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The “Shock and Awe” Approach to Legal Research: Helping Students to Understand Their Research Deficiencies so That They Are Better Prepared to Learn Legal Research

By Karen Skinner

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Abstract: This article discusses the unique approach that the law librarians at the University of Southern California use during first-year legal research to expose student overconfidence in research skills and to teach a new framework for improving those skills.

Over the past four years the law librarians at the USC Gould School of Law (USC) have been experimenting with a new class to kick off 1L legal research. Internally calling it “shock and awe,” the librarians immediately set students to work on a hypothetical research problem and let them try their hands at legal research from the first few minutes of class. The idea is to introduce an active element to the class that will grab the students’ attention and help them understand their existing research deficiencies so that they will take the legal research course seriously.¹

Before this experiment, the first class of the course had always been structured with a traditional

teaching pedagogy in mind. The class session was entirely lecture about basic legal research content such as court structure, the publication process for cases, the differences between primary and secondary sources, *stare decisis*, and what constitutes mandatory authority. Much of the lecture repeated information contained in our course reader.

In 2010, USC decided to revamp its legal research program to be more experiential. The static, teacher-centered approach we had been taking to the first class no longer matched our new experiential, learner-centered approach in the other classes. There was a disconnect between the students’ first classroom experiences and what they would spend the year doing. Plus, we wanted the opportunity to highlight the level of research skills students would need as practicing attorneys. This led to the shock and awe approach.

Why Take the Shock and Awe Approach?

The vast majority of today’s law students are members of Generation Y, otherwise known as millennials. For this generation, computers are not technology; computers are their lives.² They expect to learn through experience and interaction, what they see as “authentic learning.”³ Millennials try to

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¹ At USC, students take Legal Research, Writing & Advocacy for 5 credit hours over both semesters of the first year. The law librarians teach the legal research portion of the course, which is worth 25 percent of the overall grade. The course meets for 50 minutes a week for the first half of each semester. The course is graded with students required to complete weekly assignments, a research project, and to sit for an exam each semester. To ensure all first-year students receive similar instruction, the law librarians teach from the same set of materials. A team of seven to eight librarians usually teaches fifteen small sections of the course.

² Kari Mercer Dalton, *Bridging the Digital Divide and Guiding the Millennial Generation’s Research and Analysis*, 18 *Barry L. Rev.* 167, 169 (2012) (citing Grant Crowell, *Are “Digital Natives” Transforming Online Video for Better or Worse? Part 1*, REELSEO.COM (2011), available at <http://www.reelseo.com/digital-natives-transforming-online-video/-ixzz1saIF6ssf>).

³ Diana Oblinger, *Boomers, Gen-Xers, and Millennials: Understanding the New Students*, 38 *Educause Rev.* 36, 44 (July/August 2003).

“[M]any law students overestimate their research skills, are overconfident in their Internet research results, and predict that legal research will be the easiest skill to learn in law school.”

shape legal research to their world and their world involves seeking information on the Internet.⁴ Even the new research platforms, WestlawNext® and Lexis® Advance, look like Google searches. Students expect to get the answer with a quick Google® search and WestlawNext and Lexis Advance appear to offer the same capabilities.

Most new law students have very basic research and writing skills and “even students at top-tiered schools are arriving with less than adequate basic research skills.”⁵ They are used to gathering quick and easy information, not necessarily the best information, and they have little experience validating the information they do find.⁶ The challenge for legal research instructors is compounded because students enter law school with misplaced confidence in their research skills. They equate having the skill to conduct a Google search with the skills necessary to be legal researchers.⁷ In a 2006 study by Ian Gallacher, he examined information literacy levels of 740 incoming law students at seven law schools and concluded that many law students overestimate their research skills, are overconfident in their Internet research results, and predict that legal research will be the easiest skill to learn in law school.⁸

This overconfidence may lead new law students to tune out when it comes to their first-year legal research course. While most entering law students are completely new to typical first-year courses

like torts and contracts, all students bring at least some level of research skills to their first year legal research course.⁹ Millennials have an unrealistic sense of their abilities and they block information that they do not immediately perceive as valuable.¹⁰ Essentially, students don’t know what they don’t know.¹¹ One author describes the situation as a closing of minds: “Students feel themselves to be capable, even skilled, researchers and therefore are likely disinclined to believe that legal research will pose any substantial difficulties for them.”¹²

