Legal Research in a Social Science Setting: The Problem of Method

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T. Brettel Dawson*  
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I. Introduction

As part of its ongoing process of curriculum development, the Department of Law at Carleton University decided in 1988 that a compulsory course in legal research methods was long overdue in the B.A. Honours degree in Law. Fortified with interest nurtured by methodological debates in feminist scholarship,¹ experience devilling² for a barrister pending my call to the bar, and practice from instructing a course in legal research and writing while a graduate student, I set about developing the proposed course. No guidelines existed for such a course, beyond the logic that it should complement the socio-legal or legal studies focus of the Department.³ To the best of my knowledge, no precedents existed in Canada.⁴ In this paper, I reflect upon my questions and discoveries in the design and teaching of the initial course.

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²A quaint term by which the legal profession refers to legal researchers, although my Chambers English Dictionary defines it as being "a drudge (esp. legal or literary)", or doing the menial work of others. It does make one reflect on one's past!


⁴Interestingly, K. Carson and P. O'Malley of the Department of Legal Studies at LaTrobe University in Melbourne, Australia are currently developing a course entitled "Introduction to Socio-Legal Research." Some law schools in Canada have developed or are developing courses which consider the use of social science data in litigation.

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A methodologically sound proposition is that one must have a basic focus or question in any inquiry, and that it is best formulated and stated at the outset. Accordingly, the basic question with which I engaged in the course and reflect upon in this paper is: how does one conduct research in law within the legal studies perspective, in a way which 'takes law seriously' as itself an object of study and explores the role of law in social regulation and social change? The point of departure is also significant. In defining the issues and selecting approaches, a social scientist may well begin from a different point than a lawyer schooled in the methods of professional legal education in the doctrinal tradition. The ideal point of departure may well be "the interdisciplinary intersection of the social sciences, including but not privileging ... law trained colleagues attracted to empirical inquiry on law-related matters." But, one must begin where one is. I first learned my 'legal method' within a traditional law school, my 'legal critique' in a graduate law school odyssey (in the words of my perplexed supervisor), and my 'socio-legal questions' in the field, once joining the faculty at the Department of Law. The process, then, has become an opportunity to resolve some of the scholarly tensions nurtured in my professional life over a number of years.

Personal quest aside, my basic question raises other issues and questions, some of which relate to the capacity to work with "a general

5. By 'doctrinal tradition' I refer to the still dominant form of legal scholarship within professional law schools, which plays a significant role in constituting law as a separate discipline or 'normatively closed field of inquiry', which proceeds on the basis that law "can be studied independently of its social, economic, cultural or political context": Neil Sargent, "The Possibilities and Perils of Legal Studies", (Carleton University, April 1991), forthcoming, at 1. See also R. Cotterrell, "Law and Sociology: Notes on the Constitution and Confrontations of Disciplines" (1986), 13 J. of Law and Society 9; M. Galanter, "The Legal Malaise: Or, Justice Observed" (1985), 19 Law and Society Rev. 537; S. Macaulay, "Elegant Models, Empirical Pictures, and the Complexities of Contract" (1977), 11 Law and Society Rev. 507; S. Macaulay, "Law and the Behavioural Sciences: Is There Any "There' There?" (1984), 6 Law and Policy 149.

6. As noted by F. Levine, "Goose Bumps and 'The Search for Intelligent Life in the Universe' in Sociological Studies: After Twenty-five Years" (1990), 24 Law and Society Rev. 7 at 9.

7. I read for my LL.B. in New Zealand where it is generally a 'first' degree, unlike the graduate school model of North American law faculties. This moderates the academic aloofness of the law faculties: one attends the University rather than 'the law school' in common parlance. Professional education was still the major goal of my law school however, where legal positivism was reinforced by the lingering influence of the 'Oxbridge model', seemingly untouched by the winds of Legal Realism that at least washed through North American law faculties.

8. In the course of preparing a thesis on estoppel doctrine in contract law, I became very excited by epistemology, feminist legal studies, and the role of law in the market (society).
theory about the relationship between legal and social phenomenon," and others of which concern sources, ends, and procedures in research. For example, what research skills and frameworks are required to do ‘legal studies research’? How important is theory in research methodology – in helping us to understand how and what we ‘know’, and in influencing the questions we can ask or consider worth asking? Should one aim to ‘do good law’, and what might that mean anyway? Is it important to teach techniques of finding and reading cases, statutes, and government documents, or is it a distraction (and if so, from what)? What resources do we (and our students) need to know about and be able to use to “do good legal studies research”? What points of access exist to the institutional and ideational sources of law? Can we bring new questions to existing resources which contain embedded assumptions about what is important and how it should be categorized? What is the role of empirical enquiry, and how does it relate to use of documentary law sources? How central should be the techniques of creating or interpreting empirical knowledge? Underlying such questions is another fundamental query concerning the extent to which it is possible or desirable to define and develop an autonomous legal studies field of inquiry and methodology. The process of explicating these issues is one in which a number of my colleagues are engaged.

13. See for example: Sargent, “Possibilities and Perils” supra, note 5; A. Hunt, “What is Legal Studies? Reflections on the First Legal Studies Graduate Program” forthcoming (Carleton University, 1990). In December 1988, the Jurisprudence Centre Series sponsored by the Department, held a Roundtable on the theme: “Law and Social Inquiry”. The panelists were Hans Mohr (Law, Osgoode Hall Law School), Phil Harris (Law, Sheffield Polytechnic); Tulio Caputo (Sociology, Carleton); and Brettel Dawson (Law, Carleton). Other discussions are ongoing.
contribute to that process as well as to emerging dialogue about legal method in a social science setting.14

In teaching the course, I have adopted a structure which echoes my evolving model of the research process – beginning with the research setting, moving to development of the research question, identification and use of research resources and then to analysis and the ‘research product’. I have taken something of a similar approach to the structure of this paper. In what follows, I discuss the methodological implications of the legal studies context, and debates about approaches to research and research resources. In particular I focus on the role of the research question, the relationship between a conceptual approach to research versus a technical skills approach, the idea of research as a process and the issue related to authority and interpretation in ‘reading’ sources in the research process. I conclude with observations on where the methodological project might go from here.

