond those that appear as annotations. Another example of cutting corners reasonably is not to research for persuasive authority from sister jurisdictions, or to confine that research to the information available in treatises.[44]

## Habit 7: Savvy Use of Sources

¶17 Skilled and experienced researchers are often on the lookout for new resources. Even when a source may not be helpful for one project, the researcher can often add resources to his repertoire simply by making a mental note of a source. When the appropriate time comes, the researcher can tap into a variety of resources that can help solve the problem, even when the researcher may not have had occasion to use those sources in the past.[45]

¶18 In the example posed at the beginning of this section, the student may not have needed to display all of these attributes. The student followed the instructions of the supervisor who assigned the research, so there may or may not have been room for the student to show creativity. Nevertheless, many of the other habits would almost certainly have helped in that process as well as in future research projects. The student would undoubtedly learn more about the *Texas Pattern Jury Charges* during this project, and so any future research focusing on these charges would likely be more efficient. The student likewise might learn that the problem was not one where "jumping onto Westlaw" to start running searches was the best

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41. The authors of *Litigating Tort Cases* refer to WestCiteLink, KeyCite, and WestCheck as examples of "new research tools" that effective researchers may have embraced. Litigating Tort Cases, *supra* note 30, § 4:10, at 4-18. These are clearly outdated references.

42. *See, e.g.*, Thomson/West, Research Skills for Lawyers and Law Students 2 (2007), *available at* http://west.thomson.com/pdf/librarian/Legal_Research_white_paper.pdf.

43. *See id* at 3.

44. Litigating Tort Cases, *supra* note 30, § 4:10, at 4-18.

45. *See id.* at 4-19.

strategy. In fact, online systems may have been of limited use to solve the problem.

¶19 Ideally, legal research instruction can simulate these types of problems, allowing an instructor to instill habits such as the ones listed above, as well as others. A challenge is to provide a simulation that allows the student to fully appreciate the context in which the problem arises. Some might suggest that this is exactly why a process-oriented approach to legal research instruction is superior to the more traditional bibliographic method of instruction.[46] Conversely, had the student received detailed instruction about such resources as the *Texas Pattern Jury Charges* and the *Texas Litigation Guide*, and if the student was also able to engage in case law research competently, the student could solve this problem just as effectively as if she had learned the information in a process-oriented approach. Either method of instruction can be effective, but I would suggest that neither is as effective as what the student teaches herself during the actual research process.[47]

## Legal Research Tasks Are Often Mechanical in Nature

¶20 Bob Berring has suggested that the methods of publishing case law and of establishing West's Digest System allowed research skills to become "fungible as research became a mechanical process."[48] Others have disagreed. Barbara Bintliff comments that Berring's characterization of this as a mechanical process is incorrect in the sense that the researcher must have knowledge and understanding of the law before being able to use the digest system effectively.[49] She quotes Frederick Charles Hicks in support of her argument: "It is a mistake to speak of any of the processes of finding the law as mechanical processes, for one has not truly found the law until one understands it, and this requires a knowledge of substantive law which comes only with the passage of time and much experience."[50] The MacCrate Report likewise treats legal research as something "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."[51]

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46. For a detailed commentary on these approaches, see Paul Douglas Callister, *Beyond Training: Law Librarianship's Quest for the Pedagogy of Legal Research Education*, 95 Law Libr. J. 7, 2003 Law Libr. J. 1.

47. Several authors have discussed the role of metacognition in the context of legal research instruction and legal education in general. Kristina Niedringhaus noted that "[a] student with metacognitive awareness will have knowledge about how she thinks and be able to control her learning. The knowledge about how she thinks would include knowledge about learning preferences, strengths, weaknesses, what knowledge needs to be gained, and the best way to acquire that knowledge." Kristina L. Niedringhaus, *Teaching Better Research Skills by Teaching Metacognitive Ability*, 18 Perspectives: Teaching Legal Res. & Writing 113, 113 (2010) (footnote omitted). For further discussion of metacognition, see Callister, *supra* note 13, at 210–12, ¶¶ 39–41; Anthony S. Niedwiecki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 Widener L. Rev. 33 (2006).

