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# Step Right Up: Using Consumer Decision Making Theory to Teach Research Process in the Electronic Age

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**STEP RIGHT UP: USING CONSUMER DECISION MAKING THEORY TO  
TEACH RESEARCH PROCESS IN THE ELECTRONIC AGE**

AMY E. SLOAN\*

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Step right up, step right up, step right up  
 Everyone's a winner, bargains galore  
 That's right, you too can be the proud owner  
 Of the quality goes in before the name goes on  
 One-tenth of a dollar, one-tenth of a dollar, we got service after sales  
 You need perfume? we got perfume, how 'bout an engagement ring?  
 Something for the little lady, something for the little lady  
 Something for the little lady, hmm  
 Three for a dollar  
 We got a year-end clearance, we got a white sale  
 And a smoke-damaged furniture, you can drive it away today  
 Act now, act now, and receive as our gift, our gift to you  
 They come in all colors, one size fits all  
 No muss, no fuss, no spills, you're tired of kitchen drudgery  
 Everything must go, going out of business, going out of business  
 Going out of business sale  
 Fifty percent off original retail price, skip the middle man  
 Don't settle for less  
 How do we do it? how do we do it?  
 Volume, volume, turn up the volume  
 Now you've heard it advertised, don't hesitate  
 Don't be caught with your drawers down  
 Don't be caught with your drawers down  
 You can step right up, step right up<sup>1</sup>

## I. INTRODUCTION

Linguist George Lakoff has written extensively about how people use mental structures called frames to shape the way they see the world.<sup>2</sup> According to Lakoff, words are defined in relation to their conceptual frames and subconsciously evoke those frames.<sup>3</sup> Although Lakoff has written about framing primarily in the context of political discourse,<sup>4</sup> his ideas can be applied to other subjects as well.

1. TOM WAITS, *Step Right Up, on SMALL CHANGE* (Asylum 1976), available at <http://www.tomwaitslibrary.com/lyrics/smallchange/steprightup.html>.

2. See GEORGE LAKOFF, *DON'T THINK OF AN ELEPHANT!: KNOW YOUR VALUES AND FRAME THE DEBATE* (2004) [hereinafter LAKOFF, *DON'T THINK OF AN ELEPHANT!*]; GEORGE LAKOFF, *MORAL POLITICS: HOW LIBERALS AND CONSERVATIVES THINK* (2d ed. 2002); GEORGE LAKOFF, *THE POLITICAL MIND: WHY YOU CAN'T UNDERSTAND 21ST-CENTURY POLITICS WITH AN 18TH-CENTURY BRAIN* (2008).

3. LAKOFF, *DON'T THINK OF AN ELEPHANT!*, *supra* note 2, at 3.

4. See sources cited *supra* note 2.

The legal academy has framed research as a professional skill,<sup>5</sup> and much research pedagogy centers around replicating a controlled professional environment to allow students to learn how to do research by simulating legal practice.<sup>6</sup> Given that the primary goal of legal education is to train students for practice,<sup>7</sup> placing legal research in the professional skills frame makes sense.<sup>8</sup> It is not, however, the only way to frame the subject. Legal research can be reframed, and doing so opens new ways of understanding both practice and pedagogy.<sup>9</sup>

One way to reframe legal research is to conceptualize the research process as a consumer transaction. This shift in language evokes a different worldview<sup>10</sup> than the research-as-professional-skill frame does: legal information as a product, the process of research as a purchase transaction, and research instruction as a form of consumer education.<sup>11</sup> In fact, although it is perhaps uncomfortable for teachers of any subject to think of themselves as marketing ideas, the marketing frame is in many ways apt.<sup>12</sup> Viewing legal research this way allows professors to rethink research pedagogy. To paraphrase an observation originally made in the marketing context, to teach “successfully, a [teacher] must transcend [her] own internal point of view to understand what the [subject matter] means, and could mean, to [students] who have their own points of view. Only [content] that is meaningful from their point of view will

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5. See ABA 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) [hereinafter MACCRATE REPORT]; CHRISTINA L. KUNZ ET AL., THE PROCESS OF LEGAL RESEARCH 5–6 (6th ed. 2004); AMY E. SLOAN, BASIC LEGAL RESEARCH: TOOLS AND STRATEGIES 1 (3d ed. 2006).

6. See *infra* notes 97–99 and accompanying text (discussing legal research simulations).

7. ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2007–2008 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS viii (2007); MACCRATE REPORT, *supra* note 5, at 3–4.

8. That this way of categorizing legal research seems like common sense demonstrates the framing process. See LAKOFF, DON’T THINK OF AN ELEPHANT!, *supra* note 2, at xv.

9. See *id.* (explaining reframing). Reframing is a common technique for rethinking teaching approaches. See, e.g., Kristin B. Gerdy, *Teacher, Coach, Cheerleader, and Judge: Promoting Learning Through Learner-Centered Assessment*, 94 LAW LIBR. J. 59, 60–61 (2002) (using the parenting frame to describe the process of teaching legal research); Sarah E. Ricks, *You Are in the Business of Selling Analogies and Distinctions*, 11 PERSP.: TEACHING LEGAL RES. & WRITING 116, 116 (2003) (using a marketing frame to teach legal analysis).

10. See LAKOFF, DON’T THINK OF AN ELEPHANT!, *supra* note 2, at 4.

11. Basic principles of law firm economics support this contention. Maintaining “a modest state and federal print library” can easily cost \$100,000, and for Internet-based materials, a medium-sized law firm can easily pay a flat fee of up to \$10,000 per month. Ian Gallacher, *Forty-Two: The Hitchhiker’s Guide to Teaching Legal Research to the Google Generation*, 39 AKRON L. REV. 151, 196–97 (2006).

12. See *infra* text accompanying notes 102–103 (describing teaching as marketing).

seem relevant to [students] . . . .”<sup>13</sup> Reframing legal research as a consumer transaction is one way for a research professor to transcend her own point of view to make the content relevant to students.

Therefore, with apologies to Tom Waits, this Article approaches research from a consumer perspective. Part II sets the stage by explaining why legal information is a consumer product and analyzing changes in the information marketplace that have affected the research process. In Part III, the Article explains consumer decision making theory, demonstrating why this is an appropriate vehicle for describing the research process and evaluating the internal and external forces affecting the research choices students make. Part IV articulates the advantages of approaching research from a consumer perspective, and Part V explores ways of incorporating consumer decision making theory into research pedagogy. Finally, Part VI concludes that making students better consumers of legal information will help them become better professionals.

## II. LEGAL RESEARCH AND THE INFORMATION MARKETPLACE

### A. *Legal Information as a Consumer Product*

Students and lawyers are consumers of legal information. Librarians understand legal information as a product purchased in a market environment because they are constantly trying to build and maintain collections within their budgets. On the user end, however, research professors rarely think of the selection of research materials as a consumer choice. But it unquestionably is. The law itself may not be a commodity,<sup>14</sup> but the delivery vehicles, including code books, reporters, and databases, are consumer products.<sup>15</sup> The finding

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13. Bobby J. Calder, *Understanding Consumers*, in KELLOGG ON MARKETING 151, 151 (Dawn Iacobucci ed., 2001). Professor Tracy McGaugh has made the same point in a different context, explaining the differences in how “Generation Xers” and “Millennials” see the world and offering four methods for adapting to their learning styles. Tracy L. McGaugh, *Generation X in Law School: The Dying of the Light or the Dawn of a New Day?*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 119, 134–42 (2003).

14. Commentators have also characterized legal services as commodities. See, e.g., Edward Poll, *Commentary: Is Law a Commodity? Only if We Let It Become One*, MASS. LAW. WKLY., Apr. 17, 2006, available at 2006 WLNR 9320075 (explaining that as large corporate clients begin to expect certain kinds of work for fixed rates, legal services become commodities).