Numerous professors have grappled with the best methods to correct students’ overconfidence. Some professors believe that the solution involves adjusting student expectations so that they will be receptive to strategies that will create success,¹³ while others think the best method for dealing with overconfidence involves having students confront their misconceptions through active learning exercises.¹⁴ Researchers studying MBA students also add support to this later method, noting that “disconfirming feedback” reduces overconfidence, although there is a risk that students may not respond well to criticism that exposes weaknesses.¹⁵

At USC, we acknowledged the risk this approach poses and proceeded with our initial experiment in 2011 to have new law students question their own research skills. They experience this through

⁴ Dalton, *supra* note 2, at 180 (citing Richard A. Danner, *Contemporary and Future Directions in American Legal Research: Responding to the Threat of the Available*, 31 Int’l J. Legal Info. 179, 191 (2003)).

⁵ Cathaleen A. Roach, *Is the Sky Falling? Ruminations on Incoming Law Student Preparedness (and Implications for the Profession) in the Wake of Recent National and Other Reports*, 11 J. Legal Writing Inst. 295, 296 (2005).

⁶ Dalton, *supra* note 2, at 181.

⁷ Aliza B. Kaplan and Kathleen Darvil, *Think [and Practice] Like a Lawyer: Legal Research for the New Millennials*, 8 Legal Comm. & Rhetoric: JALWD 153, 163 (2011).

⁸ Ian Gallacher, “Who Are These Guys?,” *The Results of a Survey Studying the Information Literacy of Incoming Law Students*, 44 Cal. W. L. Rev. 151 (2007). The seven participant law schools were Syracuse University College of Law, Washington College of Law, Marquette University Law School, Rutgers School of Law--Camden, Thomas Jefferson School of Law, John Marshall Law School, and University of Baltimore School of Law.

⁹ Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 Stetson L. Rev. 1193, 1194 (2000).

¹⁰ Dalton, *supra* note 2, at 184.

¹¹ Brooke J. Bowman, *Researching Across the Curriculum: The Road Must Continue After the First Year*, 61 Okla. L. Rev. 503, 524 (2008).

¹² Gallacher, *supra* note 8, at 191.

¹³ Miriam E. Felsenburg and Laura P. Graham, *A Better Beginning: Why and How to Help Novice Legal Writers Build a Solid Foundation by Shifting Their Focus from Product to Process*, 24 Regent U. L. Rev. 83 (2011-2012).

¹⁴ Amy Gustavson and H. Clark Nall, *Freshman Overconfidence and Library Research Skills: A Troubling Relationship?*, 18 Coll. & Undergraduate Libr. 291, 294 (2011).

¹⁵ Robert C. Giambatista and J. Duane Hoover, *An Exploration of Overconfidence in Experiential Learning of Behavioral Skills Among MBA Students*, 41 Dev. in Bus. Simulation and Experiential Learning 268, 276 (2014).

a hypothetical problem and Internet research, recognizing that there are deficiencies when those existing skills are applied to legal research. In other words, students learn through failure. Our legal research course then provides students with a framework to build up their research skills.

Designing the First Class

Our first legal research class is designed to get students immediately involved in legal research. The class has three components: a hypothetical problem that uses existing research skills to highlight legal research gaps, an introduction to the research methodology that will be taught throughout the year and improve their research skills, and an explanation of the first step of the methodology (preliminary analysis of factual and legal issues). After introductions, students are asked to work on a hypothetical problem and to use the Web to research the issue and answer a few questions. After 10-15 minutes of student work on the problem, the instructor, using the research methodology as a framework, asks students what information they found on the research problem and points out areas that need improvement or require more information. The instructor then discusses the overall research methodology and course objectives for the year.¹⁶

Fall 2014 was the fourth time we have used this approach for the first class. We used a new research problem this year involving beach access on private property set in California. The problem implicated state cases, statutes, administrative law, and the California Constitution. Students were allowed to use any free websites they wanted to research the problem. We asked students to answer five prompts:

- 1) What search engine or platform did you use and what were your search terms?
- 2) What source(s) did you use?
- 3) What would be the legal basis for a beach access claim?

