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Rethinking Research

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LWI Policy Statement on Law Faculty
Adopted March 2015

The Legal Writing Institute is committed to a policy of full citizenship for all law faculty. No justification exists for subordinating one group of law faculty to another based on the nature of the course, the subject matter, or the teaching method. All full-time law faculty should have the opportunity to achieve full citizenship at their institutions, including academic freedom, security of position, and governance rights. Those rights are necessary to ensure that law students and the legal profession benefit from the myriad perspectives and expertise that all faculty bring to the mission of legal education.

Dear LWI members:

As we begin a new academic year, the editorial board of *The Second Draft* has inspired us to think about how we teach students to find law to support analysis and arguments by gathering a collection of articles around the theme: Rethinking Research. These important scholarly pieces provide multiple strategies for reinvigorating the way we think about and teach legal research. From the 2016-18 LWI Board of Directors, thank you to the contributors to and editors of this issue of *The Second Draft*!

The remainder of this column will highlight some of the activities that LWI committees and members have been engaged in over the past year.

New LWI Website

To see this issue as well as archives of *The Second Draft*, please visit the newly redesigned LWI website. There, members have access to other LWI publications, information on legal writing conferences, and a bank of teaching resources. You can also follow @LWIonline on Twitter, Instagram, Periscope, LinkedIn, and Facebook!

Teaching Resources

If you have not yet done so, sign up for a Teaching Bank membership on the new LWI website to obtain access to legal writing problems, grading rubrics, a syllabus bank, and more!

Webinars

In May, LWI committees organized two free live webinars. The Global Legal Writing Skills Committee hosted a program entitled "Teaching Global Skills to International and U.S. Law Students," and the Scholarship Development & Outreach Committee produced "The Scholarship Submission Process." Look out for more webinar programming in the next academic year.

Moot Court Conference

Fifty moot court coaches and appellate advocacy professors gathered in Chicago this April for the Second Biennial Moot Court Advisors Conference. The conference was organized by the Moot Court Committee's co-chairs, Ardath Hamann and Rob Sherwin. The John Marshall Law School sponsored and hosted the event.



Professional Status Committee

The committee's first project was to craft a Full Citizenship Statement that articulates the principle that all full-time law faculty, regardless of the subject matter they teach, should have the opportunity to achieve full citizenship at their institutions. This spring, ALWD and SALT formally supported LWI's efforts to gather individual signatures endorsing the Statement. So far, 570 individuals representing legal writing and casebook faculty have signed onto the Statement.

SALT Adds an LWI Affiliate to its Board of Governors

During its April meeting, the SALT Board of Governors voted to add an LWI Affiliate. SALT and LWI have worked as allies and partners on professional status issues and the affiliate position will enhance the relationship between the two organizations. President-Elect Kristen Tiscione will serve as the first LWI Affiliate.

If you have any questions or comments about LWI programs and projects, please feel to contact me or any member of the Board.

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Wine and cheese, Batman and Robin, cookies and milk, legal research and writing. These pairs belong together, and for good reason: they complement one another. You could have wine without cheese, but the right cheese brings out the subtleties of a wine's character. Batman without Robin is one superhero shy of a dynamic duo. Milk without cookies . . . why bother? And legal writing without legal research? What in the world would we write about?

I teach legal writing, and my wonderful colleague Amelia Landenberger teaches legal research, and we couldn't do our jobs without each other. That's not to say the model our school follows—writing professors teach writing and librarian professors teach research using common major assignments—is the only or best way to go. As you'll see from the articles that follow, law schools and professors have been innovative in how they approach teaching these important subjects. What doesn't work, however, is teaching one without acknowledging the importance of the other.



In this issue of *The Second Draft*, we are not just tipping our hats to our colleagues who teach legal research. Rather, we are recognizing how crucial a mastery of legal research is to a mastery of legal writing, and sharing insights into how to teach both more effectively. We are fortunate to work in a field where close collaboration with colleagues is so common, because it enriches everyone, professors and students alike. As another wonderful legal research colleague, Franklin Runge, has said, "We can all learn a lot from one another. There is a lot of talent in the building. Watch and learn."

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Emphasizing the “R” in LRW: Customizing Instruction for Real-World Practices



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Legal writing faculty often use the acronym “LRW” to describe what they teach. The “R” means that “research” is an important part of what we do, and recent surveys reinforce the point:

- New lawyers spend 1/4 to 1/3 of their working hours doing research.¹
- Nearly half of new law firm associates think legal research should be a larger part of the law school curriculum.²
- New lawyers’ research skills were rated “highly important” by 86% of law firm supervising attorneys.³

Most law students are taught legal research primarily by legal writing faculty alone or jointly by legal writing faculty and librarians.⁴ Law students report that the most important factor shaping their legal research skills is their law school legal research and writing course—not employment in a legal setting, not a law school clinic, not participation in law review, and not library services.⁵ But innovation in “R” instruction has not kept pace with innovation in “W” instruction. If we look to the realities of the modern legal practice, LRW

faculty can reinvent research instruction, just as we have reinvented writing instruction.

I. THE “R” HASN’T KEPT PACE WITH THE “W” IN THE LRW CLASSROOM

There is a belief in some quarters of the academy that law schools’ commendable focus on legal writing has been at the expense of its legal research instruction.⁶ Law school faculty in general value research skills less highly than do LRW faculty and practitioners. A study by BAR/BRI found that law school “[f]aculty placed very little importance on research, with just 4 percent citing it as the most important skill for recent law school graduates. In contrast, 18 percent of attorneys named research the most important skill a new lawyer should possess.”⁷ Surveys of law students indicate that they believe their writing skills are stronger than their research skills. In one survey among summer associates, half of the respondents reported that they were not fully prepared to handle their workplace research assignments and that they were better prepared for writing assignments than research assignments.⁸

One commentator concluded that “legal research education is sacrificed at the altar of a more vigorous writing curriculum” and “writing and other skills development are the focus of the [LRW] class, with research as the orphan child.”⁹ Certainly there are

many variations in how legal research is taught, for example, as a standalone course or part of a legal writing course.¹⁰ And there are many variations in how the research component is graded, for example, as a fraction of an entire grade for a LRW course, as a pass/fail component, or as a separate grade.¹¹ Nevertheless, “[r]esearch is most frequently buried in a writing or general skills class that is already crowded for time and must teach a multiplicity of basic skills.”¹²

II. ADAPTING THE RESEARCH CURRICULUM TO KEEP PACE WITH MODERN PRACTICE

If our “R” instruction has not kept pace with our “W” instruction, what do we do about it? LRW faculty are well-positioned to tackle the question. LRW faculty have changed the writing curriculum to respond to the needs of students and changes in the practice of law. Over the last several years, LRW faculty have studied the written and oral communication young lawyers are asked to produce, and the legal writing curriculum has consequently improved. At one time, most law schools taught students to write formal office memos in the

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fall semester and to write appellate briefs and to make oral arguments in the spring semester.¹³ Some years ago LRW faculty began to question whether that model reflected the realities of modern legal practice.¹⁴ As a result of that inquiry, LRW faculty have incorporated more writing assignments and a greater variety of skills assignments—from email memos and client letters to oral reports and trial briefs.¹⁵ Assignments that were unusual ten years ago are commonplace now.

LRW faculty have used other insights from the young lawyer’s work life to improve the curriculum. Knowing that young lawyers often work in teams, many LRW

faculty use team-based projects in class,¹⁶ and knowing that future employers have high expectations for professionalism, many LRW faculty incorporate professionalism into the curriculum and grading.¹⁷

If LRW faculty focused on the research curriculum the same way—by asking, “What research tasks are assigned to law students and young lawyers?” and designing a research curriculum based on what they found—what kind of changes might we see? Several entities have already undertaken surveys and studies addressing the first part of the analysis—i.e., what research tasks are assigned to young lawyers—including the ABA,¹⁸ the National Conference of Bar Examiners,¹⁹ LexisNexis,²⁰ the American Association of Law Librarians (AALL),²¹ and individual law librarians.²² Based on some of their findings, here are three ways LRW faculty might modify the “R” in the curriculum.

A. We might teach with the small law firm in mind

Nationally, half of all law grads take jobs in private practice, and half of those take jobs with firms of 25 or fewer attorneys.²³ In fact, more law school grads start their careers in small firms of 10 or fewer attorneys than start in firms with more than 100 attorneys.²⁴ Knowing that many of our students will work at small law firms could affect what we teach. In general, small law firms are less likely to have a law librarian on staff, less likely to have a law library on site, less likely to have a large online research portal, and less likely to offer formal research training.²⁵ In contrast, small law firms may be more likely to rely on low-cost Lexis or Westlaw plans and free resources.²⁶ Yet surveys of attorney research behavior tend to focus on attorneys in the largest law firms,²⁷ so our understanding of small firm research practices is incomplete.²⁸ We should find out what kind of research is typically assigned to our recent graduates who work in small firms (as compared to large firms) and what research resources are available to them, and then tailor our research curriculum accordingly.

B. We might teach Casemaker, Fastcase, or (gasp!) advanced Googling

One study found that new lawyers spend approximately 30% of their research time using online free and low-cost resources.²⁹ Casemaker and Fastcase are free to state bar members in participating states,³⁰ and nearly half the attorneys in the US practice in states that

offer them.³¹ Although Casemaker and Fastcase lack some features of Lexis and Westlaw, they continue to improve and are solid, low-cost alternatives that work for many attorneys. Yet, according to the 2013 ALWD/LWI survey, only 15% of law schools taught Fastcase and 13% taught Casemaker.³²

Lawyers also use Google to research—a lot. Nearly half of attorneys report that they start their research with free resources³³, and one-third of those start with Google as their primary free resource.³⁴ It's not because they don't have access to Westlaw or Lexis, or because they don't know how to use them; it's because they believe that Google offers them something of value that the paid-for services do not. On this basis, some have argued that law schools should be teaching law students advanced Google techniques.³⁵ For example, Google has an "advanced search" template that allows researchers to omit certain words, limit searches to particular domains, search for specific document formats, and otherwise customize their searches.³⁶ Using these techniques can make Google research significantly more efficient.

C. We might not teach Bloomberg Law

An ABA survey shows that among the paid-for legal research databases—Westlaw, Lexis, and Bloomberg—Westlaw products are used most heavily, followed by Lexis products.³⁷ Bloomberg Law was barely a blip on the screen.³⁸

ABA TECHREPORT 2013 SURVEY

FEE-BASED ONLINE SERVICE	USED MOST OFTEN BY PRACTITIONERS
WestlawNext	28.1%
Westlaw	25.7%
Lexis	24.1%
Lexis Advance	5.2%
Bloomberg Law	0.7%

Other research confirms that Bloomberg Law has not yet made a big dent in the legal market: a 2013 survey by the AALL found that only 2% of attorneys were using Bloomberg Law.³⁹

Contrast this with what law schools are teaching. The 2013 ALWD/LWI survey asked law schools what online resources they were teaching their students. I was surprised to see that 61% of law schools teach

students to use Bloomberg Law.⁴⁰ This is more than twice as many schools as teach Fastcase or Casemaker.⁴¹

2013 ALWD/LWI SURVEY

FEE-BASED ONLINE SERVICE	PERCENT OF SCHOOLS TEACHING
Westlaw Next	88%
Lexis Advance	85%
Westlaw Classic	80%
Lexis	77%
Bloomberg Law	61%

This is striking when we realize that only a small fraction of lawyers use Bloomberg Law. This phenomenon is likely due to financial incentives that Bloomberg offers to law schools.⁴² Bloomberg Law offers a terrific product, but if we want to teach law students the resources they can use on the job, we could reasonably exclude Bloomberg Law from a curriculum "that is already crowded for time and must teach a multiplicity of basic skills."⁴³

III. CUSTOMIZING YOUR "R" INSTRUCTION

Ultimately, providing relevant research instruction for our students requires staying abreast of the lawyer's current research practices. There are a couple key steps that legal writing faculty can take:

- **Talk to practitioners.** They can inform the way you teach legal research, and they are usually delighted to be consulted. What kind of research do your summer associates and alumni do? What are common research practices and resources? What research skills do your alumni wish they had learned in law school? You'll find useful models in the work already done by some LRW faculty and law school librarians.⁴⁴
- **Talk to law librarians.** Law librarians have done impressive work in understanding lawyers' research practices.⁴⁵ If librarians design the research curriculum at your school, talk with them about what they're teaching and why. Even if legal writing faculty take the lead in designing the research curriculum at your school, the law

librarians likely have valuable insights about the resources that are available, who is using them, and the pros and cons of each.

By focusing on the “R” in LRW and by applying the same creativity and innovation that legal writing faculty have brought to bear in other areas of legal writing instruction, we can customize our teaching plan to best meet the research needs of our students and the clients they will one day serve.

