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A New Way to Teach Secondary Source Research: Source Discovery

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I. Introduction

I recall with little fondness my own first-year legal research instruction, which consisted of sitting on uncomfortable seats in a darkened classroom, looking at overhead projections of various sources of legal authority, while the instructor droned on about the material contained in each source. Thankfully, my students today will be spared that experience, because legal research pedagogy has mostly moved away from this type of “source-based” instruction, in which the instructor describes each source and how it’s used, toward a more holistic legal research pedagogy that focuses on teaching students how to use each resource as part of a strategy for solving legal research problems.²

However, there is one area of legal research where many instructors still resort to a source-based model of instruction: teaching students how to use secondary sources. In fact, this method of instruction seems baked right into the name. After teaching students that secondary sources are not the law, but can be a great place to start research in an unfamiliar area, we dive right back into our source-based roots: Here’s a legal encyclopedia, this is what’s in it, this is how you use it. Here’s a treatise, this is what’s in it, this is how you use it,³ and so on.

In part, we do this because secondary sources are such a varied set of research tools. Each secondary source contains different types of information organized in different ways, making it difficult for

professors to find a uniform, process-oriented way to present these materials to students. Given this broad range of materials, information, and organization, we resort to the easiest (for us) and most efficient method we know: the source-based method.

Unfortunately, this source-based instructional method does our students a double disservice. First, like my long-ago first-year course, it eliminates any chance of active learning. Students are often reduced to passive participants in the research process, as they sit quietly while we tell them what they need to know. Even if we later provide exercises in which they can practice using secondary sources, these exercises are useless without the preparatory source-based introduction. By the time we get through the source-based lecture, we’ve already lost half the class. Second, this method only teaches students how to use secondary sources that are currently available and doesn’t equip them to use new or unfamiliar sources (or sources we didn’t have time to cover in class).

There is a better way to teach secondary sources (and, as we will see shortly, other research materials): the source discovery method. This method allows students to discover and evaluate the sources for themselves, and then put those discoveries into practice.

II. The Genre Discovery Method

The source discovery method of legal research instruction is modeled on the “genre discovery”⁴ method of legal writing instruction, which was pioneered by Alexa Chew and Katie Rose Guest Pryal at the University of North Carolina School of Law.⁵ Genre discovery treats legal documents as distinct genres, and theorizes that, just as literature students can be taught to identify the essential

¹ This Article was written while the Author was a Visiting Assistant Professor at the Mercer University School of Law.

² See, e.g., ERIC VOIGT, *LEGAL RESEARCH DEMYSTIFIED* xv (2019).

³ See, e.g., DEBORAH A. SCHMEDERMANN ET AL., *THE PROCESS OF LEGAL RESEARCH: PRACTICES AND RESOURCES* 59–85 (9th ed. 2016).

⁴ Alexa Z. Chew & Craig T. Smith, *Border-Crossing: Genre Discovery and the Portability of Legal Writing Instruction*, 25 PERSPS. 8 (2016).

⁵ The Author spent a year at UNC as a Visiting Clinical Assistant Professor.

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elements of a sonnet or fable, law students can be taught to identify the essential elements of an office memo or appellate brief. In the genre discovery method, students explore samples of a document type (a genre), analyze multiple samples to discover what they have in common, and then use those insights to draft their own legal documents.⁶

In a way, genre discovery mirrors the Socratic method used in doctrinal classes, where students “discover” the rule by reading and analyzing relevant legal authorities. In the same way that the Socratic method teaches students a process they can use to figure out an unfamiliar rule of law, genre discovery teaches students a process they can use to figure out how to write an unfamiliar document.

For example, students discover a genre of legal writing, such as demand letters, by exploring multiple samples. After reading several samples, students determine the requirements of the demand letter genre by constructing document maps.⁷ On the document map, students note common features and elements between the samples and how those elements are constructed. Students then synthesize their observations and make judgments about how they should construct their own documents.⁸

Genre discovery takes the place of professors or textbooks telling the students the “right” way to write a document. Rather than the instructor lecturing to the students, “these are the parts of an office memo, and this is how you write those parts,” students investigate sample office memos, determine the requirements of the genre, and decide how they will apply those genre conventions to their own work.

One of the most attractive features of genre discovery is that it is a transferable skill that can be applied to documents not traditionally covered in the first-

year LRW course.⁹ Where most students leave their first year knowing how to write an office memo, trial motion, and appellate brief, students taught using the genre discovery method are able to use that process to discern the patterns, contents, and organization of any legal document, even those they haven’t yet been exposed to. As a result, genre discovery empowers students to tackle any kind of legal drafting project.

This discovery-based method of instruction shouldn’t be limited to legal writing. The same method can be applied to teaching legal research, especially secondary sources. The method allows students to actively discover how various secondary sources work while also providing them with a process they can use in the future when they are confronted with unfamiliar sources. I call this method “Source Discovery.”

III. Using the Source Discovery Method

In a source discovery classroom, students work in small groups to investigate a variety of secondary sources and evaluate their usefulness in different research situations. Prior to class, they may have read the section in their legal writing or legal research textbook about what secondary sources are in general, but they have not been exposed to specific types of secondary sources.