15. The use of the term “products” to describe the delivery vehicles for legal information intentionally carries a broad meaning. Although code books, print reports, digests, and the like are tangible goods, providing information electronically could be characterized as a service, and the categorization of legal information as a good or service could depend on whether the question is approached from a marketing or legal perspective. Compare U.C.C. § 2-105(1) (2003) (defining “goods”), and Crystal L. Miller, Note, *The Goods/Services Dichotomy and the U.C.C.: Unweaving*

tools, including resources such as digests and citators, are also consumer products. And secondary sources, without question, are consumer products. They are commercially produced to make research easier, thereby adding value and prompting purchase.<sup>16</sup>

### B. *The Changing Legal Information Marketplace*

Once legal information is conceptualized as a product, it becomes clear that the legal information marketplace influences the research process by influencing the resources available for conducting research.<sup>17</sup> The legal information marketplace is different than it used to be because electronic information has largely eclipsed print research.<sup>18</sup> Surveys show ever greater use of electronic research by practicing attorneys.<sup>19</sup> Even in an academic setting, many law libraries are carrying fewer books.<sup>20</sup> Where before print research

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*the Tangled Web*, 59 NOTRE DAME L. REV. 717, 720–29 (1984) (exploring different legal definitions of goods and services), with COURTLAND L. BOVEE ET AL., *MARKETING* 240 (2d ed. 1995) (dividing products into categories of goods and services and noting that most products exhibit attributes of both), and WILLIAM D. PERREAULT, JR. & E. JEROME MCCARTHY, *ESSENTIALS OF MARKETING: A GLOBAL-MANAGERIAL APPROACH* 186–87 (9th ed. 2003) (differentiating tangible goods from intangible services). Because the characterization of electronic information as a good or service does not matter for purposes of this analysis, this Article does not explore that distinction. For purposes of this Article, the term product encompasses both goods and services.

16. See Olufunmilayo B. Arewa, *Open Access in a Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 LEWIS & CLARK L. REV. 797, 800–03 (2006) (discussing lawyers' need for information and the role of commercial information providers in providing access to that information).

17. See generally *id.* (discussing how commercial information providers shape the development of the law by defining modes of access to information).

18. Ellie Margolis, *Surfin' Safari—Why Competent Lawyers Should Research on the Web*, 10 YALE J.L. & TECH. 82, 107–10 (2007) (discussing surveys showing that lawyers conduct research primarily with electronic resources).

19. See *id.* at 108–09 (summarizing results of 2006 and 2007 surveys showing that lawyers do most of their research electronically); Thomas Keefe, *Teaching Legal Research from the Inside Out*, 97 LAW LIBR. J. 117, 123 (2005) (noting that attorneys surveyed by the ABA in 2002 spent almost two-thirds of their time researching online and only approximately one-third in print (citing ABA LEGAL TECH. RES. CTR., 2002 LEGAL TECHNOLOGY SURVEY REPORT: ONLINE RESEARCH xi (2003))).

20. My information about reduced print collections is largely anecdotal, based on my experience as coauthor of a workbook of library research exercises. See AMY E. SLOAN & STEVEN D. SCHWINN, *BASIC LEGAL RESEARCH WORKBOOK* (3d ed. 2007 & Supp. 2008). Workbook users report that subscriptions to Shepard's Citations in print are almost entirely nonexistent; that subscriptions to print reporters and digests are in decline, with some having been completely discontinued; and that subscriptions to secondary sources not in regular use by faculty are gradually being discontinued. These anecdotal reports have some support in the literature. See, e.g., Gary J. Bravy & K. Celeste Feather, *The Impact of Electronic Access on Basic Library Services: One Academic Law Library's Experience*, 93 LAW LIBR. J. 261, 266–68 (2001) (discussing data

predominated, as supplemented by electronic research, now electronic research predominates, as supplemented by print research.<sup>21</sup> This transition has many effects, two of which are the focus of this analysis. First, the law school is no longer the exclusive intermediary between vendors and student users of legal information. Second, these users enter the market with experience in electronic searching, but not necessarily with a sophisticated understanding of electronic search techniques.

### 1. *Law Schools as Intermediaries*

Law schools are no longer the gatekeepers of access to information that they used to be. Although theoretically anyone can go out and buy law books, students do not buy collections of reporters, digests, codes, and the like.<sup>22</sup> As a practical matter, the law library was, and largely still is, the intermediary between vendors and student users in the print medium. When electronic research began to take root, students had to use dedicated terminals (and later proprietary software) to access the services, so the library and the research faculty became the gatekeepers of access to those services.<sup>23</sup> The law school is still somewhat of a gatekeeper, but to a much lesser degree. Libraries still buy some books, but fewer than they used to.<sup>24</sup> Consequently, to be the book buyer is no longer to be the gatekeeper of access to legal information.

In the electronic environment, law schools are still the intermediaries between vendors and students in that law schools subsidize students' use of subscription services such as LexisNexis and Westlaw.<sup>25</sup> Nevertheless, students also have much more direct access. For one thing, many first-year students get LexisNexis and Westlaw passwords early in the fall semester,<sup>26</sup> some during

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showing declining use of print materials at the Georgetown University Law Library since the mid-1990s and hypothesizing that increased electronic access to information caused the decline).

21. See Arewa, *supra* note 16, at 828; Bravy & Feather, *supra* note 20, at 267; Margolis, *supra* note 18, at 109.

22. Even if students knew what to purchase, the cost alone would be prohibitive. See *supra* note 11 (discussing the cost of a print collection of law books).

23. For example, when the University of Oklahoma School of Law introduced computer-assisted legal research (CALR) in the mid-1970s, it was taught primarily by law librarians to two or three students at a time "huddled around one computer terminal" until more than 200 students were trained. Shawn G. Nevers, *Candy, Points, and Highlighters: Why Librarians, Not Vendors, Should Teach CALR to First-Year Students*, 99 LAW LIBR. J. 757, 758 (2007).

24. See *supra* note 20 and accompanying text.

25. Law schools purchase access for students at a low rate based on the number of full time equivalent students (FTEs). Arewa, *supra* note 16, at 832. Westlaw's price per FTE in the 2006–2007 academic year was \$61.22 per FTE, and Lexis's price was roughly \$68.39. *Id.*

26. See ASSOCIATION OF LEGAL WRITING DIRECTORS/LEGAL WRITING INSTITUTE, 2008 SURVEY RESULTS 11 (2008), <http://www.lwionline.org/uploads/FileUpload/2008Surveyresults.pdf>

orientation.<sup>27</sup> Although technically the law school controls the students' access to these services because it foots the bill, as a practical matter, the research faculty are not the gatekeepers to LexisNexis and Westlaw that they used to be. A motivated student could even go so far as to use a credit card to access either service.<sup>28</sup>

In addition, the electronic legal information market is more fragmented than it used to be. LexisNexis and Westlaw are no longer the sole electronic providers.<sup>29</sup> Much more information is available on the Internet for free.<sup>30</sup> Legally-oriented commercial web sites like LexisONE, a limited version of LexisNexis's fee-based service,<sup>31</sup> and FindLaw<sup>32</sup> proliferate, as do academic<sup>33</sup>

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(presenting survey results indicating that at 176 of 181 responding schools, first-year students receive at least limited access to LexisNexis and Westlaw in the fall semester).

27. *See, e.g.*, Rutgers Law School–Newark, First Year Orientation, Fall 2007 Semester, [http://law.newark.rutgers.edu/orientation\\_day\\_079.pdf](http://law.newark.rutgers.edu/orientation_day_079.pdf) (last visited Oct. 29, 2008) (indicating that students at Rutgers Law School–Newark receive LexisNexis and Westlaw passwords during orientation); Seton Hall University School of Law, Student Orientation Schedule, 2008–2009, [http://law.shu.edu/administration/student\\_services/orientation/orientation\\_schedule.htm](http://law.shu.edu/administration/student_services/orientation/orientation_schedule.htm) (last visited Oct. 29, 2008) (indicating that students at Seton Hall Law School receive LexisNexis and Westlaw passwords during orientation); The Cooley Law School Libraries, Using Westlaw, [http://www.cooley.edu/library/orientation/westlaw\\_info/westlaw\\_index.html](http://www.cooley.edu/library/orientation/westlaw_info/westlaw_index.html) (last visited Oct. 29, 2008) (indicating that students at Thomas M. Cooley Law School must register Westlaw passwords received during orientation); Westminster Law Library, Lexis/Westlaw Passwords, <http://www.law.du.edu/index.php/library/research/lexis-westlaw-passwords> (last visited Oct. 29, 2008) (indicating that students at the University of Denver Sturm College of Law receive LexisNexis and Westlaw passwords as part of the admissions process and receive the passwords by mail before school begins).

28. *See* LexisONE, <http://www.lexisone.com> (last visited Oct. 29, 2008); Westlaw by Credit Card, <http://creditcard.westlaw.com> (last visited Oct. 29, 2008). For anything other than *de minimis* access, however, most students would find the credit card option prohibitively expensive. *See, e.g.*, LexisNexis Research: All Services Library, <http://www.lexisone.com/lx1/specialoffer/getOffer?mode=home&action=signup&packageid=5> (last visited Oct. 29, 2008) (stating that access to the LexisNexis All Services Library costs \$277 per day). *See generally* Arewa, *supra* note 16, at 830–31 (discussing prices law firms pay for LexisNexis and Westlaw access).