NOTES

1. Joshua Poje, *Legal Research*, in ABA TECHREPORT 2014, at 1 (ABA Legal Technology Research Center ed. 2014), <http://www.americanbar.org/publications/techreport/2014/legal-research.html> (lawyers with fewer than ten years in practice spend 28% of their time researching); STEVEN A. LASTRES, REBOOTING LEGAL RESEARCH IN A DIGITAL AGE 3 (2013) https://www.lexisnexis.com/documents/pdf/20130806061418_large.pdf (new lawyers spend more than 30% of their time doing legal research).
2. LASTRES, *supra* note 1, at 6.
3. LEXISNEXIS, HIRING PARTNERS REVEAL NEW ATTORNEY READINESS FOR REAL WORLD PRACTICE 3 (2015), https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf [hereinafter LEXIS HIRING PARTNER SURVEY].
4. ASS'N OF LEGAL WRITING DIRECTORS & LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 11 (2015), <http://www.alwd.org/wp-content/uploads/2017/03/2015-survey.pdf> [hereinafter ALWD/LWI 2015 SURVEY] (when asked who teaches legal research, 45% selected “Both LRW faculty and librarians,” 38% selected “LRW faculty,” and 29% selected “Librarians”).
5. Michelle M. Wu & Leslie A. Lee, *An Empirical Study on the Research and Critical Evaluation Skills of Law Students*, 31 LEGAL REFERENCE SERVICES Q. 205, 219 (2012) (when upper level law students were asked, “If you had to choose the MOST important positive factor in shaping your legal research skills, what would it be?” 40% chose “Legal research and writing course,” followed by “Employment in a legal setting” at 26%).
6. Barbara Glesner Fines, *Out of the Shadows: What Legal Research Instruction Reveals About Incorporating Skills Throughout the Curriculum*, 2013 J. DISP. RESOL. 159, 161 (2013).
7. BARBRI, STATE OF THE LEGAL FIELD SURVEY 5 (2015), http://www.thebarbri-group.com/files/white-papers/220173_bar_research-summary_1502_v09.pdf.
8. LEXISNEXIS, SUMMER ASSOCIATES IDENTIFY WRITING AND LEGAL RESEARCH SKILLS REQUIRED ON THE JOB 2 (2016), http://www.lexisnexis.com/documents/pdf/20161109032544_large.pdf.
9. Caroline L. Osborne, *The State of Legal Research Education: A Survey of First-Year Legal Research Programs, or “Why Johnny and Jane Cannot Research,”* 108 LAW LIBR. J. 403, 404, 409 (2016) (survey of 200 law schools on how they teach legal research).
10. *Id.* at 408-09.
11. *Id.* at 409-10.
12. *Id.* at 409.
13. Kristin B. Gerdy, *Continuing Development: A Snapshot of Legal Research and Writing Programs Through the Lens of the 2002 LWI and ALWD Survey*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 227, 240 (2003) (“The most common writing assignments in legal research and writing programs are office memoranda (150), appellate briefs (126), pretrial briefs (76), and client letters (70).”).
14. *See, e.g.*, Kristen Konrad Robbins-Tiscione, *From Snail Mail to E-Mail: The Traditional Legal Memorandum in the Twenty-First Century*, 58 J. LEGAL EDUC. 32, 32-33 (2008) (finding that traditional legal memorandum has become nearly obsolete, in favor of substantive email as preferred method for communicating with clients); Ellie Margolis, *Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century*, 12 LEGAL COMM. & RHETORIC: JALWD 1, 28 (2015).
15. ALWD/LWI 2015 SURVEY, *supra* note 4, at 13 (revealing steady increase over the last five years in number of schools assigning email memos, client letters, oral report to senior partner, and trial motions).
16. *See generally* Anne E. Mullins, *Team-Based Learning: Innovative Pedagogy in Legal Writing*, 49 U.S.F. L. REV. FORUM 53 (2015); Melissa H. Weresh, *Uncommon Results: The Power of Team-Based Learning in the Legal Writing Classroom*, 19 LEGAL WRITING: J. LEGAL WRITING INST. 49 (2014).
17. *See generally* JoAnne Sweeny, *Teaching Professionalism and How to “Act*

- Professionally” by Coordinating Legal Writing with Professional Development, 29 THE SECOND DRAFT 20 (Fall 2016); Kristen E. Murray, *Legal Writing Missteps: Ethics and Professionalism in the First-Year Legal Research and Writing Classroom*, 20 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 134 (Winter/Spring 2012); Sophie Sparrow, *Practicing Civility in the Legal Writing Course: Helping Law Students Learn Professionalism*, 13 J. LEGAL WRITING INST. 113 (2007).
18. See, e.g., Poje, *supra* note 1; Carole A. Levitt & Mark E. Rosch, *Finding the Right Case: Online Legal Research 2013*, in ABA TECHREPORT 2013 (ABA Legal Technology Research Center ed. 2013), http://www.americanbar.org/publications/techreport/2013/finding_the_right_case_online_legal_research_in_2013.html.
19. SUSAN CASE, SUMMARY OF THE NATIONAL CONFERENCE OF BAR EXAMINERS JOB ANALYSIS SURVEY RESULTS (2013), <http://www.ncbex.org/pdfviewer/?-file=%2Fdmtdocument%2F55> (analyzing job activities of newly licensed lawyers).
20. LASTRES, *supra* note 1; LEXIS HIRING PARTNER SURVEY, *supra* note 3.
21. ACADEMIC LAW LIBRARY SPECIAL INTEREST SECTION (ALL-SIS) OF THE AMERICAN ASSOCIATION OF LAW LIBRARIES (AALL), A STUDY OF ATTORNEYS’ LEGAL RESEARCH PRACTICES AND OPINIONS OF NEW ASSOCIATES’ RESEARCH SKILLS (2013) <http://www.aallnet.org/sections/all/storage/committees/practicetf/final-report-07102013.pdf> [hereinafter AALL SURVEY OF RESEARCH PRACTICES].
22. See, e.g. Osborne, *supra* note 9; Patrick Meyer, *Law Firm Legal Research Requirement and the Legal Academy Beyond Carnegie*, 35 WHITTIER L. REV. 419 (2014); Joseph D. Lawson, *What About the Majority? Considering the Legal Research Practices of Solo and Small Firm Attorneys*, 106 LAW LIBR. J. 377, 378 (2014).
23. NATIONAL ASSOCIATION FOR LAW PLACEMENT, CLASS OF 2015 NATIONAL SUMMARY REPORT 1, <http://www.nalpl.org/uploads/NatlSummaryClassof2015.pdf> (noting that 51% of employed graduates obtained jobs in private practice, and jobs in smallest firms of 1-10 lawyers accounted for nearly 40% of those).
24. *Id.*
25. LASTRES, *supra* note 1, at 2.
26. See, e.g., Lawson, *supra* note 22, at 387 (“Small firms are not well positioned to pay the high costs of traditional legal database subscriptions”); Olufunmilayo B. Arewa, *Open Access in A Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 LEWIS & CLARK L. REV. 797, 831 (2006) (“Lexis and Westlaw both have modified versions of their databases that are priced for the small firm and solo practitioners market.”).
27. See Lawson, *supra* note 22, at 378 (“Underrepresentation of solo and small firm practitioners is also a trend in law librarian studies of attorney research practices.”); Laura K. Justiss, *A Survey of Electronic Research Alternatives to Lexisnexis and Westlaw in Law Firms*, 103 LAW LIBR. J. 71, 84 (2011) (noting, in survey of law librarians, that “because the survey sample was heavily weighted toward large law firms, the results are probably more relevant to firms of 125 or more attorneys than to small-to-medium-sized firms”) (emphasis added); David L. Armond & Shawn G. Nevers, *The Practitioners’ Council: Connecting Legal Research Instruction and Current Legal Research Practice*, 103 LAW LIBR. J. 575, 581 (2011) (describing a survey of law firm librarians in which only five of 162 respondents worked for a firm with fewer than 25 attorneys); Sanford N. Greenberg, *Legal Research Training: Preparing Students for a Rapidly Changing Research Environment*, 13 LEGAL WRITING: J. LEGAL WRITING INST. 241, 244 (2007) (population sample for survey intended to assess transition from print to electronic sources included only 9.8% solo practitioners but 30.9% from settings with more than 100 attorneys).
28. See Armond & Nevers, *supra* note 27, at 581 (noting “a gap in understanding current legal practice for [law schools] whose students get jobs with small firms”); Lawson, *supra* note 22, at 378 (“[T]here is a very real danger of neglecting the interests of a majority of attorneys when policy and curriculum decisions are made based on studies that fail to consider solo and small firm practitioners.”).
29. LASTRES, *supra* note 1, at 3.
30. CASEMAKER, BAR ASSOCIATION CONSORTIUM, <http://www.casemakerlegal.com/ProductsStateBarConsortium.aspx>; FASTCASE, BAR ASSOCIATION SUBSCRIBERS, <https://www.fastcase.com/barmembers/>.
31. Levitt & Rosch, *supra* note 18, at 7.
32. ASS’N OF LEGAL WRITING DIRECTORS & LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 99 (2013), <http://www.alwd.org/wp-content/uploads/2013/08/2013-Survey-Report-final.pdf> [hereinafter ALWD/LWI SURVEY 2013].
33. In a survey among law firm associates, 52% of associates reported that when researching in an unfamiliar area of law, they usually began with a free web search. LASTRES, *supra* note 1, at 4. Similarly, 45% reported that when researching case law, they usually began with a free web search. *Id.* at 5.
34. Levitt & Rosch, *supra* note 18, at 5-6 (when lawyers in survey were asked which free web site they use most often for legal research, Google was the most frequently selected source, at 36%).
35. See, e.g., Patrick Meyer, *The Google Effect, Multitasking, and Lost Linearity: What We Should Do*, 42 OHIO N.U. L. REV. 705, 737 (2016).
36. GOOGLE ADVANCED SEARCH, https://www.google.com/advanced_search?hl=en&fg=1.
37. Levitt & Rosch, *supra* note 18, at 8.
38. *Id.*; see also Justiss, *supra* note 27, at 75-76 (finding that 15% of law firms surveyed had a Bloomberg Law account, but acknowledging that survey skewed heavily toward the largest law firms).
39. AALL SURVEY OF RESEARCH PRACTICES, *supra* note 21, at 72.
40. ALWD/LWI SURVEY 2013, *supra* note 32, at 99.
41. Only 28% of schools teach Fastcase or Casemaker. *Id.*
42. See Tamara Herrera, *The Newest Legal Research Game Changer: Bloomberg Law*, 21 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 7, 7 (2012) (“For legal research teachers, Bloomberg Law requires in its contract that law schools offer the same instructional opportunities for Bloomberg Law as the schools offer to Westlaw and Lexis.”); see also Taryn Marks, *John West and the Future of Subscription Legal Databases*, 107 LAW LIBR. J. 377, 389 n. 104 (2015) (“Some would argue that Bloomberg Law has yet to earn a place with Westlaw and LexisNexis, but . . . its continuing provision of all content to law school subscribers at a steep discount make it a significant player.”); *id.* at 395 (“Bloomberg also offers its database to law schools at a significantly reduced subscription price in an attempt to entice law students to its platform before those students enter the legal world.”)
43. Osborne, *supra* note 9, at 409.
44. See, e.g., Susan C. Wawrose, *What Do Legal Employers Want to See in New Graduates?: Using Focus Groups to Find Out*, 39 OHIO N.U. L. REV. 505 (2013); Sheila F. Miller, *Are We Teaching What They Will Use? Surveying Alumni to Assess Whether Skills Teaching Aligns with Alumni Practice*, 32 MISS. C. L. REV. 419 (2014); Armond & Nevers, *supra* note 27, at 577.
45. See *supra* notes 22, 27.

Collaborative Relationships Between Law Librarians and Legal Writing Faculty¹



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How would you characterize the professional relationship between law librarians and legal writing faculty in your law school? Satisfying? Productive? Fraught? Nonexistent? Given law schools' great demands on these groups' time and talents and the ABA's increased emphasis on experiential skills, law librarians and legal writing faculty should strive to develop a meaningful dialog. In this way, each group will better understand what the other can provide in terms of expertise, and the two groups can develop a mutually beneficial work dynamic.

As law librarians, we are fortunate to work in a law school—Moritz College of Law at The Ohio State University—with legal writing faculty colleagues who welcome collaboration. Most of the reference librarians teach one section of the required 1L legal writing curriculum in students' first semester of law school.² In other words, we do not solely teach legal research in a legal writing professor's legal writing class; we are legal research and writing professors.

Because our law library director knows that she and at least two other law librarians are committed to teach a section of legal writing each fall, the law library hires

law librarians with both juris doctorates and master's degrees in library science and with both practice and teaching experience. We meet regularly with our legal writing faculty counterparts to discuss exercises, challenges with students, conference approaches, and other matters related to first-year legal writing instruction. For administrative purposes, we are adjuncts. For the good of our students, we are legal research and writing professionals. This article stems in part from our legal writing teaching experience in this context.

Legal research and writing programs are often composed of librarians and professors with a range of employment experience. More experienced members of the professions literally wrote the books that shaped modern legal research and writing pedagogy. Those who have joined the fields more recently come with new perspectives and no institutional knowledge of workplace politics (e.g., issues of status and equal pay, historical personality conflicts among colleagues) to color their perceptions. Though we represent different training, diverse teaching approaches, and experiences in law schools that may or may not recognize our expertise and hard work—law librarians and legal writing faculty can work together to teach legal research, analysis, and writing in a way that improves student learning and is personally and professionally rewarding.