II. The Legal Studies Context and its Implications for Method

In beginning to think about legal studies method, the parameters of legal studies itself must first be sketched in to provide the setting or context for the research to be undertaken. Defining the ‘field’ of inquiry, even in a somewhat preliminary fashion, permits the ambit and focus of appropriate research questions to be established. If nothing else, it answers students who want to know what kind of research they are ‘supposed to be doing’. This discussion of the ‘research setting’ is particularly appropriate insofar as the precise ambit of ‘legal studies’ is a subject of

considerable debate.\textsuperscript{15} One or other of my colleagues has described aspects of the project in the following terms:\textsuperscript{16}

[Legal studies] treats ‘law’ and ‘legal systems’ as its focus of study and commences from the assumption that two of the most crucial questions are: what counts as law and ... what is the relationship between law and power;

[Legal studies] assumes that law is a social phenomenon which cannot be studied in isolation from its social, economic and political context. However, this does not mean that we should regard law as simply a product of, or reflection of external ... forces, values or interests ... [but] also ... the law (the legal terrain, juridical field) should be regarded as a site or mechanism through which competing conceptions of social relations and social ordering are articulated, given privileged meanings and contested;

[Legal studies] is firmly rooted in social scientific traditions of enquiry. Legal rules, concepts, structures, institutions and personnel are situated in their social, economic and political contexts. Our legal studies approach goes beyond ‘law in context’ or ‘law as a reflection of social forces’. It eschews the professional law school’s fascination with doctrine, and on the other hand, empiricism. Rather, a critical approach is taken both internally and externally ... Law is examined in its own conceptual terms [and] law is examined in terms of practices;

Legal studies views law as itself a site of knowledge and power, studies the constitution of law in society and permits a range of approaches to the study of law: empirical, deconstructionist, theoretical [etc.];

[Legal studies’] conception of law is of a set of practices and discourses which constitute a ‘legal’ or ‘juridical field’ which is generated by the intersecting activities of agents (judges, lawyers, court officials, legislators, litigants, social activists, etc.), and institutions (courts, legal profession, legislatures, administrations, social movements etc.) To explore this conception of law it is necessary to adopt the concept of a ‘standpoint’ which draws attention to the fact that the legal field not only appears [to be different] but is different when approached from the situation of different participants within the legal field.


\textsuperscript{16} The discussion of legal studies from which these quotations are taken, was stimulated in part by the development of a Masters Degree in Law in the Department, and in part by a rethinking of our first year Introduction to Law course. A flurry of “thoughtpiece” memos on the topic circulated among faculty working on the first year committee, in the fall of 1989. I have chosen to quote without attribution, but I have the originals on file.
Some key ideas in these etchings are that legal studies goes ‘beyond law in context’, eschews a fascination with either doctrine or empiricism, and views law as part of social organization. The focus of study becomes any person, process, or institution which is ‘endemically legal’ in an expanded sense. By moving beyond formal law or state law, legal studies problematizes the very concepts of ‘law’ and ‘legal practices’. It also has a far wider sweep than ‘conventional legal scholarship’ which tends to be directed to doctrinal analysis of ‘primary legal sources’ (texts) for the purpose of explaining, evaluating, and predicting judicial or legislative decisions or formal law reform.\(^1\) The concept and function of ‘doctrine’ is itself an interesting object of study. In short, the juridical field is itself an object of inquiry, together with interpretive issues related to the standpoints of legal actors and, indeed, of researchers. As my colleague, Alan Hunt has commented:

The [legal studies] project explicitly adopts law as its ‘object of inquiry’ and locates that study within the social sciences. The location within social sciences is contrasted with ‘interdisciplinary’ approaches which make use of the methods of other disciplines but sees these as ‘tools’ or ‘techniques’ to be applied to an already constituted object of inquiry.\(^1\)

Clearly, methodological implications flow from such ideas. The objective of legal studies research cannot be formulated as being to ‘find the law’ or to apply ‘found law’ to particular situations (doctrinal method). But, at the same time, one cannot simply take a ‘law’ or ‘the law’ and study it ‘in action in society’ in an empirical sense.\(^1\) Because a legal studies perspective disrupts assumptions underlying canons of ‘data’ and ‘knowledge’ about ‘law’ whether ‘on the books’ or ‘in action’, it is not enough, methodologically, to simply add together social science knowledge from social data and legal knowledge from law data, and call it ‘socio-legal’ knowledge.

As this begins to sink in, the scope of the undertaking, innocuously referred to as a course in legal studies research method, becomes apparent. I recall one of those ‘startling moments of insight’ during the initial planning stages of the course, when I realized that the project precariously straddled already constituted disciplines. The research setting, then, could be described as being between a rock and a hard place, or as another colleague Neil Sargent puts it more eloquently, “there ...
remains what could be called an "epistemic gap" between the manner in which knowledge about law is produced within the doctrinal tradition ... and the ways in which knowledge about law ... is produced outside the legal academy."20 In teaching research methods in legal studies, the aim must be to produce neither (positivist) legal scholars nor (legal) sociologists — and certainly not positivist legal sociologists! Indeed, legal learning as it exists, empirical enquiry as it exists, and the relationship between the two, cannot simply be assumed. Rather, they must be rebuilt in order to construct new, pluralist, and non-positivist ways of looking at the legal system. This, then, is the ongoing challenge.

III. The Course: Legal Research Methods

In this part of the paper, I briefly discuss the contours of the course which arose from my ruminations, in order to provide a framework for my subsequent discussion of the teaching process and observations. In the clipped and capsule format of the University Academic Calendar, I described the course as:

[a]n introduction to basic methods used in the design and execution of research projects in law in a social science context. The course considers research principles, the significance of theoretical approaches taken to research and the diversity of law-related materials and research procedures. Computer-assisted legal research, elementary problem solving skills, bibliographic and citation skills will also be developed.21

There is, then, a certain flexibility in the description, a certain ambitiousness in the course, and a degree of ambiguity about the project which should come as no surprise. I explained my objectives in the course outline as being to "instill some sense of what it means to do law research and what kinds of questions students might want to ask and pursue; thus, I am trying to assist students in becoming competent in their ability to locate and analyze law/law-related material."

The course was offered over a thirteen week semester, and was divided into three segments: the research setting, the research process, and the research product. The first class was organizational and the second, an introduction to research method issues. Four classes examined the 'research setting', focussing on theories of research, issues of objectivity, advocacy, and bias, and considering the field of inquiry encompassed by legal studies. Six classes centred around the 'research process' and were spent largely in 'hands-on' sessions. Part of each class was spent in overview and debriefing in relation to the particular process and set of

resources being introduced. An on-line computer database training session was also scheduled during this segment of the course. Finally, and lamely enough, one class was spent on the research product. As this class was also used to ‘wrap up’ the course, it was clearly informal. This slender dedication of time to writing resulted in part from an anxiety to avoid having the course develop into a non-substantive ‘legal research and writing course’, and in part from an (optimistic) expectation that the writing skills of upper year students would be well developed. This expectation was dashed fairly early on! This new found realism together with an observation that writing is itself a process within research and analysis, has since lead to a greater time allocation to writing issues.22

In its initial incarnation, the course was offered as a special topics course and was open only to fourth year law honours students.23 The class was limited to 25 students. The purpose of the enrollment limitation was to permit the course to operate as a hands-on workshop. There was considerable pressure on enrollment—indeed students were packed to the walls on the first day of classes in the (vain) hope that I would throw the course open to all. This enrollment pressure indicated considerable student demand, and as planned the course has now been ‘regularized’. One amendment has been to offer it as a third year course, rather than as a fourth year ‘honours’ course. Many students expressed amazement that they had come so far without knowing ‘how to do research’ (surely a sobering thought for us all). The guinea pig students were clear that placing the course earlier to permit completion before embarking on their major honours essay in fourth year would be of great benefit. The pressure to move the course of the third year level, then, was compelling.24 The course is now required for law honours students, and continuing small class size in each section of the course will mean that in practice, the course will be limited to honours students.