48. Robert C. Berring, *Legal Research and Legal Concepts: Where Form Molds Substance*, 75 Cal. L. Rev. 15, 22 (1987).

49. Bintliff, *supra* note 29, at 258, ¶ 36.

50. *Id.* (quoting Frederick C. Hicks, Materials and Methods of Legal Research 17 (1923)).

51. Am. Bar Ass'n, *supra* note 5, at 163.

¶21 Focusing so much attention on the complexity of legal research can often shift focus away from the training of students to be able to use this skill. Students are frequently frustrated while learning how to conduct research because of the apparent complexity of the process. When students hear the message that legal research is so intricate that it will take years to master, it hardly provides incentive for them to take the time to master the skill. Moreover, students habitually attempt to develop legal research skills by adding to their existing knowledge of research sources and processes, which may include the likes of Google and Wikipedia.[52] Learning the steps in the research process, including the important steps of updating authorities to ensure their validity, does not always fit nicely into these knowledge bases. This is by no means a new problem, given that legal research instructors have struggled with incorporation of computer-assisted legal research since the systems first became available to law students.[53]

¶22 Several authors have noted that the transformation of legal information into digital formats has completely altered the way that legal researchers seek information. Berring commented in 1994 that digital information would cause the legal research universe to collapse.[54] Most of this universe was based on the West Digest System, which created the hierarchical structure that not only established the basic means of organization of case law,[55] but also "remade the structure of legal thinking . . . ."[56] Actually locating the information was mechanical and could be "self-taught by a bright person"[57] because all that the researcher needed to locate case law was the correct topic and key number. The destruction of the digest as the focal point of organization led to "crisis in legal information."[58]

¶23 More recent commentary has focused on the need for a paradigm shift away from the digest system, which has been criticized for a number of reasons, including its slow growth, the propensity of its editors to make errors, and being too "cumbersome and difficult to use."[59] Lee Peoples noted that even though a survey of his students showed that they were more effective using print digests, they nevertheless "are not likely to adopt this resource as their tool of choice."[60] Bintliff has advocated for the development of new textbooks that focus on new paradigms in the field of law, replacing the digest system.[61] Given that this dialogue has continued

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52. *See* Bintliff, *supra* note 29, at 259, ¶ 40.

53. Articles about this topic have appeared for the last twenty years or more. *See, e.g.*, Jackson H. Mumey, *Transforming Our Thinking: Responding to the Gap Between LRW Pedagogy and Knowledge-Based Systems*, *in* Expert Views on Improving the Quality of Legal Research Education in the United States 1 (1991).

54. Robert C. Berring, *Collapse of the Structure of the Legal Research Universe: The Imperative of Digital Information*, 69 Wash. L. Rev. 9 (1994).

55. *Id.* at 21.

56. *Id.* at 20.

57. *Id.* at 25.

58. *Id.* at 27.

59. *See* Lee F. Peoples, *The Death of the Digest and the Pitfalls of Electronic Research: What Is the Modern Legal Researcher to Do?*, 97 Law Libr. J. 661, 662, 2005 Law Libr. J. 41, ¶ 4. *See also* Carol M. Bast & Ransford C. Pyle, *Legal Research in the Computer Age: A Paradigm Shift*, 93 Law Libr. J. 285, 289–91, 2001 Law Libr. J. 13, ¶¶ 15–20.

60. Peoples, *supra* note 59, at 674, ¶ 33.

61. Bintliff, *supra* note 29, at 263–65, ¶ 52–63.

for so long, though, one should not expect new paradigms and systems of organization to develop anytime soon. It is possible that the next generation of Westlaw and LexisNexis will change some of this landscape, given that the new systems rely less on the database-specific and hierarchical structures of the traditional systems. As Peoples's survey showed, however, the promise that a system is less cumbersome and difficult to learn does not mean that the system will necessarily be more effective or more cost-efficient.