To prepare for the class, the instructor obtains hard copies of the secondary sources they want the students to explore. For example, I use treatises, desk books, state-specific and general legal encyclopedias, and *American Law Reports*. To determine how many sources will be needed, divide the number of students in the class by four or five, depending on the size of small groups the instructor wants to use. The instructor should assemble four or five volumes of each source (again, depending on the size of the groups), as well as any indexes or other finding aids needed to use each source.

During class, each group receives one source, plus any finding aids. The groups examine the

“[This] method allows students to actively discover how various secondary sources work.”

⁶ ALEXA Z. CHEW & KATIE ROSE GUEST PRYAL, *THE COMPLETE LEGAL WRITER* xvii (2016).

⁷ Chew and Pryal’s document map is a three-column table. In the first column, students identify the parts of the document; each document part becomes a row in the table. In the second column, they note in each row how the part is structured or worded. In the final column, they make inferences as to how they will write the document themselves. *Id.* at 30-31.

⁸ Chew & Smith, *supra* note 4, at 9-10.

⁹ CHEW & PRYAL, *supra* note 6, at xv.

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source while completing a “source summary,” which is source discovery’s equivalent of genre discovery’s document map. To complete the source summary, students answer the following questions about their source:

- Where does this source come from? Who wrote/edited it?
- What jurisdictions does the source provide information for?
- What information does this source contain?
- How is the information organized?
- What finding aids help you navigate the information?
- How often is the source updated?
- What updating tools does the source use?

Once their source summary is completed, the instructor asks students to come up with research scenarios where the source would be useful or, conversely, not useful. For example, students discovering *Strong’s North Carolina Index*, a state-specific legal encyclopedia, note that it is focused on North Carolina law, provides references to both primary and secondary sources, and is organized alphabetically by topic. So, one possible use of *Strong’s* would be providing a researcher with background information on an unfamiliar area of law and directing the researcher to the leading primary sources on that topic. However, *Strong’s* would be less useful to a researcher who had already located the leading primary law on a familiar topic.

Each group then reports out to the class on what their assigned source contains, how it’s organized, and what it’s useful for. After all the groups have reported out, each group selects another group’s source and, based on what they learned from that group, they use the new source to perform a short research project. By the end of the class, students are familiar with five types of sources, have had hands-on experience with two of them, and, most importantly, have learned a method they can use whenever they encounter an unfamiliar secondary source in the future.

IV. The Advantages of Source Discovery

The source discovery method of research instruction has several advantages over traditional ways of teaching secondary sources. First, the source discovery method promotes better learning. Students using this method must become active learners, discussing the assigned sources with members of their group, and collaboratively creating the source summary. After they have learned about their assigned source, they share their knowledge with the rest of the class. This provides a deeper learning experience for students compared to a traditional, instructor-led source-based method. Empirical studies show that students learn more when they actively participate in the learning process.¹⁰ Additionally, having students teach their newfound knowledge to their classmates further deepens their own learning because it causes them to reflect on their own understanding and integrate the material with their prior knowledge.¹¹

Second, the source discovery method promotes a crucial competency for legal professionals: information literacy. Information literacy teaches students to evaluate information by gauging its authenticity and reliability, and assessing its strengths and weaknesses.¹² The source discovery method teaches students not only what the sources contain, but challenges them to extrapolate that knowledge to scenarios where the source could be helpful in the future. This provides an opportunity to evaluate the source, not just for its reliability, but for its usefulness to a practitioner. This source evaluation skill is important because it can be transferred to other legal research sources, which will continue to evolve and develop over time due to technology.

Finally, source discovery is a flexible method which can be applied to primary sources as well.

¹⁰ Louis Deslaurieus et al., *Measuring Actual Learning Versus Feeling of Learning in Response to Being Actively Engaged in the Classroom*, 116 PROC. OF NAT’L ACAD. OF SCI. 19251, 19251 (2019), available at <https://www.pnas.org/content/116/39/19251>.

¹¹ Logan Fiorella & Richard E. Mayer, *Role of Explanations and Expectations in Learning by Teaching*, 39 CONTEMP. EDUC. PSYCHOL. 75, 76 (2014).

¹² Richard A. Danner, *Focus on Information Literacy: Law Schools Face Challenges Posed by Students’ Reliance on Online Material for Research*, NAT’L L. J., July 17, 2000, at C9.

For example, early in their first semester my 1Ls do a similar exercise to discover how statutes are organized. The students compare volumes of *Statutes at Large*, the *United States Code*, and the *United States Code Annotated* to look for underlying patterns in the sources' contents and structure. I ask a pared-down version of the questions on the source summary,¹³ leading the students to discover for themselves that codes, arranged by topic, are much more useful than chronological statutory compilations, and that annotated codes, with case notes and research references, provide more useful information than unannotated codes.

V. Conclusion

Like its predecessor genre discovery, source discovery allows students to teach themselves essential legal research skills. By giving students a framework within which they can think critically about each research source, we can promote more effective learning, encourage information literacy, and increase student confidence in their research skills across all resources. Just as genre discovery prepares students to write any document, source discovery prepares students to use any research source competently and confidently.

“By giving students a framework with which they can think critically about each research source, we can promote more effective learning”

¹³ “Where does this source come from? What does it contain? How is it similar to or different from the other sources?”