Modern law librarians are expected to do much more than staff the reference desk and answer faculty requests; in particular, they are asked to fill a variety of roles in legal research and writing programs. There

is a spectrum in divisions of labor and degrees of collaboration among law librarians and legal writing professors—groups an outsider might assume would naturally need to coordinate.³ Depending on the law school, some law librarians teach term-long, standalone, 1L research courses; some teach a few weeks or a couple of class sessions within a legal writing class (with varying degrees of coordination with the legal writing professor); and some (admittedly outliers) teach their own section of legal writing. At times law librarians are guest speakers for legal writing professors; consultants at the reference desk for students' legal writing questions; classroom instructors who introduce legal research, translate the vendor representatives' sales pitches, or provide research refreshers in the second half of the year; or all of the above.

Legal writing faculty members face similarly diverse demands on their skills and time, in part because of the increased demand for experiential learning, and in recent years, they have increased responsibilities in the law school community and opportunities for service to the law school and their profession. For example, legal writing faculty are often expected or encouraged to produce scholarship (regardless of whether they are tenure-eligible), teach courses other than legal writing (e.g., negotiation, pre-trial litigation, casebook courses), serve on law school committees, and assist in moot court and academic support roles.⁴

Both groups face increasing work commitments than perhaps was the case in years past, and they are often expected to be more credentialed than has historically been the case. For example, law library directors (the culminating position for many reference librarians) have more years of practice experience now than thirty years ago.⁵ Thus, it is no wonder an informal survey of recent postings for academic reference librarian positions indicate a preference for applicants with a Juris Doctor, a Master in Library and Information Science, and practice experience to be considered for entry-level positions. Teaching experience is also more regularly sought after in job descriptions than it was for law librarians even a decade ago.⁶ This is a relatively new development in a profession where the master's degree was once the only required level of education.

Ultimately, law librarians and legal writing faculty share many aims and have an opportunity to make these working relationships mutually beneficial and

rewarding. We recognize that, depending on the law school, members of the two groups may have specific complaints about each other, that may in fact be reasonable under the circumstances. Tension over differing teaching approaches, limited time to share in the classroom, and struggles for status and recognition likely top the list. These can be legitimate frustrations, but we suggest that building meaningful working relationships and respect outside the classroom can lead to better collaboration in the classroom, both in terms of improvements in student learning and efficient use of time.

So, how can law librarians and legal writing faculty develop stronger relationships? If nothing else, we can all find inspiration in our law schools' mission statements and the learning of our students. The ABA's increased emphasis on the value of how we work with students—teaching practice-critical skills—can be another point around which to rally. Law librarians in particular might consider how the mission of the library forwards the mission of the law school and supports the goals and objectives of the curriculum. Articulating the institutional relationship between the law library and legal writing program will establish common ground, a useful starting point.

With this broad philosophical backdrop in mind, we propose a few concrete solutions for building collaborative relationships between law libraries and legal writing faculty. Given our positions as law librarians, some of these suggestions focus on efforts law librarians can make, but legal writing faculty will also benefit from these recommendations.

DEVELOP A HEALTHY RESPECT FOR YOUR COLLEAGUES' EXPERTISE

Law librarians and legal writing faculty each have distinct, if sometimes overlapping, areas of expertise. While legal writing faculty often teach and write about research, law librarians are more centrally research practitioners and, as a result, professionally keep up to date on research practices and tools perhaps at a greater depth than legal writing faculty. Similarly, while law librarians often think deeply about how research impacts legal analysis and arguments, legal writing faculty focus more directly on writing skills and keeping up to date on new ways to think about persuasion, for example. Each population can benefit greatly from the knowledge base of the other.

Because collaboration often takes place in the classroom context, we begin with teaching. Both law librarians and legal writing faculty value identifying and furthering specific learning goals for their students. Law librarians who are invited to teach in a legal writing course or who are pursuing an invitation should talk with the legal writing professor about the professor's course objectives and pedagogical goals. Through active listening, the law librarian could offer suggestions on ways his or her proposed content and approach will complement or further those goals. Rather than arriving to teach the class session with presumptions about what research skills the students need to master, the law librarian should think *with* the legal writing faculty member in advance, engaging in collaborative dialogue about how he or she can add to the objectives already in place. The result brings librarian expertise to bear in a way that forwards the goals of a specific class.

In a similar vein, librarians sometimes receive assignments like "talk to my students about secondary sources." Librarians should resist proposing this kind of broad topic or simply accepting this type of blanket request. Legal writing faculty could offer details about where the activity falls in the semester, what students will be expected to do or know after the research session, and what kinds of research experiences the students have already encountered. To the extent the legal writing faculty member does not provide this information at the outset, law librarians can request these details so that what they present better meets the professor's expectations. The resulting class session will be much better tailored to the students' backgrounds and needs.

Opportunities for respectful collaboration extend beyond classroom instruction. For example, law libraries can support legal writing programs by developing a study aid collection that includes research and writing books and displaying it prominently in the library. At our law school, the library has coordinated with legal writing faculty to maintain a strong research and writing collection housed in the reserve room, bringing legal writing faculty expertise to bear on the collection. The library also consults with legal writing faculty regarding cancellations of items like reporters to see whether they are being used for teaching purposes. This collaboration ensures that our collection meets the needs of the faculty and students.

Moritz law librarians also benefit from legal writing faculty expertise when hiring student research

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assistants. During the hiring process, we consistently ask students for references from their legal writing faculty. Talking with legal writing faculty in this context allows the library to showcase some of its projects while consulting with the legal writing faculty on their experiences with particular students. The library also benefits by hiring students it knows have strong research skills, intellectual curiosity, and a growth mindset—essential skills for many library projects.

BUILD AND SHARE YOUR KNOWLEDGE

Law librarians and legal writing faculty each have expertise in their fields, terms of art relevant to those fields, and bodies of literature reflecting this expertise and language. Each group can benefit from becoming versed in the professional realm of the other to overcome misperceptions that may exist (e.g., law librarians believing legal writing faculty are mistakenly content to rely on vendor representatives to teach legal research, legal writing faculty believing law librarians without JDs have little to offer in the classroom). Legal writing faculty can read *Law Library Journal* or *Legal Reference Services Quarterly* to get a sense of the scholarly work written by law librarians. Law librarians can read *Legal Communication & Rhetoric: JALWD*, *Legal Writing: The Journal of the Legal Writing Institute*, and *The Second Draft* (or even legal writing textbooks) to familiarize themselves with legal writing pedagogy and paradigms. Law librarians who understand instructional frameworks like CRExAC, CRRACC, and TREAT can better craft research instruction that fits within the legal writing faculty member's curriculum. Legal writing faculty who appreciate the differences between

bibliographic instruction and information literacy may have greater insight into how librarians can help law students find case law but, more significantly, learn a slate of research strategies that will serve them beyond first-year legal writing memos.

Reading each other's work can also build empathy. Both groups are often viewed as "the other" in relation to more traditional tenure-track faculty, yet both are often expected to teach required courses regularly at less than the pay rate of traditional tenure-track faculty. Each is often expected to pitch in for extra collegiate responsibilities supporting students at every turn with moot court, job searches, and extracurricular associations, yet both often have limited or no participation in faculty governance. This may not be true for both groups in all law schools, but working relationships among the groups can nonetheless be improved when each is aware of the professional struggles the other faces. Though perhaps a frank conversation among the groups is in order, learning about those struggles via each group's literature is an easy first step.

Both groups have expert writers, and once again, publishing is another path toward a collaborative relationship. Law librarians seeking an audience outside the profession should consider publishing in *Perspectives*, where their work will be read by legal writing faculty and law librarians alike. Additionally, members of each group might consider collaborating on an article for publication anywhere, even a law review.⁷ The article can be simple and focused on an assignment the law librarian and legal writing faculty member created together, or it can be something more complex addressing any shared interest.

To this end, a shared understanding of each group member's relative position is helpful. Some law librarians have opportunities for promotion within the main library system (even if they do not have advancement opportunities in the law school), so writing and publishing may be rewarded. On the other hand, a law librarian may have no incentive to write or publish, or in fact may have to do so on his or her own time. Legal writing faculty may face similar challenges or incentives to publish. Consequently, having a basic working knowledge of your colleagues' professional obligations and commitments can develop your sensitivity to their position to ensure you are not asking too much of them or missing opportunities to improve each other's lots.

SHARE YOUR RESOURCES

Law libraries offer many resources—people, services, collections—and as a result have many opportunities to support legal writing faculty and by extension the mission of the law school. Perhaps most directly, law libraries can highlight reference services for legal writing students. Even if law librarians do not teach in a legal writing classroom, law librarians can talk to legal writing faculty about their research assignments and emphasize that students are welcome to ask research questions at the reference desk. As part of this conversation, both group members should specifically discuss what should or should not be conveyed to students so that the law librarian ensures he or she is accomplishing the legal writing professor's goals and maintaining the integrity of the assignment.

Professional conferences offer another way to support and learn from each other's work. Attending legal writing conferences presents opportunities to engage in communication with legal writing faculty, share law librarians' research expertise, and learn about ways to more effectively fold research into the legal writing curriculum. Teaching legal writing is not a prerequisite for law librarians to attend or make a case for funding. As one example among many, Steven R. Probst of Valparaiso attended ALWD in 2015 to describe collaboration with legal writing faculty in developing a skills-driven curriculum.

Similarly, legal writing faculty are welcome to attend and present at the annual American Association of Law Libraries ("AALL") conference (typically held in late July) or one of the many regional conferences (e.g., the Southeastern Chapter of the American Association of Law Libraries, Law Library Association of Greater New York) held each year. Recently, for example, Beau Steenken (Instructional Services Librarian) and Melissa Henke (Associate Professor of Law and Director of Legal Research and Writing) from the University of Kentucky College of Law partnered with Lori Shaw (Associate Dean for Academic Affairs and Professor of Lawyering Skills) and Victoria VanZandt (Professor of Lawyering Skills) at the University of Dayton School of Law to present at the 2016 Ohio Regional Association of Law Libraries ("ORALL") conference on "Assessing Assessment: Using Data from Outcomes-Based Assessment to Build a Better LRW Program." The program offered a blueprint for law librarians and legal writing faculty to work together to achieve student learning goals and meet ABA accreditation standards.

Hosting a smaller conference can bring the conversation closer to home. For example, the Legal Writing Institute (“LWI”) holds one-day workshops every year. In 2015, the Moritz College of Law at The Ohio State University, hosted an LWI workshop, organized by a legal writing faculty member in partnership with a law librarian. Given the co-organizers penchant for working together, they selected the theme “Collaboration In and Out of the Legal Writing Classroom.” Programming featured members from law schools around the region and from professors across the law school community, including casebook faculty, legal writing faculty, and law librarians. In addition to supporting the law librarian’s time and administrative commitment, the library also aided in funding for the workshop. This well-received workshop drew attendance across both communities, successfully forwarding conversations and encouraging cross-pollination.

Finally, law libraries can invite legal writing faculty to use space in innovative ways. For example, one of our legal writing faculty members at the Moritz College of Law planned a writing lab for appellate advocacy students and needed a space dedicated for that purpose. The library opened up and set aside a room specifically for this use, one close to the reference desk so that research help was close at hand. This kind of creative use of space helps the library support the mission of the law school and helps the legal writing faculty test new ideas.

Not every suggestion will work for every law librarian, law library, or legal writing faculty member, but in this difficult time for law schools, collaboration is often required. We hope these suggestions help law libraries and legal writing faculty create rewarding relationships that serve as professional models for our students.

NOTES

1. This article expands on ideas initially presented October 20, 2016, at the Ohio Regional Association of Law Libraries Annual Meeting ORALL, and it is the winning paper for the 2017 AALL (“American Association of Law Libraries”)/LexisNexis Call for Papers Short Form Division. The authors would like to thank our legal writing colleague Anne Ralph for her review and feedback.
2. A full teaching load for our dedicated legal writing faculty members is two sections of 17-to-20 students each.
3. See Association of Legal Writing Directors (“ALWD”)/Legal Writing Institute (“LWI”) LWI Survey Reports, (2004-2015), available at <http://www.alwd.org/surveys/2004-2015-survey-report/>.
4. See ALWD/LWI Survey Report (2015), available at <http://www.alwd.org/surveys/2004-2015-survey-report/>. Law librarians are increasingly invited or expected to participate in these activities too. See Charlotte D. Schneider, *Inclusion and Participation: Law Librarians at Law Faculty Meetings*, 107 LAW LIBR. J. 113 (2015).
5. Michael J. Slinger & Sarah C. Slinger, *The Career Path, Education, and Activities of Academic Law Library Directors Revisited Twenty-Five Years Later*, 107 LAW LIBR. J. 175 (2015).
6. According to the 2015 AALL Biennial Salary Survey, 44.3% of academic law library professionals teach. AALL Biennial Salary Survey 35 (2015). According to the 1999 AALL Biennial Salary Survey, of those in academic law library positions whose title suggests they would be eligible to teach (i.e., library professionals), only 26% did. AALL Biennial Salary Survey 49 (1999) (library assistants/paraprofessionals, library clerks, and computer technicians are typically classified as non-professional positions, and individuals in those roles virtually never teach law students).
7. E.g., Katrina June Lee, Susan Azyndar, & Ingrid Mattson, *A New Era: Integrating Today’s “Next Gen” Research Tools Ravel and Casetext in the Law School Classroom*, 41 RUTGERS COMPUTER & TECH. L.J. 31, 37 (2015); Aliza B. Kaplan & Kathleen Darvil, *Think (and Practice) Like A Lawyer: Legal Research for the New Millennials*, 8 LEGAL COMM. & RHETORIC: JALWD 153, 153-54 (2011); and Genevieve Blake Tung & Ruth Anne Robbins, *Beyond #TheNew10—The Case for a Citizens Currency Advisory Committee*, 69 RUTGERS U L. REV. 195 (2017).