4) Is state law and/or federal law implicated?

5) List the primary law authorities relevant to a beach access claim.

The vast majority of students began their research with Google, finding a number of websites that appeared to provide relevant information by searching for some form of the keywords beach and access. Most students found news articles or a website called Beachapedia. This information allowed the instructors to discuss the source of the information the students used and whether they could properly cite to such information. Several students located law review articles using Google Scholar and a number of students found the website of the California Coastal Commission, the relevant agency. Students identified legal terms such as easement, trespass, and adverse possession, and some were even able to identify the California Coastal Act as primary law. But many others only said cases or statutes without specifying which cases or statutes, let alone how to properly cite authorities. A few students focused on the wrong state jurisdiction, Oregon. Overall, the search results were fairly messy with students able to locate some information, but not sure how to use the information, whether the information was correct, or how to apply the information to the hypothetical client.

Our approach to the first legal research class has evolved due to the lessons we have learned each year. Over the years, we have had issues with the research problem being too easy or too difficult, not enough or too much time to complete all planned class activities, and varying levels of student interaction and participation during the class session.

Research Problem Difficulty

We started the shock and awe approach during the fall of 2011 using a hypothetical problem involving disability discrimination in hiring based on a perceived disability set in Los Angeles. The hypothetical implicated statutory, administrative, and case law, as well as federal and state law. Students were instructed to use any research methods they wanted and were asked to answer three questions. Most of the legal research instructors were pleased with this new approach. Students did struggle to find

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¹⁶ Before students attend their first legal research class, they are required to read the first two chapters of our in-house Legal Research Course Reader covering the legal system, the nature of legal authority, and case publication.

information, and instructors did have an opportunity to illuminate legal research issues for them.

We did note some issues with the new class design, however. About half of the instructors were uncomfortable with the chaotic, unstructured nature of reviewing the problem with the class, partly due to the complexity of the research scenario. We tried to anticipate what the students would search for and find, but it is impossible to account for all possible scenarios when leaving the research entirely up to new legal researchers. Some instructors also thought a pure California case law hypothetical would be better for our students because we focus on case law in the fall (statutes and administrative law are not taught until the spring). Furthermore, our research project, assigned about the fifth week of class, is usually a common-law tort with well-defined elements. Students have to select one element to research. So, it was thought that we should use a hypothetical that involved a cause of action with distinctive elements.

The following year, in the fall of 2012, we switched to a case law hypothetical on palimony set in California. We again gave students the problem at the beginning of class and allowed them time to work on it. Many of the instructors felt that this problem worked well. Some students were able to find the seminal case on palimony in California, but the majority of students found basic and conflicting information. For example, one instructor had two students rely on firm websites. One of the firm websites said that common-law marriage did not exist in California, while the other firm website said that it did (California does not, in fact, have common-law marriage). Still, we had some concerns that the hypothetical was not as sophisticated as the previous year's problem since it only covered California case law. It did not demonstrate the messiness of the original research problem, leaving students feeling fairly confident in their research skills.

We kept the same problem the following year, but this fall we decided to use the more sophisticated California beach access problem that implicates more than just case law and we do not plan to make any changes for next year. After a few years of experimenting, we have learned to make the

research problem difficult and sophisticated: show students that legal research can be messy and layered, but keep the hypothetical short to cut down on reading time so the students can immediately jump into the research.

Classroom Time Management

The first year we used the shock and awe approach, the timing of the overall class was a major issue. Instructors had difficulty fitting a course introduction, 10-15 minute research problem, 10-minute discussion of what students found, and lecture on the research methodology into one class. Many had to cut students off during the research portion at the beginning of the class in order to fit in a discussion and the entire lecture portion. In 2012, we continued to have time issues with students unable to answer all the questions for the in-class problem during the allotted time.

As a potential solution to alleviate the time crunch, the next year we moved the students' work on the research problem to a pre-class exercise/assignment. This allowed the students to try their hands at research, but gave the instructors more time to focus on in-class discussion of what the students had found. Students were instructed to use any research method they would like, but to not spend more than 45 minutes on the palimony hypothetical. Alas, the students ended up being too prepared. Most students found relevant information and the seminal case, and a number were also able to identify the claim as one of implied contract. Students found good information, leaving the instructor with little to talk about. Many of the instructors had too much class time and either ended early or showed Lexis and Westlaw® to kill time. This did not allow us to demonstrate the gaps in the students' knowledge and they were no longer learning through failure.

