

2015

Searching for the Borders

Penny A. Hazelton

University of Washington School of Law

Follow this and additional works at: <https://digitalcommons.law.uw.edu/faculty-articles>

Recommended Citation

Penny A. Hazelton, *Searching for the Borders*, 20 LEGAL WRITING J. 17 (2015), <https://digitalcommons.law.uw.edu/faculty-articles/418>

This Article is brought to you for free and open access by the Faculty Publications at UW Law Digital Commons. It has been accepted for inclusion in Articles by an authorized administrator of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.

SEARCHING FOR THE BORDERS

Penny A. Hazelton*

I have been teaching legal research for more than 42 years. At times, I long for the easy days of teaching this fascinating subject. The days when you just needed to help students learn about the print tools of the legal trade—primary sources, the great secondary sources, and the helpful finding aids. Today, all of these sources of legal information can be found in print and electronic formats with many completely new legal research tools like Casetext and Ravel muscling onto the scene. Experience has convinced me that teaching the basics is what matters most moving forward. All research tools are ever changing, even the print.

So, what do students graduating in 2015—students who are likely to practice for 50 years—need to know about legal research today and tomorrow? Nothing will be the same in even 2 years or even tomorrow!

Mastering how to use specific legal research tools is less important today because the details of use will change continually. Instead, developing a way of legal research problem-solving is the future and will need to stand the test of time.

I like to think about legal research as a complex jigsaw puzzle. The border pieces of the puzzle are the tasks we must complete in order to find an answer to a research problem. Once the border pieces have been fit together, the inside pieces must be found, then turned to fit into place—like knowing the details of how to select and effectively use the best research tool.

Let's start with the border. Jigsaw puzzle veterans know it is always easier to fit the other pieces into place once the borders or edges have been found. But wait, with so many changes in legal information sources, are there any border pieces that we may confidently say will still be available now and in the future?

* © 2015, Penny A. Hazelton. All rights reserved.

The answer is YES! Known border pieces include

- Constitutions and charters will continue to proscribe the relationships of branches of government to each other and thus the relationship of types of law to each other;
- Our federal system means that law-making happens occurs at the federal, state, local, and tribal level;
- Legislatures will still pass laws, and these laws will be codified and updated with new laws;
- Judicial opinions will be written and need to be verified as good law;
- The executive and administrative agencies will promulgate regulations, which will be codified, and will interpret their scope through adjudications, interpretations, and decisions; and
- Secondary sources will continue to be created and disseminated.

There are other border pieces we could put in our students' hands to provide a framework so they can work with the inside pieces of the puzzle. I like to think of these other border pieces as a checklist of tasks that must be completed to solve the research problem. The checklist I like was framed by Professor Marjorie Rombauer in her seminal work, *Legal Problem Solving*. Essentially, there are five steps to the research process. They do not dictate exactly which tools you select, but together they remind a researcher of tasks they must complete before any problem can be solved.

1. Preliminary analysis (identify relevant facts; think of words and phrases to use for searching; state the issue(s); identify the jurisdiction(s); assess your knowledge of the legal issues and supplement with secondary sources).
2. Search for statutes.
3. Search for mandatory case authority.
4. Search for persuasive case authority.
5. Refine, double check, and update (is your statute current?/is your case good law?/did you answer the issues posed?/is your research complete and correct?).

Helping students learn to find and recognize the pieces and put together the puzzle is our task as legal research professors, starting with the border pieces. And while most of us find it imperative to be sure students know how to use today's tools in an effective way (the inside pieces of the puzzle), we really must concentrate more on the border pieces if we want them to succeed.

To teach the border piece basics, I continue to refine the learning objectives in my research courses to concentrate on:

- Use of a research process framework—the Rombauer method;
- Conscious thinking about research tasks and choices. My students keep a detailed journal of their work, making it easy to see missteps, tools used for the wrong reason, poor search terms/connectors, potential efficiencies, misguided assumptions. It is through reading these journals that I learn how students today approach problems and where my terminology or thinking is out of step with theirs;
- Evaluation of websites with legal content and location of relevant materials;
- Use of other legal research tools beyond Westlaw or LexisNexis. Students are not Google-addicted as much as they are addicted to whatever legal research database they first learned to use. And they want it to be easy. Students are skeptical about relying on Google results, but they love the ease of searching and mostly getting something relevant—a passion they transfer to WestlawNext and Lexis Advance without critical judgment;
- Encourage careful reading of legal materials;
- Importance of secondary sources that give context to problems, help with terminology, and provide citations to relevant sources;
- Effective use of powerful search options such as Boolean searching. Students often don't understand how words are used in judicial opinions or regulations and how they might mine these patterns to produce better quality results;
- Recognition of patterns of publication (dissemination) of legal information and how they are kept current;

- Identification of the underlying structure of types of legal information, such as the difference between content of a court decision and a law passed by a legislative body, in order to maximize search strategy.

The difference between a novice and an expert is that the expert recognizes the patterns. We can help our students become the experts, to learn techniques and strategies that will help them over a fifty-year career to manage the legal research they need to serve their clients. But only if we help them discover and fit together the border pieces of the legal research puzzle.