Teaching Legal Research Through an Information Literacy Lens



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The 2016 presidential election brought the term “fake news” into the popular consciousness. Stories began emerging about individuals and groups who had created realistic looking news websites to share false stories via Facebook and other social media sites. These efforts were successful largely because so many people believed the stories to be real and shared them, spreading the fake news far and wide. Until now, people have not been accustomed to evaluating news outlets to see if they are legitimate or not; even for those who try, doing so can be difficult without careful inspection. Recognizing the importance of this issue, universities such as the University of Washington have begun offering courses designed to teach students how to recognize false news and data.¹ However, without constant vigilance, it can be easy to mistake a fake story as real and to disseminate it even further without realizing it.

For lawyers doing legal research, the same pitfalls exist. Legal research is now almost exclusively conducted online. Thus, lawyers must be mindful not only of the content of their legal research but also

the reliability of the online source they are using. Legal information used to be carefully cabined in print sources, making it easy to identify the official versions and easily understand the source (e.g., court, legislature, etc.). In a digital environment, however, those distinctions are not so easy to draw. Thus, while finding information is easier than it has ever been, evaluating it for relevance, usefulness, and reliability has never been more difficult. This poses a significant challenge for those of us teaching legal research to new law students and is especially important as we move through an era where proprietors of fake news are deliberately trying to undermine our ability to distinguish among online sources.

The field of Information Literacy suggests an approach to teaching legal research that addresses some of these challenges. Librarians have made the connection between the idea of Information Literacy and students’ ability to identify “fake news.”² We likewise suggest that this is the direction legal research instruction should be heading.

A. WHAT IS INFORMATION LITERACY?

Information literacy is the ability to “recognize when information is needed and have the ability to locate, evaluate and use effectively the needed information.”³ The concept of information literacy was first identified by academic librarians in response to the growing availability of information through electronic means. Since that time, librarians and academics have developed both instructional approaches and learning outcomes for gathering and using information.⁴ These have been adopted at universities throughout the

country and have gradually made their way into legal academic libraries as well.⁵

Traditionally, information literacy involved five core competencies: students should *know* what information they need; be able to *access* that information efficiently and effectively; *evaluate* the information critically; *use* the information they gathered; and all in a manner that is *ethical/legal*.⁶ For each competency, the standards include performance indicators, providing concrete descriptions of the skills needed to achieve competence.⁷ Each performance indicator contains a set of learning outcomes that provide specific means of assessing whether the student has learned. While all of these standards were designed to apply to higher education generally, not all translate directly to a law school legal research context. Nonetheless, information literacy provides a useful framework to approach the process of legal research, as well as a way to assess whether students have attained the competency they need to move into the practice of law. The principles of information literacy can quite easily be adapted for legal research.

B. LEGAL RESEARCH THROUGH AN INFORMATION LITERACY LENS

In a traditional research curriculum, the goal is to make sure students know how to plan and execute a search—to locate the materials they will need in order to understand and analyze the law. Traditional legal research instruction focuses on a bibliographic approach, identifying how the various publications can be found and explaining how each can be accessed to find the sources within.⁸ Whether searching primary or secondary sources, the method is relatively similar: looking up key terms in an index or table of contents, finding relevant sources, reading them, and seeing if they lead to additional sources. Students learn to conduct statutory research by looking in a key word index to find relevant code sections; they find cases by looking up key terms in the index of a digest and so on.⁹ Because legal information has historically been organized by jurisdiction and source of law, and because this method of research was developed in a world where the library contained as many “finding” tools as actual sources, this type of research instruction focuses on finding materials, presuming that researchers will easily understand what it is they have found.¹⁰

This linear research process allowed the researcher a certain amount of confidence in the reliability and utility of the information found. Because the researcher had to take so many steps before encountering a primary source, the search was more directed, and the results necessarily fell within a certain category—for instance, the New Jersey Reports contains nothing but primary case law from New Jersey. This is similar to what might happen if a person decided a particular news source was credible and sought all news from that one source as a measure of protection against fake news.

However, this confidence has been eroded because the organization of legal information has become largely separated from the print environment in which most legal research curricula developed.¹¹ Modern research is based around a search engine, rather than individual sets of publications. The online research tools are continually changing and evolving as vendors create new research products. Thus, it is time to reframe the goal of legal research instruction in light of the changed reality of legal research. For today’s law students to learn legal research now and for the future, they need to develop the metacognitive skills that will allow them to adapt to changing technology. Teaching research through information literacy can give them those skills.¹²

Finding tools are a thing of the past. Whether on a free platform like Google, or fee-paid services such as Westlaw, Lexis, or one of the many other legal research platforms, the entry point to research is a search box, and the results of the search come from many different sources. The researcher enters terms into a search box, and an algorithm returns results that match those terms. The organization of the legal information accessed by the search is not always readily apparent to the researcher. Thus, while finding materials is no challenge at all, understanding what those materials are can be difficult, especially for novice researchers. The goal of legal research instruction should address this reality.

Students come to law school already well acquainted with the search box and at least the basics of online research. There is very little possibility that they could enter terms into a search box on Lexis and get no results. We do not need to teach them that. What we do need to teach them is how to understand what it is they have found. In other words, we need to increase

students' level of legal information literacy. If we think of this as the goal of the legal research course, it leads to a very different approach to teaching research, focusing less on individual print and electronic research tools and more on evaluating the results of searches, focusing on concepts such as sources of law, hierarchy of authority, and even citation.

C. EVALUATING RESEARCH RESULTS USING INFORMATION LITERACY

Finding legal source material is no longer difficult. In the first week of law school, a student working on a laptop in class can have a research result in hand before the professor has finished defining the research task. The focus must instead be on evaluation of the sources found in light of the needs of the research assignment.

Teaching legal research with a focus on evaluating rather than finding is most effective when research is taught as a process in a problem-based curriculum. Starting with a legal problem to solve, legal research professors can teach students to use information literacy skills to identify controlling legal authority and secondary authority without source-by-source bibliographic instruction. Instead of spending class time explaining various different research services and how they work, the professor can focus on making sure students understand what to look for and how to recognize it when they see it. We recommend giving students the following list of information literacy-based questions and walking through them as a way of teaching research.

- Is it law?
- Is it my law?
- If it's my law, is it useful law?
- If it's not law, or not my law, is it useful in some other way?
- Is it credible?
- Is it permanent?

Using these questions as the framework for teaching legal research gives students both the research and information literacy skills they will need as they move into the practice of law.

1. Is it law?

This opening question invites students to learn about the sources of law and the distinction between primary and secondary authority. Using the context of a client problem, the research professor can start by outlining the structure of the United States legal system and inviting students to think about what kind of law is likely to govern the client situation. State or federal? Case or statute? This then can lead to a discussion of what those things are and how to recognize them as a result of a search. If the client problem involves common law, the professor can focus on cases, how courts make law, what a legal opinion looks like, what its citation will look like, and so on. The professor can devote some time to developing search terms and narrowing results to the type of law the students will be seeking, but the majority of the discussion can focus more broadly on how to recognize what sources are law as opposed to something else. There are a lot of "something elses" it could be, but this is the first of two binary questions that even a novice legal researcher should be able to answer: a legal source is either law, or not.

2. Is it my law?

The second question also poses a binary: the law in hand is either the type of law you need (that is, law from the relevant jurisdiction) or it is not. Through this question, the professor can explore the concepts of jurisdiction and binding versus persuasive authority. Again, using the problem as a jumping off point, the professor can discuss how to recognize when a source constitutes controlling legal authority, regardless of the method used to obtain it. The students will learn that they need to figure out who is making the decision in a case and what kind of authority is binding in that setting. For example, if a problem involves a tort claim in the state of New Jersey, students will learn that they need appellate cases from New Jersey to address their client's concerns. Class discussion can then focus on how to recognize that type of case so when a search is performed, the researcher can hone in on the right kind of information. The "is it my law?" question also allows the professor to teach students about narrowing and filtering by database to identify sources from the relevant jurisdiction.

3. If it's my law, is it useful law?

This is where the inquiries switch from categorization to evaluation. Our hypothetical researcher looking into

New Jersey tort law does not just need to find New Jersey appellate cases—the student needs to find appellate decisions *on the issue in question*. Thus, this information literacy question imports the notion of relevance—how factually similar to my client’s case is this past decision? In a world of *stare decisis*, like facts dictate like outcomes. The researcher needs to assess the source to determine its utility for the project at hand. To decide if a source is useful, the student really needs to understand the nature of legal analysis, which then informs the ability to identify what is useful as the result of a search.

This is the point at which professors can introduce shortcut tools that can help with this assessment. The ability to filter by headnotes or core terms or isolate a term within a set of research results can help the researcher proceed more efficiently through a search that yields many results. The professor can also bring in concepts of weight of authority, including why some cases from the jurisdiction might be better to use than others.

4. If it’s not law, or not my law, is it useful in some other way?

This question is more abstract than the preceding ones. It is meant to introduce the researcher to two things: the utility of secondary sources and the potential value of persuasive primary authority.

Secondary sources, previously presented as a pathway to primary sources in traditional bibliographic research, now mostly serve as opportunities for background reading and better understanding of the research question at hand. Though no longer finding tools, they may be useful in helping a researcher expand or refine a list of key words for subsequent searches, and they certainly have value to a researcher who is conducting research in a less familiar field. The universe of available secondary sources is much expanded in an online world, though—now a researcher can access any number of web sites and online publications offering analysis and commentary. Through the context of a client problem, students can start to learn how to weed through search results to select useful secondary authority.

Persuasive primary authority may also be valuable. For example, if a research result is “law, but not *my* law,” then maybe it can still shed light on the way another jurisdiction has dealt with these issues. Perhaps the issue is the subject of a circuit split for which



persuasive authority may serve a particularly useful purpose. Thus, the “is it useful?” question invites students to learn about other ways in which primary authority might be used.

5. Is it credible?

The unfiltered nature of search results makes the “is it credible?” question particularly important for online legal research. Credibility takes on a couple of meanings in this framework. First, there is a question of threshold credibility—does it have any at all? Most primary authority and much secondary authority accessed through paid legal research services arrives with an imprimatur of credibility, as opposed, for example, to an article found on a law firm website.

Second, a question with a finer point: is this a particularly credible source on my legal question? For my audience? One can imagine a taxonomy of credibility, where there are both groupings of credibility (e.g., law review articles by law professors are more credible than authorless, anonymous blog posts) followed by the more nuanced degrees of credibility (e.g., this particular law professor is a known expert on this point). This may be one of the harder questions to answer in the online world because many legal sources look the same online. In print, it might be more obvious to a researcher that the law review article she is reading was authored by a student because student work was printed at the back of a print volume. Online, the researcher has to do more work to identify the author and assess his or her credibility.

6. Is it permanent?

Here, the framing of the question varies based on the type of source involved. Most things live a long life on the internet, but for legal research purposes, permanence has a slightly more nuanced meaning.

Basic internet sources are “permanent” when the researcher (and later, the reader) can access the materials via a citation. But basic legal sources of the type a researcher is likely to use (and later, cite) are permanent when they are still good law. Through this question, the professor can present the idea of updating the law, such as by using an online service like KeyCite or Shepherd’s to make sure a statute has not been deemed unconstitutional or a case decision overruled. Here, again, the print analog is dead; it would be bordering on malpractice to think that a lawyer should be conducting these types of updates using print materials.

All of these questions are designed to help a researcher evaluate one research result, one source. Once a researcher has identified a primary, mandatory, relevant source, he or she can use that source to access other sources: those sources cited within it and those subsequent authorities that cite to it. The researcher should then apply this set of questions to all of those sources (admittedly, more efficiently as the researcher closes in on the best set of materials for that particular research problem). As researchers encounter the same sources through different research pathways, they should feel more confidence in the value of that source and know their research is closer to complete. In this way, the research process is more like an intricately woven web than the linear path traveled by bibliographic researchers.

In fact, today most information is tangled up in an intricately woven web—real news and fake news, facts and opinions, credible authors and anonymous sources. Researchers must learn how to detangle that web and evaluate each of the individual strands. Future law students will be arriving at law schools having encountered fake news and understanding the importance of being a discerning researcher. As teachers of legal research, we can build on that understanding, giving them the tools they will need to evaluate legal research that same way. Information literacy can be a valuable lens through which to learn legal research, both to give students those tools in the first place, and to set them up for lifelong learning as legal research technology continues to grow and change.