29. *But see* Arewa, *supra* note 16, at 820–27 (describing LexisNexis and Westlaw as a competitive duopoly and discussing consolidation in the legal information marketplace). While LexisNexis and Westlaw are still the industry giants, neither is likely adequate as a sole source of information. For example, A.L.R. Annotations are only available on Westlaw. *See* American Law Reports and Westlaw: An Exclusive Arrangement, <http://west.thomson.com/about/news/2007/08/10/westlaw-alr.aspx> (last visited Oct. 29, 2008). Also, CIS legislative histories are only available on LexisNexis. *See* Labor & Employment Exclusives on the LexisNexis Services, <http://www.lexisnexis.com/associates/practiceareas/labor/palabor0505.asp> (last visited Oct. 29, 2008).

30. *See generally* Lisa Smith-Butler, *Cost Effective Legal Research Redux: How to Avoid Becoming the Accidental Tourist, Lost in Cyberspace*, 9 FLA. COASTAL L. REV. 293 (2008) (surveying and reviewing Internet sites that provide free online access to primary and secondary sources of law).

31. LexisONE: Free Case Law by Court and Date, [http://www.lexisone.com/free\\_case\\_law\\_federal\\_state.html](http://www.lexisone.com/free_case_law_federal_state.html) (last visited Oct. 29, 2008).

and government<sup>34</sup> web sites. And general sources—search engines like Google<sup>35</sup> and nontraditional secondary sources like Wikipedia<sup>36</sup>—provide access to legal information. The result is that law students are now much more direct consumers of legal information than they were just a few years ago.

## 2. *Students as Experienced Researchers*

Not only is the relationship between information provider and student user more direct than it used to be, but student researchers now come to law school as experienced—although not necessarily sophisticated—electronic researchers.<sup>37</sup> Research professors teach in an environment in which electronic searching is routine to students. When earlier generations of law students learned how to research, many had never done any type of electronic searching because electronic searching did not exist.<sup>38</sup> They had to learn the basics from

32. FindLaw for Legal Professionals, <http://lp.findlaw.com> (last visited Oct. 29, 2008).

33. *See, e.g.*, Cornell University Law School Legal Information Institute, <http://www.law.cornell.edu> (last visited Oct. 29, 2008) (providing access to a wide range of core materials such as Supreme Court decisions from 1992 to the present, the full United States Code, an annotated version of the United States Constitution, and selected uniform laws, as well as secondary sources and topical pages); *see also* AltLaw.org, The Free Legal Search Engine, <http://altlaw.org> (last visited Oct. 29, 2008) (providing a searchable database of United States Supreme Court and federal appellate court cases); Oyez: U.S. Supreme Court Case Summaries, Oral Arguments & Multimedia, <http://www.oyez.org> (last visited Oct. 29, 2008) (multimedia archive related to the United States Supreme Court); Villanova University School of Law—Library, <http://www.law.vill.edu/library/researchandstudyguides/federalcourlocator.asp> (last visited Oct. 29, 2008) (federal judiciary information).

34. *See* GPO Access, <http://www.gpoaccess.gov> (last visited Oct. 29, 2008) (U.S. Government Printing Office); Law Library of Congress, <http://loc.gov/law/help/guide.html> (last visited Oct. 29, 2008) (providing an annotated guide to sources of information on government and law available online); Thomas, Library of Congress, <http://thomas.loc.gov> (last visited Oct. 29, 2008) (federal legislative information). Additionally, every state provides free access to its code online. SLOAN, *supra* note 5, at 182.

35. Google, <http://www.google.com> (last visited Oct. 29, 2008).

36. Wikipedia, <http://www.wikipedia.org> (last visited Oct. 29, 2008).

37. In 2002, 73% of undergraduates said they performed research on the Internet more than in the library, and only 9% said they used the library more than the Internet. STEVE JONES, THE INTERNET GOES TO COLLEGE: HOW STUDENTS ARE LIVING IN THE FUTURE WITH TODAY'S TECHNOLOGY 3 (2002), [http://www.pewinternet.org/pdfs/PIP\\_college\\_report.pdf](http://www.pewinternet.org/pdfs/PIP_college_report.pdf) (last visited Oct. 29, 2008).

38. The first “crawl-based” tool for searching the Internet, Aliweb, launched in 1993. SUSAN MAZE ET AL., AUTHORITY GUIDE TO WEB SEARCH ENGINES 12 (1997). LexisNexis and Westlaw began in 1973 and 1975, respectively, although obviously as much more limited services than they are today. Arewa, *supra* note 16, at 816. By the early 1990s, LexisNexis and Westlaw were providing free access passwords to students. *Id.* at 832 (citing Michael A. Geist, *Where Can You Go Today?: The Computerization of Legal Education from Workbooks to the Web*, 11 HARV. J.L. & TECH. 141, 149 (1997)).

the ground up. Anything anyone could show them about electronic searching was relevant. Obviously, this is no longer true; professors no longer teach on a blank slate. Students are online every day for news, shopping, entertainment, social networking, banking, and almost any other transaction of daily life.<sup>39</sup> As a result, they come to law school with confidence in their electronic research skills. They also bring habits, perceptions, and attitudes about electronic searching into research class.<sup>40</sup>

Thinking of legal information as a consumer product and recognizing the changes in the legal information marketplace raise the prospect of using consumer decision making theory as a vehicle both for understanding why students make the choices they do and for teaching a process that will be meaningful to them. Again, it provides a vehicle for transcending the professor's own point of view about the process and connecting with students' points of view. The next Part describes the consumer decision making process and explains why it is a useful heuristic for understanding the research process.

### III. CONSUMER BEHAVIOR AND LEGAL RESEARCH

The starting point for understanding how consumer behavior theory informs legal research is an explanation of the consumer decision making process. This is a rich field of study, and there are varying theories of consumer behavior. This discussion distills some common understandings of how consumers make decisions.

When a consumer makes a purchasing decision, he typically goes through a five-step process.<sup>41</sup> The consumer recognizes a need, searches for information about products or services that meet that need, evaluates the alternatives, makes

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39. See JONES, *supra* note 37, at 2–4.

40. See *infra* text accompanying notes 72–78 (discussing consumer perceptions and attitudes). Also significant is what students do not bring to the research classroom. At the undergraduate level, the shift “from foot traffic to online traffic” means students are unfamiliar with print research tools such as indices. Keefe, *supra* note 19, at 120. This lack of exposure to traditional information science, coupled with the ease of finding information through search engines, means that students come to law school without the necessary vocabulary or skills to think through the reasons for their queries. *Id.* at 122 (quoting Mary Ellen Bates, *Is That All?*, ECONTENT, Oct. 27, 2003, <http://www.econtentmag.com/Articles/Column/Info-Pro/Is-That-All-5579.htm>).

41. See BOVEE ET AL., *supra* note 15, at 109. The process described in this Part is a complex decision making process, but consumers do not go through this process for every purchase. Instead, consumers reach many routine purchasing decisions (e.g., which toothpaste to buy) using a more simplified process. See *id.*; see also PHILIP KOTLER & GARY ARMSTRONG, *PRINCIPLES OF MARKETING* 145–47 (12th ed. 2008) (describing consumer decision making processes and distinguishing complex buying behavior from “dissonance-reducing,” “habitual,” and “variety-seeking” consumer behaviors).

a purchase, and evaluates the purchase.<sup>42</sup> As a simple example, consider this process as applied to the purchase of a microwave oven.<sup>43</sup> A consumer may decide he needs a microwave. He looks for information about microwaves, possibly by looking online, reading advertisements in the newspaper, or seeking recommendations from friends or relatives. The consumer then evaluates the choices, thinking about price, convenience of the retailer, features of the product, color of the appliance, and so on. After evaluating the choices, the consumer decides which microwave to buy, purchases the product, and takes it home. Finally, the consumer evaluates the purchase to determine whether he is satisfied.

A variety of factors influence a consumer at each stage of this process: cultural factors, psychological factors, social factors, personal factors,<sup>44</sup> and two factors marketing literature calls situational influences and the marketing mix.<sup>45</sup> Figure 1 illustrates these influences.<sup>46</sup> Situational influences include the reason for the purchase, the physical surroundings of the place where the purchase occurs, and any time factors such as the urgency of the purchase.<sup>47</sup> Returning to the microwave example, the consumer's purchasing behavior will be different if his microwave breaks today and he needs a new one by dinnertime than if he decides that his microwave is getting old and should be replaced soon. The marketing mix refers to the product, its price, its placement, and its promotion.<sup>48</sup> To use the microwave example again, the marketing mix could include television commercials, sale fliers, and other types of promotional materials, among other things. Any and all of these factors can come into play in the decision making process—in the identification of needs, in the degree to which the consumer gathers information, in the consumer's evaluation of the information he obtains, and in the ultimate decision to purchase.<sup>49</sup>

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42. BOVEE ET AL., *supra* note 15, at 110–15; *see* KOTLER & ARMSTRONG, *supra* note 41, at 147–49; PERREAULT & MCCARTHY, *supra* note 15, at 125; MICHAEL R. SOLOMON, CONSUMER BEHAVIOR: BUYING, HAVING, AND BEING 268 (3d ed. 1992).