The direction was obvious for this year. We moved the student research portion of the exercise back inside of the classroom. Coupled with a return to a more sophisticated research problem, however, we knew we had to devote extra attention to anticipating the students' research results and preparing talking points to keep the class time

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running efficiently. The instructors all acknowledge that you cannot script every moment of a class like this, yet we have learned to test the hypothetical on similar students whenever possible to learn how the scenario may unfold in class. The first year we took this approach, we tested the problem out on a few undergraduate library employees, which was invaluable in predicting what type of answers our 1Ls might find and in discovering any problems with the wording of the research problem.

Level of Student Interaction

The first year we experimented with this class session, it was not as interactive as it could have been. We felt that the class ground to a halt during the lecture portion and that we needed to do a better job integrating the discussion of what students found during their research with the research methodology. For example, one of the instructors noted that when a student told her he searched the All Federal Cases database on Westlaw, she told the class that the student may have racked up an expensive research bill. She also used her discussion of the structure of law and primary authority to highlight the three branches of government. When one student said he used an Aspen treatise and another said he used a FindLaw® article, she discussed secondary sources and the authoritativeness of sources. This instructor incorporated this discussion on her own; it was not originally in the lecture.

Over the years, we have learned to integrate more of these connections between the students' results and the research methodology into the talking points that all instructors share. We do a much better job now linking the review of what students find with the introduction to the research process, which helps to eliminate the timing issues we experienced in the first years. Students seem to be engaged throughout the class, setting a nice tone for the rest of the course. The first class aptly highlights research gaps and demonstrates the recommended research methodology that students will use to enhance their research skills over the year.

Shock and Awe Has Improved Our Course

The law librarians at USC Gould have generally found this legal research experiment to be worthwhile—so much so that we will in all likelihood use the same approach next year. Anecdotal evidence indicates that the shock and awe approach, along with overall improvements in the legal research course design over the last several years, is benefitting student learning.

The graded research projects students submit each semester have shown steady improvement, with the exception of last year, the year we used an easier problem and the students were over-prepared, defeating the purpose of shock and awe.¹⁷ This fall in particular, student preparation also appears to be at an all-time high. We require students to watch three video tutorials during the fall semester and nearly all of my students watched all three, which is at least double the norm. Furthermore, the students are coming to class well-prepared for discussions and exercises. For example, this semester when we incorporated an exercise asking students to correct bad terms and connectors search statements at the start of class based solely on the assigned readings and video, all of the instructors were impressed by how engaged and prepared the students were.

Our course evaluations and student surveys also point to the overall effectiveness of our active learning and problem-solving approach in our legal research course. While no student directly references the first legal research class, many do note the usefulness of the in-class work. One student said, "I appreciated the number of times we got to practice searching for cases in class and in the homework." In our 2013 survey of returning 2Ls and 3Ls, 93 percent felt very well prepared or prepared for their summer jobs. A student said on the survey, "In all of my reviews I received the highest marks for efficient researching. I felt extremely well prepared for my summer job." Also, students commonly noted that they felt better-prepared than their peers from

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¹⁷ During the fall semesters of 2011 and 2012, I had average scores in my sections on the research project of 77 percent and 79 percent, respectively. However, the average dropped to 71 percent during fall 2013.

other law schools, which is particularly wonderful feedback since it was unsolicited and volunteered in the open comments section of the survey.

During the fall 2011 semester, USC gave the shock and awe approach a try. It has required tinkering each year to make it better, but we have found it to be a successful strategy for the first legal research class and encourage others to consider adopting the approach.

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Another Perspective

[P]ublishers have curtailed libraries' ability to support research through interlibrary loan and other methods. Publishers have preferred to license, rather than sell, e-journals and e-books. This arrangement has allowed publishers to control the use of scholarly works beyond what copyright law would allow. This increasing control jeopardizes the ability of libraries to support research. In effect, library collections are becoming "locked" as publishers rather than libraries determine access.

D.R. Jones, *Locked Collections: Copyright and the Future of Research Support*, 105 *Law Libr. J.* 425, at 426 (2013).