22. The questions around which the course was structured, and which were contained in the course outline, are appended to this paper.
23. I also admitted on a discretionary basis, two third year honours students who were mature students and one ‘special’ student who had graduated from the programme and currently worked with a legal database firm.
24. Interestingly, having now taught the course to groups of fourth year students and third year students, I have noticed a marked difference between the initiative and independence of the groups. Third year groups seem anxious to receive information which they may or may not concentrate on, while fourth year groups seem more confident about creating and questioning information/knowledge.
IV. Evolving Research Principles

My experience with the students in the living course, as is so often the case, sparked new insights and brought both answers and new questions. Rather than discuss each issue or question in turn, I have chosen to focus on three tensions which became apparent in the course. These tensions were between instruction in research theory and in technical skills or 'nuts and bolts', between knowing about books or knowing about research processes; and between reading for information and reading as analysis. From teasing out the complexities of these tensions, three central principles in legal studies research can be suggested.

The first principle is that one must have a research question. This research question inevitably (and fruitfully) reflects the topic and scope of research and also what the researcher considers to be worthwhile asking and why. From the well-defined research question flow the research trajectory and selection of the appropriate sources and methods. A second principle is that research is an integrated process. Instruction in research method, then, is best directed to developing research strategies and approaches rather than simply instilling isolated technical and bibliographic skills. Researchers must understand what they are doing and why. They must also be efficient and independent. A third principle is that research is about analysis and the creation of new knowledges. The location of sources, no matter how satisfying in and of itself to budding library sleuths, is simply preparatory. To complete research, sources must be analyzed within an interpretative framework and be related back to the research question. Accordingly a theory and practice of 'reading', is integral to independent and critical thought. The following sections expand on these principles and the tensions from which they sprang.

V. Know Yourself

(Or, Have Fun and Have a Research Question)

Researching can be a panicked and deadeningly boring exercise for most undergraduate students. They have to write an essay by date X on topic Y for Professor Z. The inevitable tends to be avoided for as long as possible, before being produced as quickly as possible, with as little effort as possible. Research often appears to have been conducted in an ad hoc fashion, with sources being regarded as lucky finds. Bad experiences can easily lead to 'research aversion', or at the least, to bad habits. Like the Delphic oracle, I suggest that some of the solution to this malaise may lie in the researcher 'knowing herself' – in this case experiencing herself in the research process and knowing what she is doing and why she bothers. This breaks down into two components. The first is the need to have the
researcher ‘present’ in the research project; the second is the need for focus and direction in the project itself.

From the outset, I wanted to convey to the students that research could be enjoyable and that they could be ‘present’ in their research: it could matter to them, they could choose it because it interested them, and they could do what they wanted to do with it. The puzzle was how to convey these ideas in a congruent manner. It was solved in a satisfying manner by Sandra Kirby and Kate McKenna, in their book *Experience, Research, Social Change: Methods from the Margins*, which was a course text. They outline two ideas: a self-guided library tour ‘unlike any you may have been on before’, and attention to ‘conceptual baggage’. The library tour is a fascinating innovation, which I have dubbed ‘library tourism’. Students are encouraged to set aside an hour or so to browse in the library however their spirit leads. No expectations, no limits, no end products and no ‘shoulds’. Students can start with a general topic, a specific word, or even just a physical place in the library. The exercise is intentionally open-ended. The tour works on the premise that everyone likes a conservation, and the library is a lively bustle of conversations between authors proposing and debating various ideas, information and opinions. The whole tour is entirely free form.

Students who undertook the adventure were enthusiastic. They were staggered that research could be their own—not just some task set by some professor—and that it could be fun; in fact, that they could enjoy following their (research) nose. It also helped students to find out what kind of researcher they were: for example, stream of consciousness (‘well, I started out with judicial appointments and got interested in judge’s wigs and ended up looking at the history of horse racing’ or, ‘I started with the word ‘black’ and got a reference to black bass, and from there I went to fish parasites, and I found out about one really interesting parasite with an incredibly sexist name, so I began to think about gendered language’), ‘obsessive/compulsive’ (‘well, 500 items showed up on the computer in response to my query—so I had to look through them all … yes, every last one of them just in case one might be relevant’), confident or unconfident; associative etc. Many students said it was the first time they had actually enjoyed being in the library.

Conceptual baggage is another way in which researchers can come to ‘know themselves’ and work with their strengths and dispositions. By ‘conceptual baggage’, Kirby and McKenna refer to the mix of assumptions, premises, experiences, values and beliefs held by the researcher

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about the topic/question. The conceptual baggage is often the source of the interest in the topic and the angle taken by the researcher. Awareness of conceptual baggage, which inevitably exists in any researcher, can provide insight about choice of topic and direction. It can alert a researcher to her potential biases. At the same time, conceptual baggage can highlight the strengths and priorities that the researcher is bringing into a project. Instead of pretending it isn’t there (objectivity?), acknowledging conceptual baggage ensures that the researcher is there in the research (objectively?). This idea may well be a step in developing scholarship and avoiding advocacy, no matter how well dressed.26

Focus in research is a second step in researchers coming to know who they are and what they are doing. The centrepiece of effective research is an effective research question. Research must be animated by a ‘problem’ or ‘hunch’ from which the thesis of the work and its basic questions can be crafted. Easy to say. However, in thinking about how to incorporate this idea into the new course, I ran across two significant ‘research design issues’. The first was the effect that the research question itself might have on research implementation, and the second was how to generate the research problems by which students might be impelled into their own research process.