43. *Cf.* SOLOMON, *supra* note 42, (applying the consumer decision making process to the purchase of a television).

44. *See* KOTLER & ARMSTRONG, *supra* note 41, at 131–45.

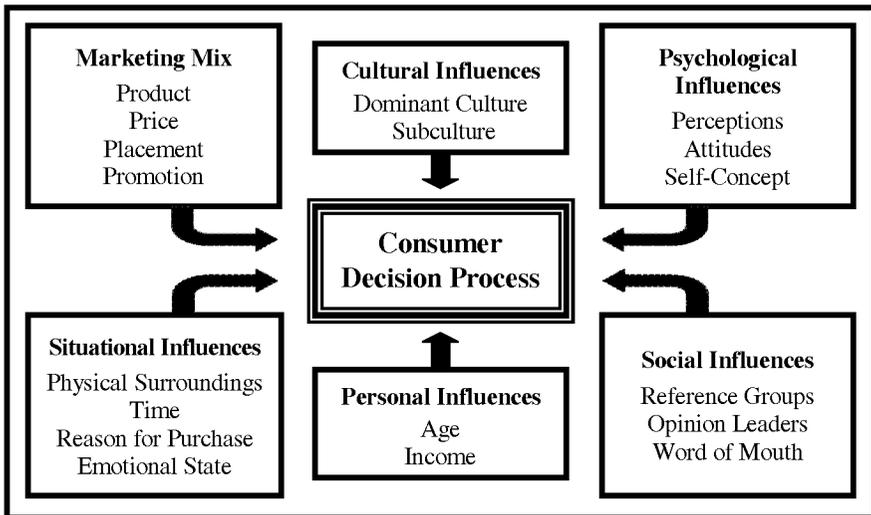
45. *See* BOVEE ET AL., *supra* note 15, at 108 exhibit 4.1.

46. This figure is adapted from BOVEE ET AL., *supra* note 15, at 108 exhibit 4.1.

47. BOVEE ET AL., *supra* note 15, at 135–36; *see also* PERREAULT & MCCARTHY, *supra* note 15, at 125 exhibit 5-9 (listing situational influences that affect consumer behavior).

48. KOTLER & ARMSTRONG, *supra* note 41, at 50–51, 130; *see* BOVEE ET AL., *supra* note 15, at 108 exhibit 4.1.

49. The complexity of this process depends heavily on a consumer's involvement with the decision. BOVEE ET AL., *supra* note 15, at 109, 110 exhibit 4.3. Whether the process is "routine" (e.g., buying a tube of toothpaste) or "extensive" (e.g., buying a car) dictates the consumer's degree of involvement and, therefore, the complexity of the decision making process. *Id.* at 109; KOTLER & ARMSTRONG, *supra* note 41, at 145–47.

**Figure 1: Factors Influencing Consumer Decisions**

The consumer decision making process and the influences on that process provide an appropriate model for thinking about legal research. The consumer decision making process is a fairly accurate descriptor of the process students go through in making research choices. It is also similar to the professional decision making process and other learning processes.

The consumer decision making process describes with some accuracy what happens in the research “purchase.” To use a simple example, assume that a researcher needs to find a state’s burglary statute. She will think about possible sources (e.g., a state law encyclopedia or a state code accessed in print or electronically), evaluate the alternatives (she could start with the code because the statute should be easy to identify, or she could start with the encyclopedia because the jurisdiction may have different degrees or types of burglary), conduct the search, and evaluate the outcome (did she find what she needed?).<sup>50</sup>

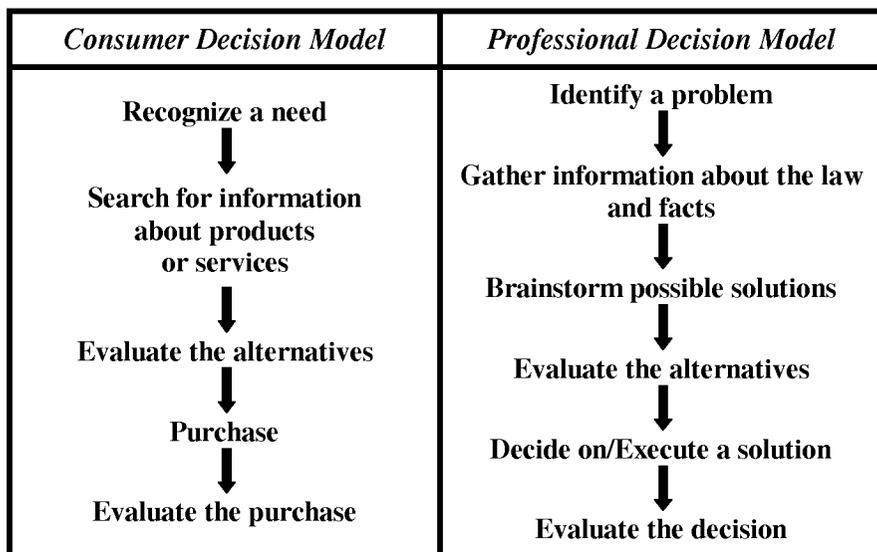
In fact, this process is similar to the professional problem solving process. When a lawyer makes a professional decision, she identifies a problem, gathers information about the law and facts, brainstorms possible solutions, evaluates

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50. VersusLaw offers three questions to ask in evaluating search results: “(1) Did I find what I was looking for?, (2) What better information could still be out there?, and (3) How can I refine my query to find better information?” VersusLaw, Inc. Research Manual, Part 1, <http://www.versuslaw.com> (follow “FAQ/Help” hyperlink; then follow “Research Manual” hyperlink; then follow “Research Manual, Part 1 - Search Basics” hyperlink; then select format icon to download) (last visited Oct. 29, 2008).

the alternatives, decides on and executes the chosen solution, and evaluates the decision.<sup>51</sup> Although this process is not identical to the consumer decision process, it is remarkably similar, as Figure 2 shows.

**Figure 2: Comparison of Consumer and Professional Decision Models**



Similar processes have also been observed in the educational context. In the academic support context, Professor Michael Hunter Schwartz has described the self-regulated learner as going through a forethought phase, a performance phase, and a reflection phase.<sup>52</sup> Professor Stephen Brookfield has also described similar processes in connection with adult self-directed learning.<sup>53</sup>

The consumer decision making process is both similar enough to and different enough from these other processes to make it a useful vehicle for thinking about the research process. It contains the basic decision making elements inherent in many problem solving processes, which makes it easy to apply in a new context. But its unique features add dimensions that other

51. STEFAN H. KRIEGER ET AL., *ESSENTIAL LAWYERING SKILLS* 33–34 (1999).

52. MICHAEL HUNTER SCHWARTZ, *EXPERT LEARNING FOR LAW STUDENTS* 27–31 (2005).

53. S.D. Brookfield, *Adult Learning: An Overview*, in *INTERNATIONAL ENCYCLOPEDIA OF ADULT EDUCATION AND TRAINING* 375, 375 (Albert C. Tuijnman ed., 2d ed. 1996) (describing the self-directed learning process as setting learning goals, locating resources appropriate for achieving those goals, deciding on learning methods, and evaluating progress).

processes do not expressly address. The next Part explores in more detail the pedagogical advantages of using consumer decision making theory to teach research.

#### IV. THE ADVANTAGES OF INCORPORATING CONSUMER DECISION MAKING THEORY INTO RESEARCH PEDAGOGY

Bringing consumer decision making theory into research pedagogy has three advantages. First, consumer decision making theory acknowledges and provides a vehicle for discussing the internal and external forces that influence the research process. Second, it provides a vehicle for discussing some real world considerations in conducting legal research. These considerations are described below as the “non-research” factors of quality, convenience, and price. Third, it puts students in a role that is familiar to them and that may, therefore, feel more authentic to them, unlike the role of “lawyer” that professors routinely ask them to play.

##### A. *Recognizing the Forces that Influence the Purchase Decision*

Many of the influences that affect consumers are apparent in the research process. The marketing mix and cultural, personal, social, psychological, and situational influences all come into play.<sup>54</sup> Using the consumer decision making process as a component of research pedagogy can make students aware of these influences in ways that might not otherwise occur to them.