NOTES

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9. Ellie Margolis & Kristen Murray, *Say Goodbye to the Books: Information Literacy as the New Legal Research Paradigm*, 38 U. DAYTON L. REV. 117, 122 (2012).
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12. *Id.*

Don't Flip Out, Flip Your Class: My Experiences Flipping an Advanced Legal Research Course



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I. INTRODUCTION

Does the prospect of a 110-minute lecture on techniques for compiling a legislative history fill you with excitement? For the majority of law students, the answer is definitely “no.” Since 2004, I have taught Advanced Legal Research: Texas Law at the University of Texas School of Law. Four years ago, I began my ongoing experiment with flipping my course. While there is no one model for flipping a course, the idea is to “flip” the instructional approach. Passive instruction that used to occur in class now occurs in advance of class. Thus, class becomes the place to work collaboratively through problems and engage in active learning.¹ This article will describe my advanced research course before flipping, my motivations for flipping the course, things to consider when flipping a course, the original design of the flipped course, what the course looks like today, and the benefits that I feel a flipped course brings to both students and instructors.

II. THE COURSE BEFORE FLIPPING

Advanced Legal Research: Texas Law is a one-credit, seven week short course that meets once a week for 110 minutes in the Tarlton Law Library's computer classroom. The course is limited to second and third year law students. Prior to flipping, the course was lecture-based, supplemented with online research problems that I would work through as part of the lecture. A weekly homework assignment was posted at the end of each class, and was due at the beginning of the next. The assignment would generally require students to conduct research similar to the problems covered in class and evaluate resources based on their experiences. I would grade the assignment, return it

during the subsequent class, and address any issues that arose in the homework assignments at that point. For example, the first homework assignment was posted after the first class and due before the second class, and I would return the first assignment and address any issues during the third class.

Students were assigned readings for each class session, but finding readings that fit my course was a challenge. While there are books focused on Texas legal research,² they did not cover several of the specialized topics I cover in my course. To meet the needs of the course, I created detailed handouts for each week's topic and supplemented with assigned readings from Texas agency publications.³

III. MOTIVATIONS FOR FLIPPING THE COURSE

After having taught my course as a traditional lecture based course for almost a decade, I started exploring the idea of flipping the course and reviewing the literature on flipping legal research courses.⁴ Ultimately, I came to the conclusion that lecturing about legal research, even with plentiful examples, is not the best way to teach legal research. One of my biggest motivations for flipping the course was my belief that students were not retaining key concepts that I covered in the lecture and thus were unable to apply the relevant skills to assignments. This belief was based on the answers students would provide on homework assignments. I was surprised by how often students would struggle on homework with a skill we had covered in detail in class. Sometimes, they managed to get the right answer in a roundabout way, but they often got frustrated and missed the point of the question.

Being able to provide my students immediate feedback on applying legal research skills was my greatest motivation for flipping the course. As noted earlier, the time between the lecture and discussing returned assignments with the students was three classes. Skills we had covered in class were no longer fresh in the students' minds by the time they were doing the homework assignments days later. When we reexamined materials that caused problems on the homework assignments, it was over two weeks after the lecture and at least one week after students had done the assignment. Thus, students did not have an immediate opportunity to apply a skill after I clarified

the legal research methods in class. More problematic, for two class sessions, there was no opportunity to reexamine materials that had flummoxed the students.

IV. CONSIDERATIONS FOR FLIPPING

In order to flip my course, I had to make a number of decisions about what traditional in-class activities I would move outside of class, how I would move them outside of class, and how to move traditional out-of-class activities into class. When flipping courses, the most common in-class activity to move outside of class is the lecture, and I did opt to follow this path. The lecture is often moved out of class by creating a video of the lecture that students watch prior to class. After considering the time and effort that creating video lectures would take, however, I did not feel that videos were necessarily the most effective way to engage my students. If my students did not retain information from a live lecture, I had no assurance that they would retain any more by watching a video of the lecture outside of class. While it remains one of the most common methods of flipping a course, I decided to try something different.

As I thought about my course, the one thing that I wished I had was a textbook that directly addressed the concepts I wanted to teach. What I decided to do was to take my detailed lecture notes, omit the examples, and create readings specifically tailored to each class that would take the place of my lectures.⁵ This way students would be able to read and synthesize the information that had previously been covered by lecture before class. For law students, reading the foundational material is similar to their other doctrinal classes, and they are very comfortable with synthesizing information this way. Creating these materials was definitely one of my challenges as it took a great amount of time to write and edit them.

Next, I had to decide how to move traditional out-of-class activities into class for the greatest student impact. I wanted students to work collaboratively on in-class exercises, but I did not have a clear vision of what the in-class exercises would look like compared to the prior out of class homework assignments. I also did not know what form that collaboration would take. Before the first class, I was hopeful that my students would enjoy the new structure.

V. THE FLIPPED COURSE: THE FIRST TIME

The first time I taught the flipped version of the course, my goal was to have a modified lecture with a greater focus on examples. After years of lecturing, I had trouble giving up teaching lecture style. I talked excessively and covered much of the same material I had included in the readings. I posted readings on Canvas, the University's course management system, so I could determine if students were accessing the readings. The rate of readership dropped off during the semester because I was covering too much of the reading during the lecture. Additionally, my lecture was taking time away from collaborative work.

For in-class exercises, I randomly assigned students into groups of four during the first class session. I teach the class in our computer classroom, which consists of 28 carrel workspaces. Groups of four ended up being too large to collaborate given the restrictive setup of the computer lab. Due to the immobile carrels, four students could not easily gather to discuss the exercises. Group members ended up doing work independently rather than collaboratively.

The in-class exercises were very similar to prior homework assignments. Watching the students interact with the material was informative as I had no idea how long homework assignments took students to complete and was surprised by what I saw. Some exercises that I thought were straightforward took the students longer to complete because I assumed that the students a greater facility with commercial sources such as Westlaw and Lexis. Other exercises that I thought would be challenging, because they required the students to use unfamiliar agency sources, were completed faster than I anticipated.

The first time I taught the flipped course, I stood at the front of the class waiting to be asked questions. Not surprisingly, students did not ask me many questions. When they did ask questions, they tended to be frustrated by the time they asked for assistance.

VI. THE FLIPPED COURSE TODAY

Over the last four years, the course has changed dramatically. I make a concerted effort to minimize the amount of time I lecture in class. I reference the readings as a foundation for examples we will be covering with an assumption that the students have

done the reading and are ready to work on examples. The course now consists of an introduction to the materials followed by students working through examples as a group. My lectures no longer cover much of the written material, so students need to do the reading to successfully participate in class. I review and update my readings annually to reflect changes in information resources. Currently, the readings are a mix of material I have created along with agency material and articles discussing related topics. I continue to monitor Canvas, and now the overwhelming majority of students access the posted weekly readings.

After working together as a class, students then work in pairs, but are also encouraged to ask questions of other students. Each class has one set of in-class exercises, which allows the students to work across groups. I assign students to pairs during the first class, and they work together for all seven weeks. They form strong relationships both within the group and among groups.

As I have seen the students interact with the material, I have been able to see what tasks challenge them. I have also seen that some exercises were not as challenging as I expected, and I have enhanced those exercises. I assumed my students had a higher level of skill with the commercial sources such as Lexis, Westlaw, and Bloomberg Law than they do. After watching students interact with the exercises and struggle with using commercial sources efficiently, I increased my focus on electronic research techniques. Many of the students do not have the level of proficiency with those services that I assumed, so they actually appreciate tasks like comparing and contrasting Shepards, KeyCite, and BCite results.

Another change is that I no longer stand at the front of the room and wait for questions. I give the students about 10 minutes to begin the exercise. Then I start walking from group to group asking questions and offering assistance. Once students get used to interacting with me, they are more than happy to ask questions as I circulate. An unexpected benefit has been students telling me and each other how much they struggled with a legal research problem previously during a summer internship or clerkship, and how helpful it would have been to have had this course before. It reinforces that these are not abstract skills, but essential ones for law practice. If more than one group has an issue, I address it immediately. I

either make an announcement reminding the students of something we covered as a group or work through an additional example for the entire group. There is much more interaction, both among the students and with me, than in my first iteration of a flipped course.

The students submit the in-class exercises at the end of class, and I review the exercises before the next class to spot any issues. Due to the level of interaction, there are few issues, but when an issue arises, I start the next class by going over the question.

VII. BENEFITS OF FLIPPING THE COURSE

The flipped course brings benefits both to my students and to me. My students get to practice research strategies immediately after they are taught. Previously, due to the lag time between lecture and assignment due dates, students forgot a number of things we had covered in class before completing the assignment. Now, they read before class, we go over examples as a large group, and they break into pairs and immediately start applying what we have covered.

Having the opportunity to witness students interacting with exercises has been a great benefit to me. It was enlightening to find out that there are skills that I had assumed students had that they did not. Some exercises were much easier for students than I thought they would be; some were much harder. I have the ability to create exercises based on the knowledge I have gained from watching the students complete exercises and can include more challenging questions. I can ask questions that might frustrate students or that students would consider “trick questions” if they were asked on homework assignments. For example, for one exercise, I asked if a final version of a Texas regulation had been adopted. At the time I created the exercise, I did not know if it would be adopted by the time we did the exercise. The skill was to look at the various sources and come to a conclusion. When we did the exercise, the regulation had not been adopted even though the earliest date of possible adoption had passed. Students obviously could not find the date of adoption, and they had questions, fearing they had missed something. I had them tell me about their research process, confirmed that their research process was valid, and then asked them what they thought not finding any information in the sources they had reviewed meant. Through the exercise, they gained

confidence in their research skills to conclude that something had not yet occurred.

When I taught in a lecture format, I always told the students to ask questions before, during, or after class. I would rarely get questions, and when I did, they were usually asked just after class. Now, there is absolutely no stigma in students asking questions. My students are constantly asking questions, and I can provide tailored instruction to each group as I walk around the room. I always tell students as part of my last class that they are more than welcome to contact me not only while they are in law school but into their future careers. This year, I had students asking this during the last class before I could even cover it!

My favorite benefit of a flipped course is the level of interaction. Not only do the students get to know each other better, I get to know my students better. Because the class is more interactive, students are more willing to ask questions after class or stop by the reference desk and chat with me about topics other than Texas legal research. A flipped classroom improves my students’ learning outcomes, and it is just so much more enjoyable to teach this way.

NOTES

1. Leslie Taylor, *Five Flippin’ Good Reasons to Flip Your Legal Research Class*, 25 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 23 (2016); Bill Tucker, *The Flipped Classroom*, 12 EducationNext 82 (2012).
2. Spencer Simons, TEXAS LEGAL RESEARCH (2d ed. 2016), Brandon Quarles, RESEARCHING TEXAS LAW (3d ed. 2012).
3. I assigned Texas agency publications such as the Texas Legislative Council’s *The Legislative Process in Texas* to provide context for compiling a legislative history and the *Administrative Law Handbook* published by the Attorney General’s Administrative Law Division to explain the administrative rulemaking process in Texas.
4. See Laurel E. Davis, Mary Ann Neary, and Susan E. Vaughn, *Teaching Advanced Legal Research in a Flipped Classroom*, 22 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 13 (2013); Judith Lihosit and Jane Larrington, *Flipping the Legal Research Classroom*, 22 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 1 (2013).
5. Several of the course readings have been combined into a law review article, Jane A. O’Connell, *A Guide to Researching Texas Primary Law*, 58 S. TEX. L. REV. 67 (2016).

Keeping It Real: How to Make Research Engaging



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How can you reinvigorate your legal research classes to make research engaging for students and teach practice-ready legal research tools?

Convert current events from today's news headlines into teachable research moments.²

Legal writing faculty and librarians can collaborate to develop hands-on exercises that get students thinking like practitioners.³

Using legal research problems ripped from the headlines, students can work in collaborative teams and keep track of their time and research expenses to learn the real-world impact of the efficiency and effectiveness of their research skills.⁴ The possibilities are endless; just check Twitter, scan Facebook, watch the news, or read a newspaper.

THE SUFFOLK EXPERIENCE

At Suffolk University Law School, we incorporated researching real world problems into our classroom. On the day of the exercise, class was held in the library rather than the traditional classroom setting. During the first five minutes of class, students were divided into groups (Groups A, B, C, D, and E) comprised of three or four students each. Each group received individual verbal instructions from a legal writing professor or librarian. Each group was given twenty minutes to complete their research assignment. The first few minutes were spent strategizing the role for each group

member. Most groups had a few members engage in online research and a few members use books to find resources in the library that would help them answer their research questions.

In addition to the individual verbal instructions, each group was given a research budget table. The budget table identified different activities, such as researching in online paid and free databases as well as finding and reading sources at the associate's billable hourly rate. Students were required to keep track of their time spent on each activity, and at the end, calculate the total fee that they accrued researching their client's problem. We used the five real-world problems below that our research librarians and legal writing faculty created: (1) *Fifty Shades*, (2) *Hot Dudes Reading*, (3) *The Bachelor*, (4) *Banksy Does New York*, and (5) *Snowmageddon*.