¶24 The demise of the digest system may mean that the law lacks a universal method of organization, but this hardly means that the law lacks structure. The subject matter of statutes may vary significantly between jurisdictions and subjects within a jurisdiction, but the information is still highly structured in systems of titles, chapters, subchapters, sections, and so forth. When a statute applies to a legal problem—which is so frequently the case in modern practice—an annotated code is generally a superior source for locating case law and authorities such as related statutes, administrative regulations, legislative history, and secondary sources. A number of types of secondary sources, such as legal encyclopedias and many form books, are organized using systems of topics and sections similar to the basic organization of the digest system. This system may not be universal, but it is a relatively common system of organization.

¶25 Developing a clear understanding of how these various authorities are organized can make important legal research tasks more mechanical in nature. Students often have as much or more trouble with mechanical steps as they do with running full-text searches trying to locate case law. Indexes to legislative codes take into account both the structure of the law and the actual statutory terms used. In a full-text search, a researcher may or may not know the precise terms used, and without the precise terms, searches on more advanced systems such as Westlaw and LexisNexis typically will be ineffective. Moreover, even something as relatively straightforward as finding a statute by popular title can be difficult. For example, a Westlaw user who tries to find the Texas Code Construction Act by entering **"code construction act"** as a terms and connectors search in the TX-ST database will see a result of 1200 documents. The online researcher would have to run a more precise search or rely on a field restriction to find the chapter containing this act more efficiently.[62] The better practice is often to rely on an old-fashioned index or table.

¶26 Legal research instructors can identify those tasks that are more along the lines of step-by-step, mechanical processes. In fact, one of the keys to becoming a highly efficient legal researcher is to master these steps, which often have little or nothing to do with the researcher's knowledge and understanding of the underlying law.[63] For instance, students clerking in Texas might have to locate legislative history in efforts to construe statutes. Students typically express dismay that they are not sure what they need to find, or that they have difficulty accessing the information efficiently on Westlaw or LexisNexis. The reality is that compiling legislative history in Texas is a straightforward, step-by-step process, where the complexity

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62. Many other statutory sections refer to this act, which is the reason for the large number of results. Entering a search with the field restriction PR (prelim) yields a more precise result.

63. *But see* Bintliff, *supra* note 29, at 258, ¶ 36.

often only depends on the date of the bill that is the focus of the research.[64] Though documentation produced during the federal legislative process is considerably more complex, a number of tools are available that render the process mainly about mechanical retrieval.

¶27 Other research tasks may be more or less mechanical for different reasons. Research in administrative law is often difficult because of the technical language used in administrative regulations. A researcher may improve the search, however, by focusing on the agency that issued the regulation before looking for references to a specific regulation's subject matter. Moreover, knowledge of the basic system of organization of regulations—parts, subparts, and sections in the *Code of Federal Regulations*, for example—can also help the researcher understand how to search for a regulation more effectively. Finding the subject matter in the index may still be challenging, but knowing the mechanics of using the index and the code should aid in the process.

¶28 Of course, finding documents is rather pointless if the researcher is unable to use the documents. Discussion of the rules of statutory construction, or even of the relative weight of the types of legislative history documents, may be more interesting than the retrieval steps. Likewise, understanding the entire administrative structure is something outside the scope of nearly any legal research course. However, an understanding of the nature of a legal authority is likewise rather useless if the researcher cannot find the document.

¶29 Berring has commented that in the past, legal research instruction could afford to be shoddy because the digest system rendered the process mechanical.[65] Bright students could show other bright students the proper steps, and students could teach themselves from that point forward.[66] However, a focus on teaching students to teach themselves does not mean that research instruction needs to return to these days of old. Suggesting that legal research courses need to focus more on mechanical processes may appear to be a step in the wrong direction, but I believe this instruction is necessary to allow students to become efficient researchers. The mechanics are part of the skills training process, and like skills training in other contexts, students need not only exposure to and familiarity with the tasks (i.e., the steps in the process), but also enough repetition so that they are in a position to master those tasks.