What I mean by the first design issue, is illustrated by the model of research question generally adopted in texts on legal research. Christopher Wren and Jill Wren,27 for example, suggest that a legal problem involves analyzing ‘facts’ to isolate ‘issues’ on which ‘law’ can then be located, (with appropriate updating), analyzed (for relevance, weight etc.) and in turn applied, to give a ‘correct’, or at least, arguable opinion as to what a judge might be predicted to do (or should be persuaded to do, from the point of view of an advocate or legal academic). Pretty clearly this view is stimulated by ‘one right answer’ jurisprudence.28 It also involves an instructional agenda which communicates to students what ‘thinking like a lawyer’ involves and how to define and resolve legal problems. It follows a traditional lawyer/client advice model with a correspondingly

26. See generally R. Cramton, “Demystifying Legal Scholarship” (1986), 75 Geo. L.J. 1 at 7-8. Much legal scholarship, he comments, “pretends to an objectivity which it does not deliver; it fails to state or examine the premises on which it is based; and it conveys a hubris of truth or righteousness ... that is inconsistent with the humility of the true scholar.”
limited conceptions of the need and use for legal research. Furthermore, the idea that law in research or practice might be beneficially critiqued, is quite absent from their definition of the task.\footnote{This omission may be connected to the care taken by Wren and Wren to point out that they are practicing attorneys. This seems to be directed to credentialing their opinions as ‘relevant’ rather than academic — another of the ironies which seem to abound in legal research instruction!} To Wren and Wren, law tools, then, are ready to use and skills are honed in their use. Of course, as most law tools are in fact organized to facilitate this research model, their approach and the assumptions on which it based actually may be quite correct within doctrinal law research.

Of conceptual interest to me was to note how the definition of the research problem effectively sets the trajectory of research implementation: different questions/assumptions lead to different research directions and resource needs. If we follow the trajectory envisaged by the indexers and cataloguers of traditional documentary law texts, we can easily find ourselves asking only certain kinds of questions and in certain kinds of ways. If we ask different questions, not only may we need different, additional, or alternative tools, but we may have difficulty using existing legal tools: there may be no category or heading for what we are looking for. My students were frustrated in this way more than once. Yet, rather than scampering back to the fold, I think that by asking different kinds of questions, legal studies both defines itself and lays the basis for its method. Thus, the generation of the research problem and its definition are of central importance in thinking about ‘legal studies research’.

My primary objective has been to encourage students to formulate a specific question to which research can be directed, rather than meandering around in a large topic area. Meandering seems to me to be a preliminary part of becoming lost. All topics can generate a host of different questions and angles. The choice of specific approaches is influenced by the particular interest and perspective of the researcher. For example, alternative treatment options for young offenders can raise questions of whether the orders are constitutional (age discrimination etc.), justified (control of juvenile crime by way of adequate punishment and deterrence etc.), or consistent with rights of privacy and consent to treatment. Together with narrowing a topic to a particular question comes the requirement to answer the ‘so what’ aspect by being able to give an account of why the information is worth seeking out and what will be known when the information is gathered together and analyzed. In this way, a context, hunch, and thesis for research can be molded into a helpful research question.
When I turned to the second design issue, of how to generate research questions, I again differed from the model suggested by Wren and Wren who present students with raw data (a factual setting) from which to construct a common research problem 'template'. I decided it would be more fruitful for students to develop their own research questions which would in turn form the basis of subsequent individually defined instruction. Apart from a latent agenda of steering students away from 'thinking like lawyers', three basic reasons underlay my decision. First, I wanted to emphasize the central importance of having a research question and to integrate into the course the process by which research questions are generated. Secondly, I wanted to really take Wren and Wren (and myself) seriously in seeking to make instruction relevant and interesting to the individual students. Thirdly, I wanted to know what kind of (law) questions our students find interesting.

In the result, my students raised enormously diverse topic areas and sub-topics. These topics included environmental regulation (wildlife protection, adequacy of regulation); young offenders (admissibility of statements, alternative treatment programmes); violence against women (limitation periods; judicial attitudes; forms of state intervention); equality rights (discrimination against the disabled; feminist litigation; employment equity/hiring practices; child custody) law reform (effects of the amended prostitution law; abortion regulation); legal theory (feminist engagement with law; radical criminology and fear of crime among the elderly); drinking and driving (alternative sentencing; incidence of underage drinking and driving; severity of sentencing); and legal process (judicial appointments; plea bargaining; mediation). Some students professed undying interest in constitutional law issues while others squirmed at the thought, many students regarded criminal law as riveting, and so on — pretty much like any group of students. However, in this case they were set loose in the same class!

The range of topics and nascent questions also raised conceptual issues. It seemed to me that some students hadn’t ‘cottoned on’ to what a ‘law problem’ was during their three completed years of law at Carleton. While I am speaking with tongue in cheek here, it was very noticeable that their initial questions looked like sociology problems without much connection to law at all, not even law as ‘endemically legal social practices’. Maybe they didn’t think law was that interesting after all! Or maybe, this legal reticence may have reflected a tentativeness in relation

30. I devoted some class-time, scheduled appointments with two or three students at a time, and the first assignment required completion of a ‘research proposal’ setting out the research question and issues arising from it.
to the legal studies context, which for many of the students was explicitly discussed for the first time in this class, despite the whole course of law study at Carleton being built around elements of a legal studies approach. It became necessary, then, to explore with students, what it was about their questions that connected them to ‘legal enquiry’.

Is it, for example, a ‘law enquiry’ to want to find out how much discrimination occurs against physically disabled young people and how it occurs? Or, does the ‘law’ in questions of disability, relate only to examining what constitutes discrimination, what remedies exist or should exist in cases of discrimination, and exploring how effective they may be? Is an examination of the social and legal constructions of disability, a law enquiry? Might looking at the extent of discrimination against young disabled adults, in turn, be a prerequisite to identifying a problem for which legal remedies might be sought?

It seems to me that the various ‘cut off’ points in defining ‘legal enquiry’ or the point at which law is, or should be involved, are not simply arbitrary, but deeply theoretical positions about the scope and application of law. What change in ‘world view’ is wrought by changing an enquiry about whether alternative measures are ‘good’ for young offenders into whether the law has a right to order such treatment? For example, which of the following possible questions is more of a ‘law question’ and why: (i) is mediation more effective than litigation in resolving custody disputes? (ii) what is the impact and significance of the construction of power relations in mediation? (iii) does mediation protect the important procedural and fairness interests of parties to a dispute? There is a need to tread lightly here. Forcing a ‘doctrinal gloss’ onto the question can diminish and circumscribe the richness of the inquiry and begin to direct it toward particular kinds of answers. A broader approach directed to finding more about law in all its facets needs to be taken.