Consider the marketing mix factor. Promotion is an aspect of the marketing mix.<sup>55</sup> The tables staffed by student representatives, candy, pizza, giveaways, and contests that LexisNexis and Westlaw sponsor serve a purpose: the promotion of their products. LexisNexis and Westlaw want students to think of their respective products as the best, fastest, most accurate, and most user friendly.<sup>56</sup> That may or may not be true. This observation is not made to disparage these providers, rather it is simply to note that students are the targets

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54. See *supra* text accompanying notes 44–45.

55. See *supra* text accompanying note 48 (describing the marketing mix).

56. The purpose of promotion is to influence the consumer in the evaluation of alternatives and to create brand loyalty. See BOVEE ET AL., *supra* note 15, at 112–13. A marketer’s goal is to get the product into the consumer’s “evoked set,” or the group of brands a consumer knows about and considers purchasing. *Id.* at 112. Ultimately, if the marketer can develop brand loyalty, consumers will often revert to routine decision making and automatically select the product with the preferred brand. SOLOMON, *supra* note 42, at 290. Brand loyalty can make a brand as much as 50% more profitable than its competitors. *Id.* at 289–90. LexisNexis and Westlaw intend their promotions to develop brand loyalty, and their efforts can be very successful. To share one example, a faculty colleague recently disclosed that she is unable to use Westlaw effectively and uses LexisNexis exclusively because LexisNexis gave out better toys when she was in law school.

of marketing campaigns, although many of them do not realize it.<sup>57</sup> Part of the reason students are unaware of the persistent advertising directed toward them is that vendors of all kinds—electronic research providers, bar review services, and others—are so integrated into the life of the school that they appear to be part of the academic environment. It is almost impossible for a student to avoid encountering commercial entities that use law school space and facilities to market to students. Indeed, law schools are complicit in promoting the hegemony of LexisNexis and Westlaw through the sweetheart deals that give students unlimited access to these services at substantially discounted prices.<sup>58</sup> It is little wonder that students do not fully recognize that these companies are selling to them, and little wonder that students suspend the skepticism with which they might otherwise view sales pitches.

Price is also a factor in the marketing mix,<sup>59</sup> but the twist on this factor in the academic research context is that price drops out of the picture altogether. Students do pay for the research resources they use through tuition, but this payment is indirect and, therefore, unlikely to have any immediate effect on their research “purchases.” Although one could see this fact as removing research from the consumer realm, it may instead simply increase the weight of other factors influencing the research “purchase.” In some consumer decisions, price is the determinative factor.<sup>60</sup> In most, price is at least some consideration, balanced against other influences.<sup>61</sup> When price is no object, other influences take on greater importance than they otherwise would because the price factor is missing as a balancing element.<sup>62</sup> Students research as though price is no object, which makes them especially susceptible to the effects of marketing promotions and other factors influencing the decision.

An analogous situation arises in the healthcare market where a third party (the insurance company) pays the provider of services (the doctor) to provide services to the user (the patient). This can lead to perverse incentives and skew

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57. *Cf.* Nevers, *supra* note 23, at 757 (suggesting that students are used to receiving CALR training from commercial vendors and comparing the training session to “a formal sales pitch”).

58. *See supra* note 25 and accompanying text.

59. *See supra* text accompanying note 48 (describing the marketing mix).

60. The consumer often relies on price when the quality of a product is difficult to judge or when the consumer knows little about the product, generally equating a higher price with higher quality. SOLOMON, *supra* note 42, at 288; *see also* BOVEE ET AL., *supra* note 15, at 113 (listing price as one criterion consumers use as an indication of quality when a product is difficult to judge).

61. BOVEE ET AL., *supra* note 15, at 112–13.

62. *See id.* (noting that a consumer would likely consider price when purchasing a product such as a VCR but would likely consider criteria such as “courtesy, competence, reputation, availability, and interpersonal skills,” rather than price, when choosing a doctor or dentist).

the way market forces might ordinarily work, but it does not change the fact that healthcare is a market environment.<sup>63</sup>

Cultural influences are also significant.<sup>64</sup> In the research context, the subculture of the law school is a primary cultural influence, and it can come into play in a variety of ways.<sup>65</sup> For example, if the culture of the school treats legal research as unimportant or as a necessary evil, rather than as a meaningful aspect of the practice of law and a vital skill, that can encourage students to make expedient choices or to make their choices carelessly because they understand research as an unimportant activity. The converse is also true. A law school culture that values training in skills like legal research can encourage students to learn to make good research choices.

Personal influences, which generally include matters such as age and income,<sup>66</sup> factor in as well. In the research context, age is significant. So-called Generation X and Millennial students<sup>67</sup> are more computer savvy and computer dependent than their predecessors. The few Baby Boomers presently enrolled in law school,<sup>68</sup> by contrast, are likely to approach research differently than their younger classmates.<sup>69</sup>

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63. See *No Reverse Gear*, *ECONOMIST*, July 15, 2004, at 5–6 (“In this third-party-payer market, doctors play an ambivalent role: they both supply medical care and demand it on behalf of their patients. This can create ‘supplier-induced demand.’”).

64. Cultural influences encompass “all the beliefs, values, and objects that are shared by a society.” BOVEE ET AL., *supra* note 15, at 127. Culture is learned and shared through social institutions; it rewards socially appropriate behavior and also changes over time. *Id.*; see also KOTLER & ARMSTRONG, *supra* note 41, at 131–34 (defining and discussing the importance of culture in consumer behavior).

65. The law itself is a subculture “comprising a shared language, common ethical norms, models of reasoning, and tools of trade.” Molly Warner Lien, *Technocentrism and the Soul of the Common Law Lawyer*, 48 AM. U. L. REV. 85, 85 (1998). A law school is not only part of the legal subculture, but also has its own internal subculture.

66. Age affects a person’s needs and interests; income limits a person’s discretionary spending. BOVEE ET AL., *supra* note 15, at 124–25.

67. Generation X includes those born roughly between 1961 and 1981; the Millennial generation includes those born since 1982. McGaugh, *supra* note 13, at 120. These dates are only approximate guides, not definitive boundaries. See *infra* note 68 (explaining variations in dates defining generations).

68. The precise dates defining the Baby Boom generation are subject to some debate. Some define it as including those born between 1943 and 1960. McGaugh, *supra* note 13, at 120. Others set the range at 1946 to 1964. BOVEE ET AL., *supra* note 15, at 124. Using the later ending date, the youngest Baby Boomers were forty-two years old in 2006. During that year, only 5% of law school applicants were over forty. PHIL HANDWERK, LAW SCHOOL ADMISSION COUNCIL, ANALYSIS OF LAW SCHOOL APPLICANTS BY AGE GROUP 1 (2007), <http://members.Isacnet.org> (follow “Data” hyperlink; then follow “Applicants by Age Group” hyperlink). Of those accepted to law school, over 25% did not matriculate. *Id.* at 6.

69. See generally BOVEE ET AL., *supra* note 15, at 124 (describing characteristics of Baby Boomer consumers); McGaugh, *supra* note 13, at 123–32, (discussing the misconceptions Baby Boomer faculty have of Generation X students and suggesting ways to bridge the gap).

An example of a social influence<sup>70</sup> in law schools is the effect upper-level students have on first-year students. Upper-level students are a reference group for first-year students because first-year students aspire to membership in that group.<sup>71</sup> If upper-level students say things like, “Everyone knows you just use Lexis and Westlaw for research,” or if they affirm the value of learning to use a diverse range of research sources, those comments affect first-year students’ decision making about research.

Another force at work is psychological influences.<sup>72</sup> In the research context, the psychological influences of perceptions and attitudes are significant.<sup>73</sup> The quality of a product is a major influence in a buying decision.<sup>74</sup> Students have perceptions and attitudes about the quality or accuracy of electronic searching,<sup>75</sup> as well as about their own electronic searching abilities.<sup>76</sup> Students’ perceptions are at least partially a function of the types of electronic searching they do on a regular basis.<sup>77</sup> For much of their searching, students look for a specific piece of information (e.g., the score of a basketball game), use sources that are fairly interchangeable (such as sources for today’s news headlines), or select information from a range of options that are largely already known (such as which retailers are likely to carry an item for purchase).<sup>78</sup>

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70. Social influences include a person’s “current or desired social status” as well as “the effects of word-of-mouth communication.” BOVEE ET AL., *supra* note 15, at 132.

71. See PERREAULT & MCCARTHY, *supra* note 15, at 121. In addition to being influenced by upper-level students as a group, first-year students can also be influenced by particular individuals called opinion leaders. *Id.* at 121–22.

72. “Psychological influences include a person’s needs and motives, involvement with a decision, perceptions, learning experiences, attitudes, and personality characteristics.” BOVEE ET AL., *supra* note 15, at 115.