## Achievement Goals and Systems of Student Motivation

¶30 The Carnegie Report was especially critical of the legal academy's primary means of assessment—the single final examination at the end of a term.[67] This practice "holds a privileged, virtually iconic place in legal education,"[68] and many

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64. *See* Brandon D. Quarles & Matthew C. Cordon, Researching Texas Law 146–54 (2d ed. 2008).

65. Berring, *supra* note 54, at 24–25.

66. *See id.*

67. Sullivan et al., *supra* note 9, at 162–64.

68. *Id.* at 164.

schools are deeply committed to the continued use of this system of assessment.[69] The competitive atmosphere that is ubiquitous in most law schools is made even more intense by the practice of grading these exams on a curve.[70] By grading on the curve, the system ensures that only a certain percentage of students can succeed, and this success is relative to how many other able students are in a particular class.[71] The Carnegie Report authors concluded that: "Without the significant balance provided by other kinds of motivation, especially the desire to hone one's craft and serve clients responsibly that the practical and the ethical-social apprenticeships emphasize, we fear that much of the pedagogical effort of law professors may be producing less result that [*sic*] one would wish."[72]

¶31 Although much of the criticism of assessment in law schools has focused on the use of the examination in doctrinal courses, assessment and evaluation in other types of courses have also been criticized. In both simulation-based classes and clinics, the grades are often based on the subjective opinions of a single teacher, and this assessment may not come until the end of a term.[73] The authors of *Best Practices for Legal Education* note:

> In simulation-based courses, the primary and sometimes sole method of assessment is for a single teacher to observe a student performing a limited number of lawyering tasks. Sometimes, self- or peer-evaluation is also used. Frequently, students are given a grade on every performance, often without any opportunity to receive formative feedback before the summative assessment and without any opportunity to continue practicing until the appropriate level of proficiency is achieved. For that matter, almost no effort has been made to describe appropriate levels of proficiency.[74]

These authors reached a rather predicable conclusion—that current assessment practices at law schools are "abominable."[75]

¶32 The *Best Practices* report agrees with the conclusion reached by Judith Wegner, Senior Carnegie Scholar:

> A better assessment system would find ways to stimulate student reflection on future professional paths, strengths and weaknesses and guide students toward relevant learning opportunities; provide incentives that lead students to take more active responsibility for their own learning as they undertake increasingly sophisticated work throughout students' law school careers; and document information that would attest to graduates' professional capabilities while assisting employers in making efficient and informed hiring decisions.[76]

¶33 The authors of *Best Practices* acknowledge that practices in legal research and writing classes may exempt assessment in these courses from the abominable category.[77] This is not without irony, given that legal research and writing instruc-

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69. *Id.* at 165.

70. *Id.* at 163.

71. *See id.*

72. *Id.* at 163–64.

73. *See* STUCKEY ET AL., *supra* note 10, at 238.

74. *Id.*

75. *Id.* at 239.

76. *Id.* (quoting Judith Wegner, Thinking like a Lawyer About Law School Assessment 63 (2003) (unpublished manuscript)).

77. *Id.*

tors have traditionally had to fight to ensure that the courses have a significant place in law school curricula. The nature of writing courses invites more constant feedback, as students continually work on drafts and redrafts of written work product. Legal writing instructors may also be more likely to conduct the type of criteria-referenced assessments that are preferred over the traditional norm-referenced assessments at the heart of an evaluation system based on a curve.[78]