Fifty Shades

The *Fifty Shades* group ("Group A") worked on a problem involving the State Attorney General's petition to find the book *Fifty Shades of Grey* by E.L. James obscene.⁵ The Superior Court Justice concluded that the book was obscene and sent a notice to Group A's client, Boston High School, demanding that it not disseminate the book in its creative writing classes. Group A needed to mount a defense and avoid having Boston High School pay a high fine or have any of its English teachers face jail time. Group A researched applicable law and determined if any organizations would be exempt from the Justice's ruling.

To find the answer, students had to locate Massachusetts' statutory law, case law, and secondary

sources. Students using electronic resources located the secondary sources with ease. Those conducting book research struggled to find secondary sources but easily located the statute.

Hot Dudes Reading

The Hot Dudes Reading group (“Group B”) researched an issue concerning a group of individuals who had started an Instagram account called HotDudesReading⁶ where the group posted images of handsome men on the NYC subway system reading books. The account was so popular that the group created a local version. Last week, Group B’s client, Danny Amendola, took the subway to Harvard Square and was photographed on the subway reading a book. This photo was then uploaded to HotDudesReadingBOSTON. Mr. Amendola was neither aware at the time that his picture was being taken nor that his picture was online. The folks behind the HotDudesReadingBOSTON Instagram account used Mr. Amendola’s picture to not only advertise the book he was reading in the picture but also to advertise an organization, Keep Print Books Alive. Mr. Amendola is not happy that his picture was used without his consent for advertising purposes and wants to sue the creators of the Instagram account. Accordingly, Group B researched whether the creators of the HotDudesReading Instagram account were authorized to use Mr. Amendola’s photo because it was taken while he was in public.

With this module, students struggled to frame their research questions. They brainstormed topics including public transportation, social media, use of picture, and privacy. Ultimately both the students conducting book research as well as those using electronic resources found the applicable statute by focusing on the unauthorized use of pictures.

The Bachelor

The Bachelor group’s (“Group C”) client, Gronk, faced a problem as he was traveling home from Martha’s Vineyard on the Steamship Authority. He was returning from a weekend away with his three brothers who had been celebrating one brother’s engagement. There were a few celebratory cigars left over, and Gronk decided to smoke one of them on the upper deck of the steamship. A complaint was filed against him for smoking the cigars. He remembers that a few people asked him to put out his cigars because they

mind the smoke. However, instead of putting it out, he just moved to the other side so they could not see him. Therefore, Group C researched whether it was permissible for Gronk to smoke in fresh air on the upper deck of the Steamship Authority.

Students quickly determined that smoking in certain outdoor areas, such as bar and restaurant patios, is prohibited. They then engaged in a discussion of whether smoking on a ferry constituted a public place. Those distinguishing the ferry noted that Gronk had paid a fee to ride the ferry, and no one was eating on the ferry whereas the public does not pay a fee to enter a restaurant. Ultimately, students were relieved to find that the applicable statute specifically identified the Steamship Authority as a public place where smoking is prohibited.⁷

Banksy Does New York

The Banksy Does New York group (“Group D”) had a famous British Graffiti artist, Banksy, as its new client.⁸ Banksy was recently in New York City and was caught putting his artwork on the brick siding of a Manhattan police station. Group D discovered it is illegal to put graffiti on private property and researched whether it is legal in New York to put graffiti on public property.

Students automatically presumed that it would be illegal to graffiti a police station. Both students conducting online and book research were stumped when they simply tried to research graffiti and police station. This caused them to read the assignment more critically; in doing so, they were able to expand their research beyond police stations and found the applicable statute making it illegal to graffiti a building owned by a public agency.

Snowmageddon

The Snowmageddon⁹ group’s (“Group E”) client, Mindy, was skiing in Maine last weekend and had an accident. She stopped in Freeport, a town outside Portland, Maine, to meet friends for lunch. When she was walking down the very snowy and icy sidewalk, she tripped, fell, and broke her ankle. She also dropped four vintage art deco wine glasses that she was planning to give her friend as an engagement gift. She had paid \$2,500 for them. Accordingly, Group E researched whether Mindy could sue the town of Freeport for damages.

Most students began this research under the assumption that Mindy would be successful in a suit against the town of Freeport. Several states have laws that require homeowners to shovel their sidewalks within a certain amount of time of a snowstorm or be subject to a fine.¹⁰ For this reason, they began their research expecting to find a statute or case that would support their assumption. Even when they located the applicable Maine statute, they continued to search for an exception that would allow Mindy to recover.

Process and Conclusion

During the research process, librarians and professors observed the students engaging in online research as well as those that were gathering resources in the library. Rather than directing the students through the process, they allowed students to make mistakes, learn from them, and reassess their research strategies. Watching when and where students struggled and succeeded helped the professors and librarians to assess the strengths and weaknesses of students' research skills.

At the end of the twenty minutes within each group, students reviewed their findings and calculated their time spent on each activity listed in the research budget table. They reviewed the various primary and secondary sources they found through the different methods of research. This gave students an opportunity to self-assess and reflect upon the similarities, differences, and efficiency in conducting online paid and free research as well as manual research in books.

Each group then presented its issue, research process, and findings to the whole class. The class then discussed common pitfalls and tips to use for future research assignments. Students were interested in hearing the different real world research problems each group faced and the approaches each group took to research the issues. The next time students saw a headline in the news, they could anticipate how they would research that problem.



“Using legal research problems ripped from the headlines, students can work in collaborative teams and keep track of their time and research expenses to learn the real-world impact of the efficiency and effectiveness of their research skills.

The possibilities are endless.”

NOTES

1. Thank you to our Research Assistant, Emily Kaminska, Juris Doctor Candidate at Suffolk University Law School Class of 2018.
2. See Amy R. Stein, *This Time It's for Real Continued: More Ways to Use Law-Related Current Events in the Classroom*, 21 PERSP. 18, 18-19 (2012). Students can be given tasks that relate to real world current events, ranging from client interviews to discussing professionalism and ethics. *Id.* at 19. The professor begins each class with current events; the students have reacted positively to this style of learning, and sometimes they are even the ones bringing in the current events to the professor to discuss. *Id.* at 18.
3. At Suffolk University Law School in Boston, Massachusetts, each year-long Legal Practice Skills (“LPS”) course is taught by one legal writing professor in an integrated manner. Every LPS section has a law library liaison assigned to the section who frequents the class and works closely with the professor and students. The liaisons have copies of assignments and also conduct library labs in class for hands-on learning.
4. See Jessica Durkis-Stokes & Amy Vorenburg, *The Serial Podcast: Bringing the Real World into First-Year Legal Writing*, THE SECOND DRAFT, Fall 2016, at 10. Two legal writing professors taught students through the use of the *Serial* podcast. *Id.* The podcast was engaging for Millennial students, and they were eager to practice with actual and relevant current events. *Id.*; see also Susan Daicoff, *Working with Millennials in the Law*, ARIZ. ATT’Y, Jun. 2014, at 16, 20-22, 24. Millennials are different from previous generations and cannot learn or be trained the same way as them. *Id.* at 21-22. Technology in the classroom promotes learning and may even help students remain engaged. *Id.* at 24. Furthermore, dividing individuals into small, diverse groups may invigorate Millennials when presenting in front of the class. *Id.*; see also Olivia Rundle, *Creating a Healthy Group Work Learning Environment in Law Classes*, 14 QUT L. REV. 63, 69 (2014) (highlighting the value of requiring group learning in law school, such as gaining motivation, developing supportive relationships, and contributing to their overall wellbeing as law students); Janet Weinstein et al., *Teaching Teamwork to Law Students*, 63 J. LEG. EDUC. 36 (2013) (discussing the rationale for teamwork instruction in law school).
5. See “*Fifty Shades of Grey*” Makes the List of Most “Challenged” Books, CBS NEWS (Apr. 15, 2013, 10:43 AM), <http://www.cbsnews.com/news/fifty-shades-of-grey-makes-the-list-of-most-challenged-books/> (reporting that E. L. James’ multimillion selling trilogy was number four on the American Library Association’s annual “challenged books” list due to complaints from parents, educators, and other members of the public about offensive language and sexual content).
6. Hot Dudes Reading (@hotdudesreading), INSTAGRAM, <http://www.instagram.com/hotdudesreading>.
7. MASS. GEN. LAWS ch. 270, § 22 (2016) (stating that smoking is prohibited on the Martha’s Vineyard & Nantucket Steamship Authority).
8. A documentary captures an account of the antics of the elusive British street artist known as Banksy who posted a unique exhibit a day in New York in an unannounced location, launching a month-long scavenger hunt for his work. See <http://www.hbo.com/documentaries/banksy-does-new-york>.
9. *Snowmageddon* is a term that derives from a 2010 North American blizzard and has even been used to describe subsequent storms and particularly difficult winters like the winter of 2015 in Boston.
10. See MASS. GEN. LAWS ch. 85, § 5 (2016) (allowing cities and towns to require homeowners to shovel snow or be subject to fines).

Of Hippos, but Not Cat Memes: Teaching Fact Authentication



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As lawyers, we know that stories are composed of facts, and as lawyers we know how to parse facts from characterizations. Can your students? Have they been taught to question and then verify or authenticate the individual facts presented as part of a narrative?

Consider this: In Washington, D.C., when taking a walk on the George Washington University campus, you may happen upon a popular outdoor statue of a hippopotamus. A nearby sign explains that the statue was placed there in honor of the hippos that once could be found in the Potomac. George and Martha Washington liked watching them from their Mount Vernon porch. They were also a favorite of children visiting the estate. George Washington even had a false set of teeth made of hippopotamus ivory—the most advanced dentistry of the day.

That little vignette clearly contains facts, characterizations, and falsehoods. Did you take note of them as you read? Did the appearance of characterizations cause you to dismiss the whole? Did the falsehoods? Now, ask yourself whether the appearance of either should cause you to dismiss the whole. And finally, would your students pick this apart by doing research or simply by relying on what they think they know?

To end any suspense, there really is a statue, and the sign really does say *most* of these things.² The sign does talk about something that is a fact: George

Washington really did have a false set of teeth made of hippo ivory.³ But the Washingtons never saw hippos frolicking in the Potomac, and no one would have permitted children anywhere near the Potomac if there were. To see hippos in the Potomac, consider the process by which a hippopotamus would appear in the Potomac. Someone would have had to travel to Sub-Saharan Africa,⁴ capture a pod of hippos (they are social creatures) without being attacked (their size and their continuously growing teeth can easily kill humans⁵), carry them across land to seafaring boats, make the trek across the Atlantic, and then to the Potomac—all while keeping the animals' skin moist at all times.⁶ The hippos might freeze in the winter if not recaptured and quartered somewhere warmer. Hippos are also the third largest land-mammals alive today, weighing in at 1.5 tons or more.⁷

I learned of this statue from a student⁸ in my Fall 2016 *Persuasion in Legal Writing* course who told us the story in response to a lesson I was teaching about a placard on a display at the United States Mint. The placard quoted a phrase attributed to President Theodore Roosevelt, about the design of coins, which fit with an article I was completing. Unfortunately, neither my co-author nor I could verify the attribution to President Roosevelt when we conducted our confirming research. We pulled the quote from the article draft as unsupported. Several students expressed surprise at our decision—to them, a placard at the United States Mint was itself a verified source that sufficed for the purposes of attribution. A debate ensued in the class: how far must one research before something is a fact? I realized that the students did not really have a sufficient foundation in fact authentication.

The idea that led us to the Mint began, coincidentally enough, with a questionable quote in the *Washington Post* that the Treasury Department had no records explaining how President Andrew Jackson was chosen to appear on the \$20 bill.⁹ Most readers accepted that statement as true. My co-author and I did not. Our deep-dive research revealed that our hunch was correct: the information survives, and it is contained in the National Archives.¹⁰

In the meantime, however, the lack of research into the origins of whose portraits have been considered for our current money has led people in 2016 to lay

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claims to being the first to consider placing a woman on United States paper currency. Those people are off by ninety-five years and by omission of 1971 legislation introduced in Congress to issue \$2 bills with the portrait of Susan B. Anthony.¹¹ All of this proves the point that insufficient research allows people to repeat—and others to believe—false narratives.

Part of my responsibility to move novice students towards competencies in research skills includes teaching them to fully appreciate the differences between facts, characterizations, and falsehoods. And, with the decentralization of information as well as the acknowledged profiteering that goes along with alternative fact dissemination, I must be more deliberate in my approach to teaching different categories of facts:

- **Established, unassailable facts** such as the regions where hippos live in the wild;
- **Verifiable facts**, such as the average weight of hippos; and
- **Debatable facts**, such as whether this bullet point should have used “whether or not” instead of “whether.”

I also spend a significant amount of time distinguishing facts from

- **Characterizations**, which are essentially the opinions or judgments of the writer. Someone’s “funny plaque accompanying a random hippopotamus statue” is someone else’s “nonsensical waste of money,” if that second person does not think that public art should be presented in a humorous way or if that person does not agree the lesson “don’t trust everything that is on a plaque” should play out with a statue.
- And, now, sadly, I am spending more time teaching the difference between facts and **misrepresentations**, such as a statement that this article focuses primarily on hippos; and on **falsehoods**, such as a statement that this article focuses on cat memes.¹²

To construct arguments on behalf of clients, lawyers must understand these distinctions. Arguments are constructed around the narrative of legal precedent: the purpose and history of a statute depend on facts just as the trigger facts of a case lead to the reasoning and outcome in a decision. We teach our students how to communicate the facts of their assigned client’s case; to “show [not tell] the story by describing scenes and events from the client’s perspective.” Implicit are lessons about facts and characterizations.