73. Marketers define perception as a three step process of exposure, attention, and interpretation of stimuli. *Id.* at 116. “An attitude is a person’s enduring positive or negative inclination toward a product.” *Id.* at 121. Attitudes have three components: cognitive (the actual belief), affective (the strength of the feeling), and behavioral (how a consumer is likely to act on the belief). *Id.*; see also KOTLER & ARMSTRONG, *supra* note 41, at 142–45 (describing perceptions, beliefs, and attitudes and their effects on consumer behavior); PERREAULT & MCCARTHY, *supra* note 15, at 115–16 (describing beliefs and attitudes).

74. Products that “work better, require less service, or last longer are worth more to the consumer.” PERREAULT & MCCARTHY, *supra* note 15, at 110.

75. Consumers usually consult their past experiences before seeking external information. LEON G. SCHIFFMAN & LESLIE LAZAR KANUK, CONSUMER BEHAVIOR 533 (9th ed. 2007).

76. Self-image, a personal influence, may also manifest itself in a student’s view that she is competent in electronic research. See KOTLER & ARMSTRONG, *supra* note 41, at 141 (describing the connection between self-image and consumer behavior).

77. The greater the past experience with a product, the less likely it is that a consumer will consult external information before purchasing the product again. SCHIFFMAN & KANUK, *supra* note 75, at 533.

78. AMY E. SLOAN, BASIC LEGAL RESEARCH: TOOLS AND STRATEGIES (4th ed. forthcoming 2009) (manuscript on file with author).

As a consequence, students may bring a number of perceptions or attitudes to class. They may think of electronic searching as an event rather than a process<sup>79</sup>: *Usually one or two searches are all I need to find enough information about a subject.* They may think of all or many sources of electronic information as equally reliable: *It does not matter where I get my information because it is all basically the same.* They may bring a false sense of confidence to their ability to search for information and assess whether the information they find is accurate: *I can find what I need by doing word searches that I construct; I do not need to use subject searching or other tools. I can tell whether information I get from the Internet is accurate or inaccurate.* They may think a search strategy that is easy is better than a more difficult one, even when the results are incomplete<sup>80</sup>: *Electronic searching is easier than print searching; therefore, electronic searching is more accurate than print searching.* They may also bring perceptions about the approach to research instruction or the role of research instruction in the curriculum: *Research professors just give the “party line” about how to do things; they do not teach how lawyers “really” do research. Research is not important; this is just a hoop to jump through to finish law school.* Or conversely: *Strong research skills are important to my success in practice.*

Several observations about perceptions are worth making. First, perceptions can lead to expectations.<sup>81</sup> Thus, for example, if students perceive the type of natural language searching that most general Internet search engines use<sup>82</sup> as the best way to find information, that can lead to the expectation that the information they find through natural language searches is the best and most complete information available.

Second, perceptions are not always accurate. “Selective attention,” “selective distortion,” and “selective retention” all affect the accuracy of perceptions.<sup>83</sup> Selective distortion, which refers to the tendency to interpret information in a way that supports what a person already believes,<sup>84</sup> is

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79. Keefe, *supra* note 19, at 122 (quoting Susanne Hasulo, *Defining Information Literacy*, INFO. HIGHWAYS, July–Aug. 2002, at 4).

80. A *Law Library Journal* survey confirmed that the ease of terms and connectors searches made students feel more confident in their search results even when students were more successful using print research to locate pertinent authority. 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, 676 (2005).

81. See PERREAULT & MCCARTHY, *supra* note 15, at 116.

82. Gallacher, *supra* note 11, at 183 (explaining that search engines like Google translate the user’s natural language query into a Boolean search behind the scenes).

83. KOTLER & ARMSTRONG, *supra* note 41, at 143; see PERREAULT & MCCARTHY, *supra* note 15, at 113.

84. KOTLER & ARMSTRONG, *supra* note 41, at 143; cf. PERREAULT & MCCARTHY, *supra* note 15, at 113 (stating that the process of selective perception causes consumers to “screen out or modify” information conflicting with prior attitudes and beliefs).

especially significant in the research context. For example, if a student perceives electronic searching as the most accurate way to research, the failure of an electronic search is likely to cause the student to conclude that the information she is seeking does not exist, not that the search methodology is flawed.<sup>85</sup>

Third, learning can alter perceptions. In this context, learning refers to “changes in an individual’s behavior arising from experience.”<sup>86</sup> If professors give students well-rounded, diverse research experiences, they can affect students’ perceptions about research. But it is only experiential learning that will change these perceptions. It is important for research professors both to understand and accept students’ perceptions regarding electronic research as a starting point for effective teaching. Professors will not change these perceptions by telling students they are wrong or by relating personal experiences illustrating the need to use diverse research methods. Rather, students must see for themselves that different search strategies lead to different results, and they must acquire this knowledge in contexts that matter to them to give them the behavioral experience to alter potentially inaccurate perceptions about research.<sup>87</sup>

A final factor to take into account is situational influences, which may include time, physical surroundings, and emotional state.<sup>88</sup> If a student feels time pressure, the student may make different choices than if he does not feel time pressure.<sup>89</sup> Most students feel time pressure to complete their research. This is where convenience, or perceived convenience, comes into play. Convenience becomes especially important in the consumer context when price

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85. See KOTLER & ARMSTRONG, *supra* note 41, at 143 (suggesting that a consumer with a preexisting preference for one brand will distort the good and bad points about a competing brand to conclude that the consumer’s preferred brand is the better choice); PERREAULT & MCCARTHY, *supra* note 15, at 113 (noting that selective perception helps explain why some consumers dismiss advertising immediately); Peoples, *supra* note 80, at 676 (noting that students whose electronic research did not lead to accurate information still rated electronic searching as effective and attributing students’ confidence in their search results in part to their high opinion of the effectiveness of electronic searching).

86. KOTLER & ARMSTRONG, *supra* note 41, at 144.

87. See ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 143–45 (2007) (discussing the importance of and strategies for including experiential learning in the law school curriculum).

88. See *supra* text accompanying note 47.

89. Under time pressure, consumers usually “will not spend a lot of time gathering information about alternatives, will limit the number of alternatives they consider, and will tend to stick to the tried-and-true solutions that have worked in the past.” BOVEE ET AL., *supra* note 15, at 136. For student researchers, this solution is overwhelmingly electronic. See Gallacher, *supra* note 11, at 164–65 (discussing the research habits of students at the undergraduate level) (citing JONES, *supra* note 37, at 12–13).

drops out of the picture.<sup>90</sup> It is entirely common for us as consumers to balance cost and convenience.<sup>91</sup> But because price is no object for the student consumer, the convenience factor can become a very powerful motivator.<sup>92</sup> Regarding physical surroundings, many students prefer to work from home instead of in the library.<sup>93</sup> Emotional state matters too: when students feel stressed or worried about their work, it can affect how they approach the project.<sup>94</sup>

By bringing an understanding of these influences into the classroom, research professors can better understand why students make the choices they do and can tailor instruction in ways that respond to those influences. In other words, research faculty can transcend their own points of view about research and put the material in a context that has meaning for students. Talking with students about the consumer decision making process and the influences on that process can give them metacognition about their own decision making that can help them evaluate the effectiveness of the choices they are making, if not persuade them to make different choices.

### *B. Putting Research in a Real Life Context*

In addition to providing a vehicle for talking to students about the forces influencing their research decisions, the consumer decision making model in general and the evaluation phase of the process in particular create an opening to talk to students about the balance of quality, convenience, and price. Those elements could be called non-research factors because they are not necessarily related to the substantive components of research. In other words, if a lawyer needs to look up a South Carolina statute and has the citation to the statute, from a substantive perspective it does not matter whether the lawyer looks it up in Westlaw, a free database maintained by the state, or the state code in print, assuming that all of those sources are up to date. The statute will be the same in any of those sources.

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90. See *supra* text accompanying notes 60–62 (discussing consideration of price in relation to other factors in the buying decision).

91. See BOVEE ET AL., *supra* note 15, at 136 (discussing consumers' willingness to spend more money to make the best use of their time).

92. For example, unlimited CALR printing allows students to print all results of their search queries in minutes without seriously evaluating the content of the sources they print. Theodore A. Potter, *A New Twist on an Old Plot: Legal Research Is a Strategy, Not a Format*, 92 LAW LIBR. J. 287, 291 (2000).

93. See *id.* (noting that the advent of the photocopier allowed students to transport their research home to work in a more comfortable and less formal setting).

94. Professor Lawrence Krieger's work on humanizing legal education addresses the effects of stress on student performance and happiness. Excerpts from his and others' work on the effects of stress and strategies for reducing stress are available at [http://www.law.fsu.edu/academic\\_programs/humanizing\\_lawschool/humanizing\\_lawschool.html](http://www.law.fsu.edu/academic_programs/humanizing_lawschool/humanizing_lawschool.html) (last visited Oct. 29, 2008).