In addition of these weighty conceptual issues, practical method issues also arose from the more or less unreined generation of research questions. Feeling a little bit like the sorcerer’s apprentice, I found myself surrounded by 25 energetic research questions, and endless tangents. This is a good exercise for those seeking to relinquish professorial control over students’ learning experiences! Secondly, it was clear that some law materials would not be relevant for some projects. For example, one student wanted to examine the Supreme Court of Canada judgments of Madame Justice Wilson and compare them with what was known of her background, to see if being a woman judge had made any difference.31 For

31. In one of life’s finer ironies, just as this student concluded that it had made no difference, the judge gave the 1990 Barbara Betcherman Lecture at Osgoode Hall Law School, entitled “Will Women Judges Really Make a Difference?” in which she argued that they very well might.
this project, legislative material was not really relevant, although we struck a compromise when I had the student locate legislation empowering judicial appointments. A third problem, since remedied, was the lack of structured follow-through. I did not require students to complete their research or to prepare a finalized essay based upon it. I suspect that this had the dual effect of diminishing the relevance of the work and permitting tangents to multiply unchecked. Subsequently I have required some written work based on the research question, although I worry that this might lessen flexibility and experimentation in the course. Finally, I found myself seriously hampered by limited class time. Three hours is precious little time to introduce appropriate resources and finding tools, and have students become confident and proficient in their use. This situation is accentuated if they are all looking for different things. One way to alleviate the problem was to have students work in small groups in the library. The use of ‘research buddy networks’ has ameliorated this problem.

In short then, setting up research correctly involves several critical elements. First, students must be welcomed into their own role as researchers and be encouraged to make the leap from being ‘receivers of knowledge’ to becoming creators of knowledge. Some deep-set habits and anxieties may need to be overcome in this process. Secondly, their research must be animated by a research question which is consistent with the field of inquiry, that is, legal studies. Great care must be taken to avoid the influence of pre-existing assumptions about law research problems encoded into formal law sources. Thirdly, research should be guided by a specific problem or question which is relevant to the interests and concerns of the individual student researcher. Finally, the presence of the researcher in the question also suggests that her ‘conceptual baggage’ – the mix of assumptions, premises, values and beliefs held by the researcher about the topic/question – should be acknowledged. Not only does this avoid unconscious bias, but it also permits these ‘starting points’ to offer insight and direction to the research.32

VI. Know Where You are Going
(Or, What Are You Doing With That Book?)

It has been observed often enough, that legal research courses have traditionally not been part of the curricular mainstream but have, rather, languished (more or less resourced) somewhere in the margins as a

32. See further Kirby and McKenna, Experience, Research, Social Change, supra, note 25.
necessary chore, but with little academic challenge or interest. In some law schools, legal research is taught as a separate course, while in others, one section of a compulsory first year course, such as criminal law, is taught as a ‘small group’ with the dual objectives of imparting method and substance. Generally speaking, the methods course or component is regarded as ‘not real law’, and as not integral to the curriculum. At the same time, it is an almost universal lament that instruction in legal research method is generally unsuccessful. Clearly I was anxious to avoid a similar fate for my research course – particularly as I had had the experience of teaching in a law school legal research and writing course, seemingly scorned as much by other faculty as it came to be by students.

A key insight in my salvation from such a fate, was stimulated from the work of Wren and Wren. They link the ineffectiveness in research instruction with a failure to conceptualize research as a process. They note that much legal research instruction proceeds from a bibliographic approach which aims to teach students which books are in the library and what elements they each contain. Thus, law school courses often amount to a dignified sort of show and tell ‘enlivened’ with interwoven treasure hunts. The concepts of why one might want to consult these books, or at what stage of research, are a missing link. Students are thereby structurally disabled from developing or implementing coherent research strategies, and are not confronted with choicemaking and values* in research and in research tools. Wren and Wren suggest an alternative in which students are introduced to various sources when they become relevant to the solution of the research question. The idea is that students must know what sources exist, when to use them, what to use them for, and how to use them.

From these ideas flow the second principle of research methodology posited from the course: that research is an integrated process which requires the development of strategies and approaches to materials, rather than rote learning of technical and bibliographic skills. Accordingly, my starting premise was that students should be encouraged to develop “a theory and analysis of how research should proceed”, together with an

34. Method, of course, does infuse pedagogical practices in all courses. Thus, for example, ‘case law method’, or requiring that cases be read, has developed an approach to legal texts and expands the ‘legal contexts’ of law students. See generally M. Davies, “Reading Cases” (1987), 50 Mod. L. Rev. 409.

35. This lament itself raises the issue of research skills for what, and for whom? Sadly, the experience to date has not even been that the ‘wrong’ skills have been learned for the contexts in which graduates place themselves, but that research skills have generally not been learned or integrated to any useful degree.


37. Ibid.
Legal Research in a Social Science Setting: The Problem of Method

epistemological consciousness of knowledge creation: of "who can be a knower, what tests beliefs must pass in order to be legitimated as knowledge, what kind of things can be known." However, in discussion while designing the course and in subsequent experience teaching it, I was presented with an alternative argument that the goal should be to 'get the students into the library and tell them what's there so they can go ahead and use it.' These alternatives represent a tension between technical or skills training and developing a conceptual approach to research. My preference is clearly for the conceptual approach.

However, there was considerable pressure from students for me to provide technical skills training: to provide the 'nuts and bolts', relatively unadorned. To take a sampling from comments made on my course evaluations:

"the first couple of classes were somewhat different, but the course became very useful shortly after."

"articles on legal scholarship were not really that helpful."

"there was a nice combination of studying skills and studying the philosophy of method; not only learned valuable academic skills by learning research techniques, but also marketable skills."

"the purpose of the course was, I thought, to teach research methods, yet the first three months concentrated on theory ... more time should have been given to the research methods (sources) than was given."41

"the first half of the course was interesting but a waste of time."

"on a practical level, this may have been one of my most useful courses to date."

Oh well. An immediate question arising from these comments, is what makes something 'useful' or 'useless'? 'That it is relevant' may be an equally immediate answer, but this begs the question of relevance to what. If it is to 'getting a job', the necessary question is what kind of job? If it is to learning 'methods', it is not self-evident whether that means techniques, research strategies or understanding what one is doing and why. Surely, what is 'useful' or 'relevant' must ultimately depend on context and purpose. Another objection has to do with the pedagogical

38. S. Harding, "Is There a Feminist Method?" in Feminism and Methodology, at 2.
39. Ibid., at 3.
41. As the course was only 13 weeks long, this student clearly overstated the time spent on research theory. Perhaps, their estimate reflected how long it felt for them!
assumptions which underlie the demand for the nuts and bolts. Technical instruction runs the risk of complementing a conservative, professional model of legal education which “tends to take the practice of law as a given, and to respond to practice rather than to attempt to shape it. The professional model perceives the law professor as a teacher of these professional data and skills.” However, critical legal education rejects these assumptions.

While I readily concede, even insist, that a researcher must be technically skilled, such skills are not developed, nor are they exercised, in a neutral vacuum. Indeed, rather than being endlessly malleable, some tools tend to mold the researcher, and “confine thought to the familiar categories of traditional legal theory.” Legal tools are especially prone to appear ‘value-neutral’ or value-free. A ‘nuts and bolts’ approach to legal method, assumes that the tools, and indeed the products being constructed, both exist and are straightforward: one simply has to set about doing the job. The whole project of legal studies renders this assumption problematic.