¶34 Instructors of stand-alone legal research classes—especially advanced legal research classes—have developed a variety of means to assess student skill development.[79] Methods include homework assignments and quizzes, research exercises, observation and dialogue, peer assessment, and evaluations at the end of the term through the use of tools such as pathfinders and examinations.[80] The value of the various assessment tools may be debated, but use of these tools has become rather standard, especially in the advanced courses.[81] Legal research instructors are perhaps less prone than doctrinal faculty to succumb to pressures of conforming to traditional models of teaching and assessment.[82] Although schools may expect librarians (and legal writing faculty as well) to publish, the value system that applies to doctrinal faculty does not apply in the same manner to those teaching legal research courses.[83] As a general matter, law schools are unlikely to reward professors for developing innovations in teaching or for experiencing success in having students achieve learning objectives.[84] Without the pressures for conformity, legal research instructors are probably more likely to try to find ways to innovate.[85]

¶35 Legal research courses should seek to achieve a number of goals, and different learning structures and goal orientations can affect student motivation,[86] student performance,[87] cognitive engagement,[88] and teacher motivation.[89] What can be difficult in legal research and other skills classes is providing assessment and evaluation within an environment that focuses so heavily on norm-reference assessments. Most

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78.  *See id.* at 243.

79.  For a summary of various means of assessment in legal research courses, see Simon Canick, *Legal Research Assessment*, 28 Legal Reference Services Q. 201 (2009).

80.  *Id.* at 206–12.

81.  *See id.* at 212–13.

82.  *See* Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 San Diego L. Rev. 347, 360 (2001).

83.  *See id.* at 361 (noting that law-school economics make teaching innovations difficult to implement because of large class sizes).

84.  *Id.* at 360 & n.43.

85.  This is not to suggest, though, that use of various assessment tools means that legal research instructors are using the best teaching methods available. Surveys have shown, for instance, that the vast majority of advanced legal research instructors use a classroom lecture format, which is not considered to be the most effective means of engaging students. *See* Wright, *supra* note 13, at 310 (citing Ann Hemmens, *Advanced Legal Research Courses: A Survey of ABA-Accredited Schools*, 94 Law Libr. J. 209, 229, 2002 Law Libr. J. 17, ¶ 51)). *See also* Stuckey et al., *supra* note 10, at 231–34 (summarizing strengths and weaknesses of lecture format and providing tips for alleviating the problems with this format).

86.  Covington & Omelich, *supra* note 17, at 1038.

87.  *Id.*

88.  *See* Judith L. Meece et al., *Students' Goal Orientations and Cognitive Engagement in Classroom Activities*, 80 J. Educ. Psychol. 514 (1988).

89.  Ames & Ames, *supra* note 18, at 545.

truly individualistic learning structures that incorporate criterion-referenced stan-
dards allow students to achieve desired goals if the students are willing to put forth
the desired level of effort and strive for certain standards of excellence.[90] To the
extent that a law school expects a certain model of grade distribution—even in skills
classes—providing this assessment may be difficult or impossible, given that the
grade curve ensures that only a certain percentage of students can reach a certain
level of achievement. To the extent that research classes are not bound (formally or
perhaps informally) by such a curve, individualistic learning and goal structures can
and should improve both student motivation and performance.

¶36 Educational psychologists refer to a goal structure as something that
"defines which goals students are to accomplish, how students are to be evaluated,
and how students are to relate to each other and to the task."[91] A number of
researchers have compared goal structures that are competitive in nature, coopera-
tive in nature, and individualistic in nature.[92] Most law schools use a competitive
structure in which "students work against each other such that the probability of
one student achieving a goal or reward is reduced by the presence of capable
others."[93] By comparison, a cooperative structure incorporates a situation where
"the probability of one student receiving a reward is enhanced by the presence of
capable others."[94] With an individualistic structure, there is "a fusing of the person
with the demands of the task such that participating in the task itself becomes the
goal."[95]

¶37 The authors of *Best Practices in Legal Education* recommend implementa-
tion of cooperative goal structures.[96] According to studies cited in that report,
"cooperative learning produces higher achievement, more positive relationships
among students, and psychologically healthier students than competitive or indi-
vidualistic learning."[97] In a cooperative system, a goal is shared by a set of individu-
als.[98] The authors of *Best Practices* note:

> Engaging pairs or teams of students in activities such as group projects, presentations,
> papers, study groups, peer tutoring, peer teaching, and peer evaluation can improve
> learning. "Learning is enhanced when it is more like a team effort than a solo race. Good
> learning, like good work, is collaborative and social, not competitive and isolated. Working
> with others often increases involvement in learning. Sharing one's ideas and responding to
> others' reactions improves thinking and deepens understanding."[99]

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90. Covington & Omelich, *supra* note 17, at 1039.
91. Ames & Ames, *supra* note 18, at 535.
92. *Id.* at 535–36.
93. *Id.* at 536.
94. *Id.*
95. *Id.*
96. Stuckey et al., *supra* note 10, at 119.
97. *Id.* at 120 (quoting Gerald F. Hess, *Head and Hearts: The Teaching and Learning Environment
in Law School*, 52 J. Legal Educ. 75, 85 (2002)).
98. Ames & Ames, *supra* note 18, at 539.
99. Stuckey et al., *supra* note 10, at 120 (quoting The Seven Principles in Action 23 (Susan
Rickey Hatfield ed., 1995)).

Providing opportunities for students to collaborate is certainly a worthy goal, but for a distinct skill such as legal research, assessing an individual's skill can be difficult when an instructor evaluates a group's effort and performance rather than that of an individual. It may be that the group dynamic resolves concern about individual abilities within a group (that is, the stronger members of the group may demand more of the weaker), but assessing performance has to be based on the efforts of the group as a whole rather than any individual. Researchers suggest that students themselves will engage in a self-group comparison,[100] but individualized assessment still becomes difficult in a truly cooperative system.[101]

¶38 Individualistic goal structures can have competitive aspects to them.[102] For instance, the use of external standards can result in goals that are similar to those related to interpersonal competition.[103] Other individualistic motivational systems are noncompetitive in nature.[104] Carole Ames and Russell Ames have summarized such a noncompetitive system:

> Central to a noncompetitive conception of individualized structures is an involvement in mastering the task. Such an orientation has been intended when individuals have been encouraged to try their best, provided with multiple opportunities for improvement, asked to monitor or evaluate their own progress, or asked to establish goals that exceed their past performance. A noncompetitive individualistic structure, then, differs from a competitive structure in that in the former, students are focused on the task, and effort or trying is perceived as the route to mastering the task. Students are not focused on questioning their ability, and the underlying assumption is that "I can if I try."[105]

¶39 The goal of this type of noncompetitive individualized structure is to foster a task-mastery motivational system, with mastery indicating that the individual has gained ability through the use of effort.[106] In this type of system, a student who is required to apply effort to complete a task does not demonstrate a lack of ability, because the goals are more focused on prior achievements rather than a comparison with others.[107] Other researchers have concluded that task-oriented structures promote several factors that are believed "to initiate and sustain task involvement, persistence, and improved performance."[108] In competitive structures, by comparison, students tend to focus on ability in terms of their performances in relation to others.[109] Goal orientations may be similarly divided into performance goals (norm-referenced and competitive) and mastery goals (criterion-referenced and

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100. Ames & Ames, *supra* note 18, at 539.

101. I generally give my advanced legal research students the freedom to work individually or collaboratively on assignments.

102. Ames & Ames, *supra* note 18, at 538.

103. *Id.*

104. *Id.*

105. *Id.* at 538–39 (citations omitted).

106. *Id.* at 539.

107. *Id.* Much of this research has focused on children, but studies focused on college-level learning have found similar results. *See, e.g.,* Covington & Omelich, *supra* note 17, at 1041 (looking at systems of motivation in a study of college-level psychology students).

108. *Id.* at 1047.