We do our students a strong service if they learn these distinctions *before* they represent clients in a clinic, externship, or post-graduation experience. This first and heavy lift most appropriately belongs in the required first-year legal research, analysis and communication course series. Gone are the days when we can limit our teaching of research to legal materials. Written and verbal communication in law occurs in a variety of mediums, to a variety of audiences, and in a variety of different rhetorical situations. Our pedagogical goals for legal research should likewise reflect the connecting universals across law and legal communications—they will always include law and facts.

NOTES

1. A different version of this premise appeared as a BEST PRACTICES IN LEGAL EDUCATION BLOG entry, Ruth Anne Robbins, *What is a Fact, A Story?*, (Jan. 26, 2017), <https://bestpracticeslegaled.albanylawblogs.org/2017/01/26/what-is-a-fact-a-story/>.
2. <http://allenbrowne.blogspot.com/2012/08/ingrid-bergman-and-george-washingtons.html>.
3. DIGITAL ENCYCLOPEDIA, *False Teeth*, <http://www.mountvernon.org/digital-encyclopedia/article/false-teeth/> (last visited Apr. 8, 2017) (citing Malvin E. Ring, *John Greenwood, Dentist to President Washington*, 38 CAL. DENTAL ASS'N J. 846, 849 (2010)).
4. AFRICAN WILDLIFE FOUNDATION, *Hippopotamus*, <http://www.awf.org/wildlife-conservation/hippopotamus> (last visited Apr. 8, 2017).
5. SAN DIEGO ZOO, *Hippo*, <http://animals.sandiegozoo.org/animals/hippo> (last visited Apr. 8, 2017).
6. *Id.*
7. See, e.g., NATIONAL GEOGRAPHIC, *Hippopotamus*, <http://www.nationalgeographic.com/animals/mammals/h/hippopotamus/> (last visited Apr. 8, 2017); LIVESCIENCE, *Hippo Facts*, <http://www.livescience.com/27339-hippos.html>.
8. Courtney Knight, J.D. 2017.
9. Abby Ohlheiser, *Why is Jackson on the \$20 Bill? The Answer May Be Lost to History*, WASH. POST: THE FIX (Apr. 20, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2015/03/06/why-is-andrew-jackson-on-the-20-bill-the-answer-may-be-lost-to-history>.
10. The research became an article, which compared the way that paper currency design decisions are made to design decisions for stamps, naval ships, and coins. Genevieve Tung & Ruth Anne Robbins, *Beyond #TheNew10—The Case for a Citizens Currency Advisory Committee*, 69 RUTGERS. U. L. REV. 195 (2017).
11. Ruth Anne Robbins & Genevieve Tung, *95 Years of Waiting for a Woman on Paper Currency*, WOMEN YOU SHOULD KNOW BLOG (Jan. 28, 2016) <http://www.womenyoushouldknow.net/95-years-of-waiting-for-a-woman-on-paper-currency> (discussing the history and showing letters in the National Archives asking for women to be placed on the money). The introduced legislation can be found at H.R. 11,515, 92d Cong. (1971); see also H.R. 11,516, 92d Cong. (1971); H.R. 11,758, 92d Cong. (1971); H.R. 11,759, 92d Cong. (1971); H.R. 13,418, 92d Cong. (1971).
12. It is still a falsehood, even with this cite to a popular Facebook page. <https://www.facebook.com/CatMemes/>.

Zen and the Art of Legal Research



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I often talk to my students about succeeding in law school within the construct of Zen principles. As a starting point, I stress that Zen is not a religion but a way of life. A Zen master employs principles of discipline, focus, simplicity, awareness, balance, presence, and an ability to see the dual nature of things in order to achieve the ultimate goal of enlightenment.

As a generalization, Zen is the experience of living in the present moment. The practice teaches you to become aware of yourself, your surroundings, and your place within the universe. In Zen practice, being “present” means focusing all of your senses wholly on whatever it is you are doing (or not doing) in the here and now. This necessarily requires a lot of discipline, but also requires that you balance your “practice” with your personal life. Through this daily mindfulness practice, a Zen practitioner can ultimately achieve enlightenment—an awakening that illuminates one’s true nature and/or true purpose in life.¹

Similarly, students can apply these same principles in order to achieve research “enlightenment.”² In this sense, I liken enlightenment to understanding the true nature of the research assignment, seeing the dual nature of it (i.e., seeing all sides of the issues and cases), and, ultimately, becoming “one” with the research assignment.

Below are my Top Ten Zen Tips for Law School Research that I give to my students before they start researching their first “open universe” memo or court brief. I hope you and/or your students find them helpful.

1. Become a Zen master.

As early as you can, get certified in both Lexis and Westlaw. You can easily become certified in either discipline by going through an on-line tutorial that walks you through research exercises. Don’t wait until you get your first research assignment to learn how to research. The certifications only take a few hours and will save you a lot of time in the long run. Moreover, getting certified looks great on your résumé.

2. Know your universe.

When you get your first major assignment, it’s highly likely you won’t know the topic all that well. If this is the case, consider reading a few secondary sources to ground yourself in the subject matter. This will help you identify and refine the specific search terms you will need to start your research and get better results more quickly.

3. Be disciplined.

Start early! Everything in law school takes longer than you think it will, especially during your first year. If you have two weeks to complete a research assignment for an open memo, don’t wait an entire week before you start. For most people, the longer you wait, the harder it is to start—so start early.

4. Be focused.

Identify your jurisdiction and start there. Is this a federal issue or a state issue? Is this an issue within the Seventh Circuit or an issue within the State of Illinois? When you research online, be sure to start in the narrowest database. Of course, if it's an issue of first impression, you will want to broaden the scope of your research; but, if not, focus your efforts within the narrowest database you can.

5. Be simple.

Pare down your issue(s) and don't get bogged down on extraneous points that you weren't asked to address. Stay on task. Your professor doesn't want you to include all the cool/interesting/esoteric/arcane points of law that you unearth while researching your issue. With the overwhelming number of cases you are bound to read, it's easy to meander into other issues. Keep it simple and focused and this won't happen.

6. Be aware.

Keep a research log to make sure you don't read the same cases multiple times. For every case that looks promising, jot down the citation and a quick blurb about the case. Do the same for cases that don't seem to be a good fit for your memo or court brief. This will ensure that you are being as efficient as possible. You may not think this step is important, but, trust me, it won't take long before all of the cases start to blur together.

7. Be balanced.

Law students tend to research in huge blocks of time—maybe six hours on a Saturday. My advice is to be balanced: do a little each day. It doesn't have to be "researching" each day, but work on the assignment most every day (perusing cases, making a timeline of facts, etc.). This will also ensure that you don't fall behind in your other classes.

8. Embrace the duality.

If you really want to be effective, try researching from your opponent's point of view. Whether you are writing an objective office memo or a persuasive court brief, it will always help you to approach the problem from the other side's perspective. Your search terms may change if you tackle the problem from a different viewpoint, and this could be the key to finding the "best" cases. Remember: the "best" cases aren't necessarily the ones that come out in your client's favor.

9. Be present.

Being "present" in a research sense means making sure you are relying on good law. Be sure to Keycite or Shepardize to ensure that a case you want to use has not been overturned on appeal. But note: just because a case has a red flag next to it doesn't necessarily mean you can't use it. Oftentimes a case will have multiple issues on appeal and only one of the issues has been overturned. Make sure you look to see if your issue is still viable from the case, even if you see a red flag.

10. Be wise: know when to say when.

One of the difficulties of research projects for law students (and practitioners) is knowing when to stop researching. So know when to say when: keep researching until you are finding nothing new or keep coming up with the same cases. Do note, however, that this point shouldn't be until you have gone through the other numbers on this list (especially #8).

If you follow these steps, you will greatly enhance your chances of reaching enlightenment—which in this case equates to mastery of your research assignment. Remember: you can't write a great office memo or court brief if you don't have a complete understanding of the issues and precedent cases and how they fit into the universe of your client's facts. If you follow all of the steps, you will, at the very least, feel a certain "inner peace" that you have done all you can to produce the best possible work product.



NOTES

1. For an overview of Zen mindfulness practice, two of my favorite books are SUNRYU SUZUKI, *ZEN MIND, BEGINNERS' MIND* (2006) and D.T. SUZUKI, *INTRODUCTION TO ZEN BUDDHISM* (Grove Press 2013). For a more current application of Zen principles to modern life issues, check out CHARLOTTE BECK, *EVERYDAY ZEN* (1989).
2. For a more comprehensive discussion of Zen principles and how they might help students achieve "enlightenment"/becoming "one" with the law school experience, see generally, CHAD NOREUIL, *THE ZEN OF LAW SCHOOL SUCCESS* (2011).

Teaching Legal Research and Writing in a Fully Integrated Way



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Cycling pedagogy, or task-based teaching, is often used in language classes to reinforce the practical nature of language; however, it translates nicely to teaching legal research and writing as well. The philosophy of task-based teaching is that “the center of the learning process moves to the students themselves and allows them to come to the realization that language is a tool to tackle and (re)solve real-world problems.”² Thus, the process necessitates the desired outcomes and skills. At its root, the “students learn how to ask questions, how to negotiate meaning, and how to interact and work within groups. Within this group work, they can observe different approaches to problem solving as well as learn how others think and make decisions. These are skills that our students will need to be successful in the real world.”³ In current scholarly conversations, this type of instruction is often described as problem solving in legal education: a new trend for legal curricula to address for our incoming students.⁴

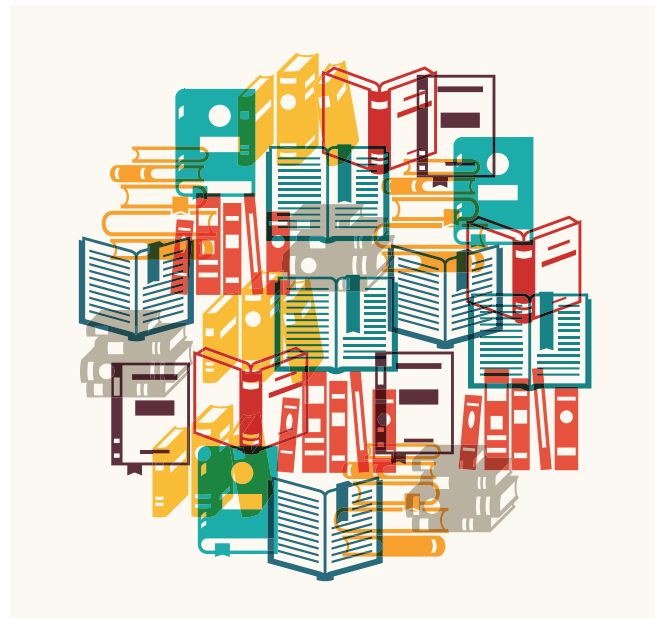
Prior to 2015, research librarians (hereinafter library faculty) taught the research portion of the Legal Analysis, Writing, and Research (“LAWR”) Course at Wake Forest as a separate and distinct six-week series of classes, while our writing professor counterparts held classes concurrent to research instruction that provided instruction on legal writing, organization, analysis, and other writing-related topics.⁵ The research classes typically were not on the same topic as the writing problems. Based on the theory of cycling pedagogy, in the Fall of 2015, my teaching team experimented with a more fully integrated model of research and writing that focused on more group work and assessing as well as practical research and

writing exercises that grew into a larger work product. The integration, or close alignment, was implemented in the thought that the students would learn that the process of researching and writing is truly the same process – two parts of a whole. To integrate writing and research instruction, the new model focused on teaching the skills and theory of legal research and writing in a way that cycled information through the completion of meaningful tasks.⁶ Cycling in this context meant that the students were writing on the same topics and issues that they were using to practice their research skills.⁷ The course has improved tremendously since 2015 through this aggressive integration of two curricula while including a task-centered methodology.

COURSE OBJECTIVES AND GOALS

At Wake Forest (“WFU”), LAWR Professors are charged with creating courses that meet both programmatic goals and individual objectives in whatever methods they choose. Those professors may design a course in any way they see fit, so long as it complies with and achieves programmatic goals, objectives, and guidelines. Each section of LAWR must meet certain course-wide WFU LAWR 1L goals, which include providing students with basic research skills and strategies and cultivating effective written and oral communication skills. For example, upon completion of LAWR, students should be able to form a research plan that identifies issues and relevant types of legal authorities and communicate that plan to a third party, in addition to locating and retrieving legal sources in basic and advanced methods. Students should also be able to organize their research findings in a research memo or research log to demonstrate their abilities and critical evaluation of the sources.