Another question that necessarily arose from this discussion of concepts and techniques, had to do with which sources are relevant or useful for legal studies research and into the use of which students should be inducted: ie. which nuts and which bolts? As Delgado and Stefanic point out, “[r]elying on [legal tools] exclusively ... renders innovation more difficult; innovative jurisprudence may require entirely new tools, tools often left undeveloped or unnoticed because our attention is absorbed with manipulating old ones.”

The course description cited above suggests a focus on “the diversity of law-related materials and research procedures,” including traditional documentary sources of law, and sources of information about law. In my initial conception, it was the definition, interpretation and uses of legal texts in research which formed the bulk of research process instruction. In part, this focus on law materials may have been an offshoot of my scholarly background – what I have been trained to think of as being important, or even perhaps, just what I have been trained to think of at all! I should add in my defence that my conceptualization of the core of legal texts significantly exceeds that prescribed by most standard legal research manuals.

44. Delgado and Stefanic, “Same Stories” supra, note 11, at 225.
45. Ibid., at 208.
Several practical and conceptual issues suggested this parameter as a starting point for the course. As any legally trained scholar knows, there is a vast expanse of 'formal' law-related material in a number of different categories: judicial and quasi-judicial material; legislation and legislative evaluations; parliamentary material, commission reports, and other government documents; law reform material, all further bisected by diverse jurisdictions/countries and time periods, historical and current. This terrain is marked by a host of indexes, different categorization schemes and organizational principles, and particularities. Anyone who wants to reliably and intelligently discuss this material must be able to locate it, update it, and know what kind of animal it is. Knowledge of this core of law material cannot be assumed or fudged by legal researchers/students. The effect of a drunk driving law cannot be discussed usefully by a student who can't locate the original legislation and any amendments to it. Equally knowing how to use this material and not be intimidated by it seems to be a prerequisite to being able to critique the assumptions and values contained within it, and to being able to take law seriously as an object of inquiry.

However, while law texts may be necessary, they are also not sufficient, to use a current turn of phrase. The research questions which the students generated from use of a legal studies framework, all connected law to social practices. A focus on law texts only, then, gives students only part of what they need to pursue their research. Indeed, if the essence of legal studies is context and standpoint, such 'internal' or self-defining law sources are only part of what is required to understand law. Moreover, establishing, or accepting, a dichotomy between 'law research' and 'social research' is not fruitful to the project of 'taking law seriously as an object of inquiry'. Law exists in social practices, and modes of ordering or regulation of society are wide ranging.

The social research dimension and interest in the effectiveness of law apparent from the student research questions, pressed me to think about the scope of materials and 'sources' relevant to legal studies research. Some sort of empirical material, whether created or located become necessary. Much of the student interest seemed to reflect the established concern of 'law and society' with the 'gap problem': a perceived difference between 'law on the books' and 'law in action'. But, while this interest in 'gap problem' research indicated that students were anxious to understand law in a broad sense, it gave rise to an additional methodological problem in relation to the use of social research resources. Students must learn how to read, analyze and integrate social research in their law problems in an 'authentic' and appropriate way. Too often legal researchers seem to treat social research, especially statistics, in the same way.
boars might forage for truffles: tasty tidbits to supplement the dinner. Munger and Seron suggest that legal researchers, even critical legal researchers, tend to use social research in a highly selective manner, to support already mapped out arguments. Moreover, the ‘gap problem’ raises issues of what we should, or do, expect law to be like or to achieve. What is, after all, the significance of locating a ‘gap’ between law in practice and law in the books? And, how can a gap, or the ‘effectiveness’ of law be measured?47

But, to return to the central issue of process. In this section I have discussed the pitfalls of assuming the body of material and sources for research and I have insisted that technical skills be developed in conjunction with an awareness of the appropriate uses and limitations of the resource tools. A much expanded understanding of legal research materials is necessary to assist informed legal studies research. A strategic approach to research involving the staged introduction of relevant materials and tools reinforces these ideas. After development of the research question and identification of issues and possible approaches, it was suggested that students follow a pattern of consulting general sources before moving to the most relevant primary or first-hand sources around which the research question hinged. Once identified, the tools by which these sources could be located were introduced. Various approaches to sources were also suggested: topical, key words, statute-based and so forth. As a consequence, not every source was introduced to every student. Ideally, however, those sources and tools that were of concrete relevance were introduced into the research skills of students.

VII. Know When You Have Arrived
(Or, When you Find a Case, What Have You Found?)

Thus far in the paper, I have described a relationship between my planned objectives in the course, their refinement from experience in the course and my subsequent ruminations. My path to articulating the third principle of research—the role of reading/analysis—was rather more unscripted. Two classes in the initial course were rather surprising. Both related to how material is read, or considered in the legal studies research process. The first class had to do with authority in legal sources; the second concerned interpretation.

As may be apparent, I found myself struggling at various points of the course with ‘voice’, or more accurately, struggling to consistently speak in a ‘different voice’ from that of traditional legal research. Nowhere was this more stark than in a class innocuously enough called ‘the law setting’. My plan was to perambulate through the kinds of library-based law sources and their organization, discussing the various types of law sources, and their chronological and topical arrangement in order to lay a basis for the much heralded “strategic approach to the legal research process.” I also planned to distinguish between primary and secondary sources, and put in a good word for the merits of starting with primary sources. This class followed intensive discussions of socio-legal studies and theory issues in research design, and was intended to begin the transition into research implementation.

All began well. I had a diagram neatly on the board and was launching into an exegesis of some of its finer points, when a sort of rustling began among the students. I noticed that bemused looks had appeared on the faces of my students as if they were asking, “Is she serious or what?” Innocently enough, I inquired as to their reactions to the material being presented. What followed was a highly charged discussion. “What,” they queried, “was a ‘primary authority’ and who said that it was one?” “How can sources be labelled absolutely as being either primary or secondary?” In particular, the idea of cases as primary authority raised eyebrows: “Aren’t case reports simply judges interpreting other judges (points of law) or judges interpreting litigants’ evidence and hence mediating reality (points of fact)?” “The whole notion of a distinction between primary and secondary sources, imports the idea of authority. But, which sources are ‘law’? Which sources have authority and what gives them that

48. The allusion is to Carol Gilligan, In a Different Voice (Massachusetts: Harvard University Press, 1985).
50. As noted by Wren and Wren, ibid, at 43, n.121, a researcher “can start with either primary or secondary authorities [but] starting with secondary materials rests on the questionable assumption that students should acquire their first taste of legal research by working with sources that have been called ‘the least authoritative, the least reliable, the most misleading and the most overrated’ of legal research sources.” Quoting Schmid, “Book Review” (1962-3), 8 Utah L. Rev. 160, at 162. I agree with Wren and Wren that students need to be encouraged to think critically and independently in research and that the best place to begin, therefore, is with ‘primary authorities’. A problem at the undergraduate level is that students may lack the necessary store of legal contexts with which to approach primary sources, or to have not moved from being ‘received knowers’. See generally M. Davies, “Reading Cases” (1987), 50 Mod. L. Rev. 409; M. Belenky, B. Clinchy, N. Goldberger and J. Tarule, Women’s Ways of Knowing (New York: Basic Books, 1987). The more basic problem as it turned out in my classtime was: What is a primary authority?
authority: is it how we relate to them?” Furthermore, “isn’t making the
distinction at all, [between primary and secondary] simply an outgrowth
of conventional legal research methods?” “Surely, it’s a distinction which
reinforces a view of what is legitimate or not!” No legal positivists these!