As long as the evaluation phase of the research process focuses exclusively on the substantive research perspective, all of those choices appear to be equal. They are all valid methods of obtaining the information. In a real world situation, however, factors like price, quality, and convenience can affect that choice. If the lawyer is a sole practitioner, locating the statute in the free state law database is probably the best option. Why? From a price perspective, it is the cheapest option. From a convenience perspective, the lawyer does not have to get up from his desk and walk to the shelves or drive to the library to get it. From a quality perspective, the information is the same as that in other sources.

There is no reason why the consumer decision making process has to be the vehicle for discussing these issues with students. Virtually all research professors talk to students about the cost of research and the importance of cost-effective research.<sup>95</sup> Using the consumer decision making process to conceptualize research simply provides another way of bringing that awareness into research pedagogy. Conveying this message in a new way may help students take the message to heart. Cost issues can seem abstract or distant to students, and it is important for research professors to avoid a preachy tone in discussing cost. Because research faculty do not pay directly for research, they may not be the most credible messengers for admonitions about cost. But putting research in a consumer context potentially allows the message to have more resonance for students.<sup>96</sup>

### C. *Putting Students in a Familiar Role*

The third advantage to integrating the consumer decision making process into research pedagogy is that it puts students in a familiar role, one they are more likely to sustain without “breaking character.” Students are often asked to play the role of lawyer<sup>97</sup> before they have been socialized into the legal

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95. See Gallacher, *supra* note 11, at 163; see also Kathryn Hensiak, *Evaluating the Financial Impact of Legal Research Materials: A Legal Research Classroom Exercise*, 13 PERSP.: TEACHING LEGAL RES. & WRITING 128, 128 (2005) (emphasizing the benefits of a legal research exercise that critically evaluates legal information in relation to the cost of the resources used to obtain it); Beth Youngdale, *Finding Low-Cost Supreme Court Materials on the Web*, 12 PERSP.: TEACHING LEGAL RES. & WRITING 108, 108 (2004) (noting the challenge of encouraging law students to “think cost-effectively” when performing legal research).

96. This is an example of how reframing can change perception. See also Linda S. Anderson, *Incorporating Adult Learning Theory into Law School Classrooms: Small Steps Leading to Large Results*, 5 APPALACHIAN J.L. 127, 132–33 (2006) (noting that adult learners respond most effectively when they see the relevance of the material presented to them); Francis J. Mootz III, *Nietzschean Critique and Philosophical Hermeneutics*, 24 CARDOZO L. REV. 967, 1028–29 (2003) (observing the rhetorical lesson that the way a question is framed largely determines its answer).

97. For example, a typical memo assignment puts the student in the role of a law firm associate and the faculty member in the role of a partner.

discourse community.<sup>98</sup> Indeed, this is a technique for acclimating them to the legal subculture. Research professors try to make the role playing realistic by making simulations as rich and detailed as possible, but the bottom line is that students cannot fully embody the lawyer role early in their studies. Ultimately, they break character when they leave the classroom and revert to roles, like that of student, that are more real to them in the moment. That does not mean that professors should not place students in the lawyer role. It is one students need to learn, and law school is the ideal venue for developing their professional identities.<sup>99</sup> However, the consumer role is a useful supplement to the lawyer role. The consumer role acknowledges the experience students already bring to the process. Students have been consumers of electronic information in other contexts for a long time. The consumer role also adds immediacy and relevance. Students are consumers *today*, not at some future time. Because the consumer role is familiar, it is one students are more likely to maintain when working outside the classroom.

Even if the student consumer might make different choices than the lawyer consumer does, the consumer model opens the door to discuss that issue expressly. The consumer model invites conversation about ways that academic exercises do and do not track “real life.” Again, in that sense, it provides a way for research professors to transcend their own points of view about research and make the material relevant to students.

#### V. INTEGRATING CONSUMER DECISION MAKING THEORY INTO RESEARCH PEDAGOGY

Thinking about legal research as the purchase of a consumer product can inform research pedagogy in three ways. First, it allows research faculty to recognize their own “marketing” role. Although research faculty cannot control every relevant factor in the consumer decision making process, they can affect some factors and can use those factors to their pedagogical advantage whenever possible. Second, research professors can structure assignments in ways that challenge some of the perceptions students bring to the research process. Third, research professors can talk to students about their role as consumers. This can make students consciously aware of the decision making process and the influences on that process. Professors can also use the evaluation phase of the decision making process as a vehicle for helping students analyze the cost, quality, and convenience of research choices.

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98. See Amy E. Sloan, *Erasing Lines: Integrating the Law School Curriculum*, 1 J. ASS’N LEGAL WRITING DIRECTORS 3, 6–7 (2002) (explaining the role of the first-year curriculum in socializing students into the legal discourse community).

99. See STUCKEY ET AL., *supra* note 87, at 144–45 (discussing how problem-based education helps students develop professional competence).

### A. *Influencing the Consumer Mind-Set*

Faculty may feel uncomfortable with the notion of marketing their ideas to students,<sup>100</sup> but it is impossible to escape the fact that professors of research compete with commercial entities for their students' attention.<sup>101</sup> Therefore, it makes sense for research faculty to be aware of and, to the extent possible, exert some influence over the internal and external factors affecting student research behavior. Research professors cannot control all of the factors that affect consumer decision making, but they can influence some of the factors. Specifically, research faculty can influence the marketing mix and the situational, social, and cultural factors.

One of the easiest factors to influence is the marketing mix. In consumer decision making theory, the marketing mixes of competing products all influence the purchase decision.<sup>102</sup> Although professors of research are not marketing individual products, they do attempt to present a message about research that is different from messages students may receive from other sources. Accordingly, research professors should bring their own promotion into the process, especially by differentiating their role from that of the vendors. The difference is analogous to the difference between independent financial advisors and advisors affiliated with specific companies. Research faculty are free to suggest, and do suggest, diversified approaches to research using a variety of sources; they are not trying to advance any one vendor's agenda. Promoting this identity would be worthwhile.<sup>103</sup>

The purchase situation is another factor research professors are in a position to influence. The urgency of a purchase is an element of the purchase situation, and physical location is another.<sup>104</sup> Professors can structure assignments in ways that reduce urgency, thereby encouraging different "purchasing" (i.e., research) behavior on the students' part. Setting interim deadlines for work, requiring documentation of the research process, factoring research strategy and results into the grading scheme, and gradually broadening or narrowing the parameters of the assignment are all ways of managing the time element in the purchase situation. Professors can also affect the physical location by scheduling library time for research on an assignment. Doing so could encourage students to consider integrating some print sources into their research strategy or to consult

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100. This is the case even though faculty often tell their students that the students are marketing their ideas to their audiences (e.g., senior partners or judges). See Ricks, *supra* note 9.

101. See *supra* text accompanying notes 57–58.

102. BOVEE ET AL., *supra* note 15, at 109.

103. I am indebted to Professor John Luthy for suggesting the independent financial advisor metaphor.

104. See *supra* text accompanying note 47 (describing situational influences).

reference librarians for assistance, both of which are unlikely to occur when students conduct research exclusively by computer at home.<sup>105</sup>

Social and cultural factors are more difficult, but not impossible, to influence. Because upper-level students and alumni constitute reference groups for first-year students,<sup>106</sup> asking members of those groups to speak with students reinforces the validity of the messages faculty convey about legal research. Testimonials from former students<sup>107</sup> and studies showing that legal employers expect lawyers to arrive on the job with competent research skills<sup>108</sup> may also help bolster the message. And although culture is difficult to change, faculty who teach research can work with other faculty colleagues and their school's administration to foster a law school culture that values skills education in general, and research skills in particular, working to ensure that a consistent message about the value of strong research skills is part of the institutional culture.<sup>109</sup>

### B. Challenging Student Perceptions

Research professors can use the consumer mind-set as a pedagogical tool by constructing assignments in ways that either encourage or require students to do things differently than they might otherwise choose in order to counteract some of the internal or external influences affecting research behavior. As noted earlier, learning can alter perceptions,<sup>110</sup> or phrased differently, students learn when the curriculum challenges their assumptions. If research assignments challenge student assumptions, students will be more likely to confront and

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105. These types of interventions in the research process are consistent with process movement approaches. Process pedagogy deconstructs research and writing into a series of steps and encourages the professor to participate with students as they perform each step. Ellie Margolis & Susan L. DeJarnatt, *Moving Beyond Product to Process: Building a Better LRW Program*, 46 SANTA CLARA L. REV. 93, 98–99 (2005).

