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Work-in-Progress: A Research Framework in FCIL Teaching?

Janet Kearny

Whenever I teach 1L students U.S. legal research, I use a process-based framework - the four steps of the research process: 1) preliminary analysis; 2) secondary sources; 3) written/codified law; 4) cases. I explain to the students that this is not a checklist -- it's not even always in order -- but it's a way of thinking about the materials available to us and how we might go about finding and using them. I teach in the order of these steps and their homeworks build in this direction; by the final homework, they can do all four steps at once.

In preparing for my Spring 2022 class on advanced legal research in foreign and international law, I started thinking: Is there a process or a strategy that might apply similarly to the way I teach 1Ls? I've only taught the class once before [and it became a Zoom class halfway through] as it's currently offered every-other-year, and I was ready to do deep soul-searching on it. In the past, I taught the course in discrete chunks - here's how we might tackle foreign law, here's what you need to know about treaties; etc. They were treated as very separate and distinct units. When I reviewed coursebooks, there were some general considerations overall, but it seemed like most of the research planning sections were specific to certain types of law. And that makes sense! This is so disparate - when we think about, foreign and international law really means the entire world: can there be a process that we can apply no matter what comes up, no matter the country or subject matter? Even if we can, will it need so many caveats that it becomes meaningless?

Well, I decided to make one, and I'm working through it with my students this semester. Here's my basic starting outline:

Research process framework -

1. Research Plan: Identify→
 - a. The question/task
 - b. Type of law
 - c. Specific entities of interest & key characteristics
 - d. Relevant facts
 - e. Key search terms/concepts
 - f. Plan of attack
 - g. *Use a research guide on the topic/jurisdiction to fill in or update the above; as you learn more going through the steps below, update your plan.
1. Secondary sources:
 - a. *Tips:

- i. Pay close attention in them (to their own info of course but also) for references to other secondary sources, to primary sources.
- ii. Review what you find at each step before running more searches. Meaning, check the encyclopedia entry for a book, before you go just generally looking for books.
 - a. Reference Materials: Dictionaries, Research Guides, & Encyclopedias
 - b. Books & Journal Articles
 - c. Grey Literature: Reports, Working Papers, Other
1. Primary law[?]
 - a. Identify what the primary[?] law (legal? original?) sources are for that area/jurisdiction and whether/how they are binding - identify the hierarchy.
1. Locate the primary sources
2. Apply!

Only one class in and drafting the first graded, out-of-class assignment and I have issues, as one would expect, and you may have already identified. Originally, I forgot to list relevant facts in the research planning stage - luckily I asked students to brainstorm their ideas for research planning, and they listed relevant facts. How do I want them to handle cases? If we say that in some legal systems, cases are not binding and are not considered primary sources, then should they be classed under step 2? My instinct is to say no - step 2 is about commentary and analysis, not about legal sources no matter how non-binding they are. I'm now considering whether I should call it a framework for US lawyers in FCIL topics.

Initially, on step 2, I called it commentary & analysis because not all places call them secondary sources. When discussing with one of my colleagues (shout out, Alyson Drake), she suggested I keep to secondary sources, that it offers the students a comparative point with what they already know about the world and that it requires them to make the translation between what we would call a secondary source and how it might be classed elsewhere. I'm thinking that would apply to sources like cases as well - we call it a primary source here in the US, so when they get to the point of looking for cases, they need to make that translation for themselves - it's why I want them to expressly indicate the hierarchy of sources for a particular jurisdiction or area of law.

Research Framework *continued from page 2*

Might it be better to call step 3 primary sources or legal materials, rather than primary law?

I'm structuring my course this semester beginning with foreign law, and using foreign law to dive deep into planning and tracking, cultural competency, secondary source types and searching. When I get to international law, my plan is to work with the students to discuss how we might adjust what we look for under each step, going through treaties, treaties in the US, and customary international law. I expect a whole other host of problems - the UN class and soft law? Ha!

My students, in what little time I've had with them so far, seem excited to work through this framework and evaluate it. Hopefully, based on my experiences with them I can come to some conclusions, whether positive or negative, and continue to expand this idea. Maybe one day it'll be listed under member publications!

Do you use a process framework for class? Do you love this idea or hate it? Email me and let me know - jkearney15@fordham.edu.

Do you have a Work-in-Progress?

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FCIL-SIS Award Nominations

Have you, or an FCIL-SIS member you know, made a significant contribution to our profession this year? If so, please let us know! The Executive Committee needs your help identifying the folks who deserve these prestigious FCIL-SIS Awards:

The Daniel L. Wade FCIL-SIS Outstanding Service Award: honors a FCIL-SIS member who has made an outstanding contribution to our SIS in the areas of section activity and professional service.

The Thomas H. Reynolds & Arturo A. Flores FCIL-SIS Publications Award: honors a FCIL-SIS member who has greatly contributed to the professional development of their AALL colleagues during any given year. The winning "publications" may be print, digital, or electronic initiatives.

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The Newsletter Article of the Year Award: honors an FCIL-SIS member who contributes an outstanding article for the FCIL-SIS Newsletter during the previous year.

The Interest Group/Committee Project of the Year Award honors the FCIL-SIS Interest Group and/or Committee that produces an outstanding project for the benefit of FCIL-SIS and/or AALL members during the previous year.

Nominations for all awards are due by May 15, 2022, to the Executive Committee: Marcelo Rodriguez (marcelorod@email.arizona.edu), Caitlin Hunter (hunter@law.ucla.edu) or Susan Gualtier (sgua@law.upenn.edu). We look forward to hearing from you!