A debate followed about whether some sources were ‘extrinsic’ for
some research but ‘intrinsic’ to other research problems. The only
compromise that could be reached, not that I was holding to my position,
was that “it depends on the kind of research you are doing.” This apparent
relativity, of course, flies in the face of the hierarchical ranking of ‘law
sources’. It is, however, quite consistent with an approach that
problematizes ‘formal’ law and asks different kinds of questions about
‘the legal’. The interesting point, of course, is that legal sources have
built-in systems of authority, which seek to entrench systems of thought
and enquiry in law. Hence, the power balance between researcher and
source may also shift with this compromise. Instead of the researcher
bowing to the source as the sanctioned, authoritative pronouncement, the
researcher may retain an evaluative stance with reference to sources, and
locate their own ‘truth’ in relation to the research question. My newly
empowered students did concede the point that whatever source was
(first) used, the temptation to let other’s do the thinking for them should
be resisted. This is an essential component in developing a ‘reading’
stance to research.

Another component of developing a reading stance in research can be
derived from the insight from critical scholarship that (legal) meanings
are both mediated and constructed. Accordingly, legal documents have
a range of significations, and there are many layers and purposes in the
production and analysis of legal documents. These include textual or
discourse analysis, studies in the translation of experience into discourses
of authority and versions of reality; observation of (judges’) legal method
in action; the relation of law to politics; and the relation of a law case to
its local setting (context). In legal studies research, a case (or other legal
document) can be read (or indeed written) at any one or several of these
levels or aspects. As Martin Davies argues, before the legal significance
of a case can be discerned (‘read’), the text of a decision must be placed
within a context that is legally relevant. Its legal interpretation depends
upon the significance which the legal reader identifies by situating the
case within her or his store of information and purpose. Contexts differ
between readers, and ‘legal’ readings allide with ‘non-legal’ readings.51

51. Davies, “Reading Cases”, ibid.
My second unscripted happening in the course convinced me that an understanding of this kind of dynamic in reading is a crucial component of legal studies method. The ‘happening’ on this point related to an evaluated assignment. I asked students to ‘research’ *Bromley London Borough Council* v. *Greater London Council*. This case involved a dispute over public transit subsidies, which erupted between a local authority and a regional council in England. During an election for the G.L.C., the Labour Party candidates promised in their manifesto that they would reduce public transit fares and levy local authorities to raise the projected shortfall in funding. Once elected they proceeded to do so. The actual cost of the reduction doubled, because of ‘claw-back’ penalties imposed by the Conservative central government. One of the local authorities levied by the G.L.C. refused to pay the supplementary rate precept, and challenged the authority of the G.L.C. to issue the levy. Its application for judicial review went as far as the House of Lords. The House of Lords quashed the supplementary precept on the grounds that it was *ultra vires*, did not accord with ‘ordinary business principles’, and breached the fiduciary duty owed by the G.L.C. to its ratepayers. The case is a fascinating example of law, politics and economics neatly packaged in judicial reasoning.

I assigned several tasks in relation to this case. Students were required to find the reported case from a general description, give correct legal citations to it, and undertake rudimentary updating — to judicial and academic considerations of the decision. This was meant to reinforce technical skills. I hoped that students would systematically and efficiently progress through the various steps involved as they had been instructed earlier in the course. The core of the assignment, though, was a requirement that students ‘read the case’ and tell me what it was about. On the assignment sheet, I expressed the task in the following terms: “This case can be read different ways... What is your reading of the case? What other readings are possible? When you find this case, what have you found?”

The results were intriguing (from my point of view at least). Almost all the students spent forever on the mechanics and hardly any on the reading. Moreover, they found it incredibly frustrating that I hadn’t told them how many citations they should have: how would they know when they were finished? Nor could they understand why I had weighted 50% to reading the case: what did that have to do with the ‘research process’? Also, as they didn’t have a context in which to read the case (mea culpa?), they didn’t know what it meant, or what was important. Should they focus on the transport aspect, the administrative law aspect, the statutory interpretation aspect, the economic aspect, or the political aspect? Ultimately nearly everyone presented a single reading of the case, with no reference to having chosen between alternative possibilities and little apparent tolerance for the co-existence of different readings/meanings. Their reading was ‘right’, and effectively excluded alternative readings. Surprisingly few students thought that the case might have been part of an enormous political fuss (which it was) or that it implicated law in politics (which it does). Perhaps it is not such a surprise given that relating law to politics, or other contextual elements generally, is excluded by the form of internal legal discourse (judicial decisions).

Nevertheless, as ‘raw data’ for thinking about legal method, the student responses raised some further questions: What did my students think cases were? What did they think judges do, and in what context, if any? Why was there a difficulty in translating the theory of ‘law’, at which they had become adept, into concrete application?54

We went over the assignment in class after I had marked it. Because the students had done all the work, and suffered all the frustrations, this discussion was very connected for the students. Their interest spanned across the technical elements, to interpretations of the case, and why it

54. Several pedagogical issues also arose out of this example. How much of my agenda should I have shared directly prior to handing out the assignment? Should the exercise have been a class project rather than a graded assignment? Should I have found several cases of equivalent richness to lessen the competitiveness fostered by the ‘hunt’ for the one case and, incidentally to lessen the ‘cobbling’ (or was it co-operation) of sources between students? How is a task like this compatible with the process-orientation of students using the time for their own research projects?