109. Ames & Ames, *supra* note 18, at 537.

more individualistic).[110] Table 1 is based on a table provided by Carole Ames and Jennifer Archer demonstrating the differences between these goal orientations.[111]

**Table 1**

Comparison Between Mastery Goal and Performance Goal Orientations

| Climate Dimensions | Mastery Goal | Performance Goal |
|---|---|---|
| Success is defined as . . . | Improvement, progress | High grades, high normative performance |
| Course places value on . . . | Effort/learning | Normatively high ability |
| Reasons for student satisfaction are . . . | Working hard, challenge | Doing better than others |
| Instructor is oriented toward . . . | How students are learning | How students are performing |
| Students view errors/mistakes as . . . | Part of learning | Anxiety eliciting |
| Students focus attention on . . . | Process of learning | Own performance relative to others |
| Reasons for student effort . . . | Learning something new | High grades, performing better than others |
| Instructors base evaluation criteria on . . . | Progress (individualistic) | Normative (compared with other students) |

¶40 The task-mastery motivational system and mastery-goal orientation can create a learning environment more suitable for a legal research course than the competitive, norm-based environment that is so common in the legal academy. On the other hand, the context of the instruction would also significantly affect the decision to use either system. For example, a first-year student who lacks the context for legal research as a distinct skill does not have a prior achievement level on which to base a self-assessment.[112] Conversely, an upper-level student has much better context for this self-assessment, even though members of a class will enter the course with varying levels of ability. Accordingly, the application of these different achievement goals and systems of motivation probably varies depending on the type of legal research course in which the principles are applied.

## Application of Task Mastery to a Legal Research Course

¶41 I have previously written about the content of my advanced legal research course,[113] and much of the current content is the same as it was in 2003. The course

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110. Ames & Archer, *supra* note 17, at 260.

111. *Id.* at 261 tbl.1.

112. Berring and others argue that "[s]ince the rest of the first year consists of traditional courses taught out of casebooks and readers, the research course lacks any context in the first year." Robert C. Berring & Elizabeth Edinger, Finding the Law 5 (12th ed. 2005). Others disagree. *See* Shapo & Kunz, *supra* note 3, at 78.

113. Matthew C. Cordon, *Beyond Mere Competency: Advanced Legal Research in a Practice-Oriented Curriculum*, 55 Baylor L. Rev. 1 (2003). Though some of my observations summarized here apply to a basic first-year legal research and writing class as well, the goal orientation in those courses necessarily differs from the stand-alone, upper-level research course.

focuses intentionally and directly on the skills identified in the MacCrate Report, with significant emphasis on state-specific materials. What the course particularly stresses is the nature of legal rules and institutions, which is the first research skill covered in the MacCrate Report.[114] What I have learned in teaching the course many times is that most students simply lack interest in gaining knowledge about legal information unless there is a clear application that they can associate with the discussion. Students typically enroll in the class to be able to perform legal research better and more quickly, and though discussion of the nature of authority can help in that regard, lectures about legal authority did little to accomplish the goals of the course unless I could assign a task that could put that knowledge to immediate use.

¶42 The course's goal orientation has evolved over time to focus much more heavily on task mastery. On the first day of class, I assign students a research project and give them a certain amount of time (usually three hours) to complete it. The students' performance on this assignment serves as a benchmark for students to gauge their progress during the course. In a task-mastery motivational system, students are not judged in terms of how they relate to one another, so it is important to stress that student performance on this benchmark assignment will not be judged in relation to other students.

¶43 On the first day of class, students also learn of the course's goals—for each student to improve his or her research ability by 300% in all respects. This means that students should be familiar with and capable of using three times the number of legal resources at the end of the quarter compared with the beginning; students should be able to find three times the amount of information at the end of the quarter compared with the beginning; students at the end of the quarter should be able to find the information they are able to find at the beginning of the term in a third of the amount of time; and students should be able to improve their accuracy in finding materials threefold. Reactions to these instructions tend to vary, given that students have different skill levels and different levels of confidence as they enter the class. I often have to provide numerous reassurances that the students' skill levels at the beginning and end of the quarter will not be evaluated based on a comparison of others. In a law school that tends to be highly competitive in nature, sometimes those reassurances are still not enough.