106. See *supra* notes 70–71 and accompanying text.

107. Some legal writing instructional material includes student testimonials. See, e.g., KUNZ ET AL., *supra* note 5, at 368–76 (including research journals from four students illustrating varied approaches to researching a single issue); Diana L. Donahoe, TeachingLaw, <http://www.teachinglaw.com/teachinglaw/resources/smil/spot2.htm> (providing student video testimonials on the research process) (subscription service; contact Aspen Publishers for academic access) (last visited Oct. 29, 2008).

108. See, e.g., Gallacher, *supra* note 11, at 155–58 (discussing studies regarding expectations of legal employers); Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469, 490 tbl.11, 491 (1993) (discussing a study regarding expectations of hiring partners in Chicago law firms).

109. See James B. Levy, *The Cobbler Wears No Shoes: A Lesson for Research Instruction*, 51 J. LEGAL EDUC. 39, 45 (2001) (explaining the psychological phenomenon of “emotional contagion,” through which “people tend to match the moods, attitudes, and emotions of the person being observed”).

110. See *supra* text accompanying note 86–87.

adjust their perceptions when their perceptions fail. In a sense, this is the ultimate in Socratic learning.<sup>111</sup>

For example, it is possible to construct an assignment to challenge the perception that electronic research is faster than print research. Students or teams of students can do the same research task electronically and in print and then compare results. Some tasks are faster online; others are faster in print. The goal would not be to convince students that print is better or faster. Because print collections are shrinking, this would be “advancing into the past.”<sup>112</sup> Rather, the goal would be to discourage the reflexive gravitation toward electronic sources and to encourage consideration of print sources as an option where appropriate.

To challenge the perception that terms and connectors or natural language word searching are the “best” ways to conduct research, research professors could construct assignments in which key concepts are expressed with variable terms that students may not know. Professors could accomplish this by having students or teams of students do research with different methodologies—word searches, subject searches, table of contents searches—to compare results. The key to this type of assignment is not to undermine students’ confidence in their ability to do research, but rather to challenge them to rethink their assumptions. Search results might be evaluated in terms of good–better–best or inadequate–adequate–excellent to avoid a judgmental tone. One example of an area of law that might work well for this type of exercise is express assumption of the risk, which also involves the terms “exculpatory clause” and “hold harmless agreement.” An exercise based on a covenant not to compete, which could also be called a “noncompete clause,” “noncompete agreement,” or a “noncompetition agreement,” might also be effective.

Another perception worth challenging is that if an electronic search yields no information, no information exists. A useful exercise would contrast similar research scenarios for which some answers pop up easily in electronic searches and others require more digging. A professor could ask an individual student to research different types of situations to make this realization conscious. As an

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111. See generally Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L.J. 725, 730 (1989). Professor Neumann explains that Socratic dialogue consists of two parts, the *elenchus* and the *psychagogia*:

In the *elenchus*, the teacher’s questions guide the student to an understanding of the nature and extent of his or her ignorance. The *elenchus* ends when the student reaches *aporia*, a state of new-found perplexity. In the *psychagogia* (literally, the leading of a soul), the questions help the student construct the knowledge that the *elenchus* showed was lacking.

*Id.* (citation omitted).

112. F. Allan Hanson, *From Key Numbers to Keywords: How Automation Has Transformed the Law*, 94 LAW LIBR. J. 563, 578 (2002). Professor Hanson makes this point in connection with Westlaw’s KeySearch function, *id.*, but it is equally applicable to print research.

example, Segways,<sup>113</sup> which are known generically as Electric Personal Assistive Mobility Devices (EPAMDs), are exempt from some requirements applicable to motor vehicles. In some jurisdictions, a student could easily retrieve this information through a search for “EPAMD” or “Electric Personal Assistive Mobility Device” in a state statutory database.<sup>114</sup> In other states the code sections are fragmented, such that more extensive analysis of the statutory scheme, through table of contents searching, is necessary to obtain complete results.<sup>115</sup> Other jurisdictions have yet to legislate regarding EPAMDs,<sup>116</sup> so the failure of a search for that term in fact indicates that no information is available.<sup>117</sup>

### C. *Bringing Consumer Decision Making Theory into the Classroom*

Another way to incorporate the consumer model into research pedagogy is to discuss it expressly with students. It would not take a lot of class time for professors to explain to students generally that they are consumers and then consciously put them in that role (in addition to the professional role of lawyer that professors typically ask students to play). Professors could do this through lecture early in the semester to sensitize students to the consumer forces at work in the information marketplace, later in the semester after students have some research experience under their belts (and have felt some of the consumer influences at work), or both. If this does nothing more than make students aware that they are the objects of marketing campaigns and cause them to bring a healthy skepticism to the commercial messages they encounter, it will be worth the time spent in class.

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113. Segway, <http://www.segway.com> (last visited Oct. 29, 2008).

114. For example, in South Carolina, statutory exemptions applicable to EPAMDs appear in a single section of the code. S.C. CODE ANN. § 56-5-3310 (2006).

115. For example, Maryland’s provisions regarding EPAMDs are scattered through multiple titles within its Transportation Code. *See, e.g.*, MD. CODE ANN., TRANSP. § 8-409 (LexisNexis 2001) (authorizing use of EPAMDs on pedestrian walkways); *id.* § 21-101(j) (defining EPAMD); *id.* § 21-501.1 (establishing traffic rules for EPAMDs and wheelchairs). Further, the Transportation Code contains several definitional sections. *See id.* §§ 1-101, 11-101 to -178, 21-101. The definition of vehicle in section 11-135, which does not mention EPAMDs by name, seems to encompass devices like EPAMDs, but the definition of motor vehicle in section 11-176 expressly excludes EPAMDs. Some provisions of the Transportation Code apply to all vehicles; others apply only to motor vehicles. *Compare id.* § 21-901.1 (limiting reckless driving to operation of a motor vehicle), *with id.* § 22-101(a) (prohibiting driving any unsafe vehicle on the highway). Thus, a professor could present an issue that requires students to research the statutory scheme using the table of contents to determine which provisions apply to EPAMDs and which do not.

116. Seven states have not regulated EPAMDs. *See* Segway–Support–Regulatory Information, <http://www.segway.com/support/regulatory.php> (last visited Oct. 29, 2008) (listing jurisdictions that have enacted legislation regarding the use of EPAMDs).

117. *See* SLOAN & SCHWINN, *supra* note 20, at 174, for a version of this example.

The evaluation phase of the consumer decision making model is also a useful vehicle for keeping students aware of factors like price, quality, and convenience.<sup>118</sup> An assignment could ask students specifically to evaluate their research process by asking why they made the choices they did or by evaluating their choices in terms of quality, convenience, and price. Did they get a good value overall? Pricing structures are so difficult to generalize about that it might be worthwhile to create for the class a model pricing structure for various services so that students have some concrete data against which to measure their research choices.

## VI. CONCLUSION

As this Article goes to press, a commercial for DirecTV, a satellite television provider, has been airing in which DirecTV lampoons Comcast, a cable television provider.<sup>119</sup> Comcast has had some difficulty with consumer complaints.<sup>120</sup> In the DirecTV advertisement, actors playing Comcast executives ponder how to solve this problem. One executive suggests that Comcast solve the problem by changing the customers. Professors sometimes might like to change their “customers” (i.e., students), too, but that is not possible. To teach successfully, faculty must meet the students where they are.<sup>121</sup> Consumer decision making theory does not fully explain student research choices, and it is an unlikely candidate to displace existing pedagogy based on more established process approaches. But reframing the research process to see students as consumers of legal information can shed light on their research behaviors and can improve both the understanding of the student mind-set and the ability to teach in ways that resonate with students. Ultimately, if students are more conscious and savvy consumers of legal information, they will be better professionals, and they will provide better service to the ultimate consumers, the public.

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118. See discussion *supra* Part IV.B.

119. YouTube, <http://youtube.com> (search “DirecTV commercial bashing the cable company”) (last visited Oct. 29, 2008).

120. See, e.g., Cameron W. Barr, *Comcast Repair Complaints Surge: Company Blames Verizon As Montgomery Customers Stew*, WASH. POST, July 17, 2005, at A1, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/16/AR2005071601229.html>; Bob Fernandez, *Stormy Times for Comcast*, SEATTLE TIMES, Apr. 28, 2008, [http://seattletimes.nwsource.com/html/business/technology/2004377720\\_comcast28.html](http://seattletimes.nwsource.com/html/business/technology/2004377720_comcast28.html).

121. See McGaugh, *supra* note 13, at 119 (advocating teaching students “as they really are” not as faculty “believe they *should be*”); see also PERREAULT & MCCARTHY, *supra* note 15, at 111 (“[T]rying to get consumers to act against their will is a waste of time.”).