Subsequently, I have used the case as an ‘in-class’ example – handing it out one week and telling students to ‘read it’ for the next class. They come to the next class somewhat frustrated and mystified. The more charitable think that the case really must be about legal method rather than boring old administrative law, but that they must have missed something. The point of the exercise becomes clear when I ask them what the case is about. From the range of readings, insight about interpretation and research flow. My favourite moment was when a student said, “Well, I just read the case for the important bits and sifted the rest out.” Of course, no context had been given by which ‘importance’ had been defined! This then, lead nicely into my interpretive points without all the agony.
matters to understand something of the interpretation process in research. This class also finally gave students a context in which the approach the case. In its absence, there had been little to ground the exercise. Without a context (or research question/focus) there had been nothing to which they could concretely apply their theoretical skills (save of course their unarticulated contexts). As one of my students commented to me later about her experience with the assignment:

In Bromley I wanted to challenge the demand to 'read' the case in light of the gap I sensed between the kind of research it entailed and what I was working on for my own research project. It has since struck me that the 'gap' or missing link in Bromley was the absence of a research question to animate the inquiry, and by which I could analyze the case or construct a legal meaning. In simpler terms, I resisted Bromley on the heels of developing my own research project because the approach used was bibliographic. The 'problem' of finding etc. was very legal, and the 'methods' it employed were very bibliographic. On the other hand, the 'problem' of reading the case became very socio-legal. I became as frustrated as —, because I wanted to 'read' the case as I had been taught, ie. in light of the research question asked, but — I had no question. ... This leads me to ask whether it is the generation of a research question that is vital to legal research in a social science setting. [This then may be similar to feminist arguments that] it is not new 'methods' but new problematics, concepts, hypotheses and purposes of enquiry which have generated such research.55

The tensions identified in the exercise by this student as between bibliography and process, reading and context, and 'legal' and 'socio-legal' tasks, reflect inherent design tensions in the course and in the wider methodological project as I conceived it. In some ways, the assignment was a microcosm of the course. Yet in the tensions, creative possibilities and insights were highlighted. Technique separated from methodology reinforces the approach for which the techniques were originally designed, rather than generating new problematics. Interpretation is central to research, and is necessarily linked to research question. The interpretive process hinges on context which is theoretically mediated. Finally, the 'field' of legal studies inquiry is law broadly and contextually defined. Students had found only part of 'the law' when they had found the case.

VIII. Conclusion

No course stands still, and the methods course on which this paper has been based is no exception. In the process of writing this paper, I have seen new problems and new solutions, many of which I have begun to

55. Correspondence from Angela MacDonald to the author, July 1990 (on file).
explore further. From conversations with colleagues in the process of writing the paper, I have sensed renewed interest in questions of method in legal enquiry. Yet, I worry that new methodological initiatives will be limited to teaching lawyers about social science methods for use in litigation, or social scientists about law for use in empirical studies. In such a scenario, the reconceptualization of the 'law' on which such research is based, and indeed of the legal research methods needed for it, might be seen as being irrelevant or unnecessary. Both lawyers and social scientists might remain well pleased with their disciplines as constituted. Indeed, the doctrinal paradigm of law has considerable life left within it, and existing research methods seem to 'solve' the kinds of problems generated within it. But, with recognition that law is not autonomous of society but in some sense maps, reflects or helps form society and social ordering, then law itself must become an object of inquiry. Existing legal research methods cannot solve the kinds of problems, the 'new problematics', generated within this altered frame of reference about 'law'. As Marc Galanter pointed out as long ago as 1974,

we need more from the research enterprise than merely complementing legal learning as it exists by adding an empirical dimension. Instead we should be interested in the task of theoretical construction or reconstruction of ways of looking at the legal system—of expanding our conceptual apparatus to encompass features and relationships which lie beyond the boundaries of received legal scholarship.  

This paper, then, explores some of my views on the project of legal studies methodology. I have suggested several basic principles in developing a stance toward legal studies methods: the need for the researcher to be present in her research, the need for a specific research question or problem, the need to develop a strategic approach to research as a process rather than as a set of isolated skills, and the need to develop reading/analysis connected to the research question and the 'paradigm' or theory within which research is being conducted.

When I gave one of my (former) students a copy of the first draft of this paper, she suggested that I rename it, "Legal Research in a Social Science Setting: the Problem of Problems," and suggested that the methods project of which the course was part involves "nurturing the ... 'crises' which Kuhn claimed may be induced by repeated failure to make an anomaly conform." For this student, as for me, the core of the endeavour

58. Correspondence, Angela MacDonald.
is the process of generating research problems which capture the scope of legal studies enquiry. Equally, theoretical informed understandings of law in society help us to identify what it is that we want and need to know about ‘law’. Research methodology, then, is an essential element in the legal studies curriculum.

Like research itself, the course contained its surprises and tangents, some of which proved to be remarkably rich sources of insight and further inquiry. Of course, students and instructor may have learned different things! I find the project enormously interesting, and I hope this paper will be both a contribution to our understanding of legal studies methodology and an invitation to further conversation.

Appendix: Course Outline – Legal Research Methods

Guiding Questions.

Each section of the course was initiated by ‘core questions’ which were designed to identify basic issues, to reassure students having those questions, and to reinforce the idea that research, indeed scholarship, is about having questions and pursuing their answers. In the process of reviewing the course and writing this paper, I have modified one or two of the original questions. The questions set out below are the current ‘guiding questions’.

I. The Research Setting: Planning

1. What does it mean to do research?
2. What is a ‘research question’ or research ‘thesis’?
3. What is a research project in law? What is ‘legal studies research’? What kind of methodological implications arise from a ‘social science setting’ for law research?
4. Do I have to deal with statistics?
5. How do I design a research project of my own?
6. What kinds of materials do I have available to me and how are they organized? Are the materials and their organization ‘neutral’? Are there assumptions about law and classification and research which have methodological implications?

59. I was also tempted to tinker with the questions by putting them into the third person: ideally to give them (and me?) more apparent ‘dignity’. Still, I choose to use the first person in my outlines, in the hope that students will the questions as being their own and, in the spirit of concreteness, I leave them that way.
II. *The Research Process: Implementation*

7. When does 'research' start? What kinds of ‘pre-library’ work do I need to do? How do I organize my research agenda?
8. How do I organize, keep track of and analyze my 'data'/information?
9. How do I get directions to the research material I need? And how do I find it? How do I know that what I’ve found is still current? Do I need to check that it is?
10. What can on-line databases accessed through a computer contribute to my research?
11. What's the difference between finding books and 'research'? How do I sort through the mass of information to get at what is relevant?
12. How do I read law material? Do I have a 'standpoint' in research? Do the authors of my sources have a standpoint? What effect might 'standpoint' have on objectivity in research? Is research 'value neutral'? What about bias?

III. *The Research Product: Action*

13. When am I ready to write? Should I wait till I have all my ideas clear before I start to write? How do I write the project up? What is the role of outlines?
14. Is there a 'legal style'? Should I 'sound like a lawyer'?
15. What is the difference between arguing for a position and being an 'advocate'? Is advocacy consistent with the aims of scholarship and research?
16. What about footnoting and citation: why does it matter? Why do people get so picky about it?
17. Is revision really necessary? What does it mean to revise my work? How many revisions do I have to do? Should I avoid the embarrassment of showing it to anyone else until it's finished?
18. When am I finished? And, when I am finished, what should I do with my research product? For that matter, do I need to do anything with it at all, and why?