¶44 To build student skills, the course incorporates several general goals and components, including the following.

## Familiarity

¶45 Students should have exposure to a broad range of legal resources. This is often the main focus of first-year legal research instruction, and it remains a focus in advanced legal research. It would be ideal if students had and could retain in-depth knowledge of all the sources covered, but just being aware that a source is available is often helpful in itself.

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114.  Am. Bar Ass'n, *supra* note 5, at 157.

## Repetition

¶46 Familiarity with resources alone is not enough to develop solid research skills, especially with regard to more mechanical processes. The course requires students to repeat processes several times for different types of tasks, such as compiling legislative histories or using KeyCite or Shepard's for research purposes.

## Rigor and Challenge

¶47 Students are not likely to accelerate their skill development during a short period of time unless the assignments are rigorous and challenging. This is especially important in research focusing on case law, because students tend to retain certain levels of ability from the first-year course but need to improve their speed and accuracy in finding relevant cases. The rigor and challenge in the case law context may result from students' having to solve a difficult problem, or it may result from their having to identify a certain number of the most relevant cases from hundreds of possible cases.

## Diligence, Patience, and Organization

¶48 In addition to the good habits discussed earlier, good researchers are also diligent in completing tasks and do not lose their patience when they encounter a difficult problem. Moreover, researchers need to remain organized throughout a problem, using appropriate means to keep track of the authority they have discovered. Students will often comment that they tend to print the same case multiple times or print cases without knowing why some of those cases are especially relevant. The course can alleviate problems like this by encouraging improvement in overall organization during the research process.

## Significant Increase in Confidence

¶49 Many students enroll in advanced legal research because they are not confident in the skill they attained as first-year students. Even when students complete a research task properly, they are not always sure they did so using the most effective means. By being required to complete tasks using several different approaches and to evaluate how effective those options are, students should gain confidence in what they are doing. They will likewise become more confident as their speed, accuracy, and overall effectiveness improve.

## Conclusion

¶50 Employing mastery orientation as a goal means that all students should have the opportunity to succeed. Assessment of skill development can be difficult, especially when most students submit what amounts to the same answers (meaning research results submitted in proper citation form and sometimes information provided about those resources). It can also be a challenge to define or describe "success" when students are being judged principally by their skill development. However, when students properly focus their attention on skill progression throughout the course, I am capable of assessing their improvement based on their

description of this progress in their research logs. Moreover, the practice of keeping the research log to identify research strategies, articulate the steps in the research process, and engage in self-evaluation significantly increases the likelihood that a student retains the knowledge about the research process. By knowing that they can succeed in the course by putting forth sufficient effort, students are more likely to provide honest self-assessments.

¶51 My statement to students—that during law school they can come closer to mastering the skill of legal research than any other skill—cannot rest on this course alone. Experiential opportunities will significantly affect skill development, though the actual experience may vary from student to student and from school to school. My institution focuses heavily on simulation models, and students often have research opportunities during these simulations. Students in clinical programs and writing courses have additional research opportunities within the curriculum. Of course, students also have numerous external opportunities for skill development in summer clerkships and internships, work on law journals, work as research assistants, and so forth.

¶52 Legal research courses provide opportunities for instructors to "prepar[e] [students] for the demands of professional work" in the context of a distinct skill by training students "to think, to perform, and to conduct themselves as professionals."[115] By emphasizing that students should focus their attention on the process of learning and building their skills, we allow students to see the relationship between research skill development and other areas of development. Students with an appreciation for their ability to develop strong research skills during law school should be motivated to accelerate their development in this area, and the incorporation of an appropriate goal orientation of a research course can significantly help students to accomplish this successfully.

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115. SULLIVAN ET AL., *supra* note 9, at 27.