In addition to the course-wide goals for LAWR, two additional goals emerged for this redesign that integrated the legal writing and legal research components of this course. The first was to provide students with a connected approach for introducing a new set of legal facts by which they would both research and write a simple legal analysis. The second goal was to instruct these same students with a new paradigm for teaching research, which includes a shift from a source-driven research model to an information literacy model.⁸



COURSE DESIGN AND ASSIGNMENTS

Particularly, the course highlighted in this article was divided into three modules in Fall 2016:

Module 1: Orientation

In addition to extensive in-class time with their legal writing professors, students were asked to participate in a team-building activity where the objective was to build the highest free-standing balloon tower in the library. To get balloons to build the tower, the students had to correctly identify parts of legal print sources, such as title, author, and type of source. The objective of this activity was to debunk the competitiveness early in law school by fostering positive team-building experiences while introducing students to the legal resources they will be discussing, learning about, and citing in their first-year curriculum.

Module 2: Closed Universe Client Letter or Legal Analysis/Memo⁹

In this module, students received all the legal sources they would use for their legal analysis. In addition to relevant statutory law and case law, the closed universe source pack included relevant secondary sources. Thus, the packet included a statutory excerpt, three cases interpreting the statute, an excerpt from the state-level legal encyclopedia, and a law review article on the topic. This exercise built a foundation of knowledge for students to find value in using

secondary sources to understand a topic but primary authority to write about the topic. By collaboratively creating the problem, both the legal writing and research experts could ensure the students were exposed to the full universe of legal resources they would be expected to utilize in a traditional legal research problem. While no official legal instruction took place during this two to three week module, the students grappled with the weight of authority and critically evaluating the sources for inclusion or exclusion from a legal memorandum.

Module 3: Research-Intensive Open Universe

In this six to eight week module, students obtained a set of legal facts through an interactive client interview. They used those facts to identify two legal issues and conduct research to determine the probable outcomes. For the first legal issue, the students completed collaborative group exercises and followed professor-driven instruction to learn effective research strategies. The students then produced a research report that detailed how and why they used various sources of legal authority to predict the legal outcome of the case and provide an objective analysis of the law. The research report assignment required students to perform a critical evaluation of the authority they found, rather than merely assessing their research process.¹⁰ Specifically, the research report required students to choose at least sources they would include in the memorandum's legal analysis section and at least three sources they would intentionally exclude from their memo. Additionally, the students had to justify their choices by analyzing the source: the citing references, influence of the source in the larger research universe, the weight of authority, the relevance to of the facts to their fact pattern, etc. The library faculty graded and facilitated this portion of the module, which included daily research exercises and the research report.

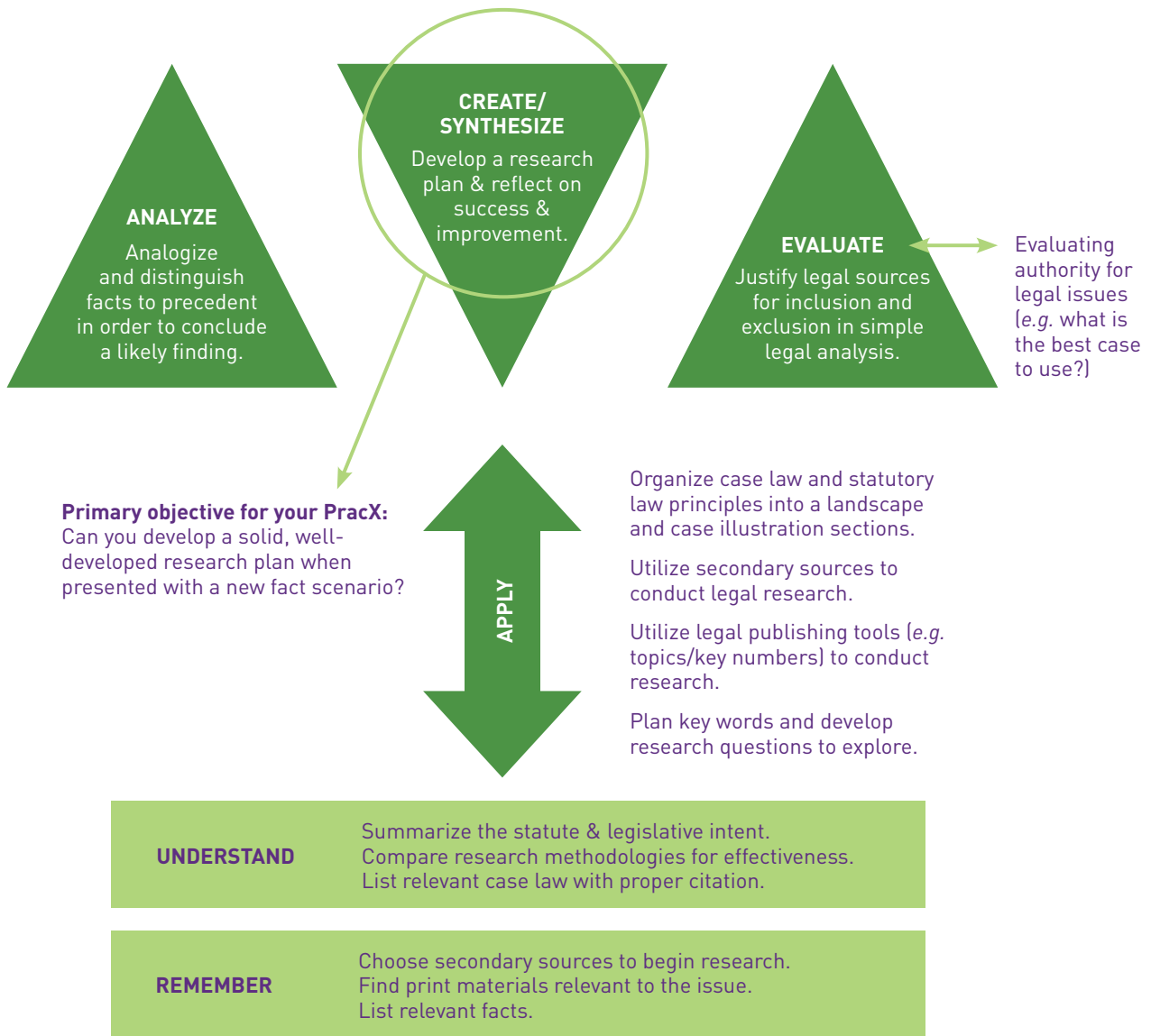
The students then took the theory and skills they had gained through the process and independently researched the second issue of the objective memorandum. For the second issue, the students reflected on the process by keeping a research log.¹¹ This research log provided a tool for the library faculty and legal writing faculty to assess the students' research skills. The students were provided a template of a research log, which included sections for term

development, research questions, search strategies and then documenting their process through note taking and ongoing evaluation of the sources (e.g., asking themselves how useful that source was to the overall topic and final memo). Typically, the logs ran five to ten pages in the length. The research log was submitted for formative feedback to the library faculty prior to the final grade, which counted towards the correlating open memo grade.

In addition to the log and research report, the students wrote a memorandum of law that provided their legal analysis of both issues and provided legal advice to the clients whom they had initially interviewed. This tiered approach to guided teaching and learning allowed the professors to model effective research strategies and tools and then assess whether the students have appropriately mastered the skills and are able to transfer them to a new issue. Students planned, located, evaluated all the various legal authorities and used their research to draft legal analysis. To close the module, students engaged in a formal negotiation on behalf of their client to determine whether they could resolve the legal issues without litigation. The larger 1L section was divided by plaintiff and defendant by sub-section (A and B); this intersection interaction fostered additional community building and less silos between sections. Following the negotiation, students deconstructed the process for all the students and provided them with an opportunity to reflect on the process and the various strategies they employed.¹² Module 3 incorporated numerous logical interactions that a new attorney might have with a client: a client interview, legal research, a memo, and negotiation. Module 3 accomplished many, if not all, of the LAWR objectives for first-year students.

DETERMINING SUCCESS: EXCEEDING BEYOND LEARNING OBJECTIVES

This experiment has been a success, particularly with regard to the latest learning goal of integration of research and writing into a single process¹³ Prior to combining the research and writing assignments, students did not have the context for understanding how and why research leads into analysis and writing and how the research process is recursive. Because students are now trained in a Google-like research mentality, where it is a "one stop shop," many of the



students did not inherently see the cyclical process of researching, learning, writing, researching, writing, editing, etc.¹⁴ Once the students were introduced to the set of facts, they could work through their preliminary questions by basic research, then start to practice their legal research skills when they were ready to grapple with the application of the law. Often, the students needed to research their topic before they could even start their legal research. While there had been a lack of knowledge in the writing and researching process and a lack of knowledge of legal sources as a subset of the academic literature, after this model the students appeared more familiar and versed in the larger holistic process.

Part of the change in our model also included the task-based pedagogy of group learning. Under the integrated model, both the research and the writing

assignments were completed within a group setting, apart from the final written product. This group work even included the critiques and conferences, which were completed peer to peer. The cycling of tasks, group problem solving, and integration of topics allowed the students to grapple with the more complex legal issues in a more nuanced and sophisticated manner seemingly without the same level of stress.¹⁵ Student learning was enhanced by adding higher level thinking activities once the foundation was mastered. Previously, the students were never able to get past the foundational learning. Students have anecdotally done better through both iterations of this model, both through perceived and actual learning.

Incidental to the integration was a shift to a model of information literacy rather than source-selection research.¹⁶ Traditional legal research instruction

focused mostly on sources and the layout of the legal information universe. However, with the emergence of new computer-assisted legal research platforms that allow students to conduct a Google-like search, traditional legal research instruction has changed, or should change if it already has not.¹⁷ Rather than focusing on the sources of legal literature, the focus changed to identifying the source and critically evaluating it for inclusion, or exclusion, in their legal analysis and writing.¹⁸ Through this change, students have a better understanding of the legal sources they are finding on the new platforms.¹⁹ They can critically evaluate and weigh the sources of legal information more readily and based on the credibility and persuasive nature of the information and understand where it should be placed to support their legal argument.²⁰ This shift moved students' thinking up the Bloom's Taxonomy from remembering to critically evaluating and analyzing.²¹ In prior years, it was a struggle to get the students to understand all the different types of sources and their authority. Students now demonstrate a strong understanding of what a source is and how it might be used in their writing, both of which are higher level skills than memorization.

OBJECTIVES AND BLOOM'S TAXONOMY FOR MODULE/UNIT 2: FALL 2015

Determining Success: Evidence

Most of the evidence collected that indicated success was anecdotal commentary from students, both verbal and through course evaluations. This evidence was presented to Dean Suzanne Reynolds, our Dean of Students, and our LAWR Director during breakfast meetings with the first-year students. The students with whom the deans discussed our model found this

“[O]ur teaching team’s integrated model reflects the type of holistic learning embodied by each of our students, which in turn allows graduates to emerge from the program with the skills and knowledge necessary to be productive attorneys.”

form of learning to be more intuitive and to provide higher level thinking. They felt they learned the topic while they were developing their skills better.

Additionally, the teaching evaluations reflected the students' perspectives of LAWR. Particularly, our Fall teaching evaluations students stated, “I loved the way our legal writing and research professor teamed up and coordinated assignments. It made the course a lot less overwhelming and easier to follow,” “I loved the structure of the class (writing → research → combining both disciplines.) Overall, this course was a great experience,” and “Research is not an easy topic to transition into from undergrad. Professor Johnson made it as approachable as possible...” These comments were converse to the prior spring semester where students very clearly saw a disconnect between writing and research. Students stated, “I don’t know how the research component of the class could be done better, but it felt a little disjointed and the information we would cover didn’t match up with the skills we needed for writing assignments,” “[l]astly, there seemed to be a disconnect between the research and writing portion of the class,” and “[t]he research portion of class and the writing class were very disjointed and what we learned in research did not seem related to what we were doing in the writing portion and so I felt like I did not properly learn how to research for my writing.”

Interestingly, the teaching evaluations from Fall 2016 merely reflected where there was breakdown in communication for our larger LAWR section. There were not any substantive comments about how the research instruction and writing instruction was either done well together or done in a disjointed way. Thus, gleaned from this lack of commentary, the integration was a known entity, and the students did not expect the instruction to be given in any other method. There was no reason to comment, good or bad. It just made sense and was the way it was.

In addition to anecdotal evidence, students performed well on the research and writing assessments. The research report sample, the graded rubrics, and the graded research log showed that the students connected the research and writing into one package.²² The research demonstrated was more fluent and logical. Thus, the students learned about a topic and analyzed it to a new set of facts; the only way to do that successfully was through adding the

research instruction directly to the writing problem. By teaching research and writing in a task-forward approach, students did not have to infer or transfer the knowledge from one to the other. The educators, functioning within an integrated model, did the transfer for them, and ultimately, improved the students' learning and skill sets in both disciplines. While other models are also effective in teaching legal research and writing, our teaching team's integrated model reflects the type of holistic learning embodied by each of our students, which in turn allows graduates to emerge from the program with the skills and knowledge necessary to be productive attorneys.

NOTES

1. Liz McCurry Johnson serves as Reference Librarian as well as a Professor of Legal Research for the first-year Legal Analysis, Writing and Research course. Additionally, she teaches a seminar research course, *Health and Medical Research for Lawyers*. She is licensed to practice law in North Carolina. She is also an active member in the North Carolina Bar Association, SEAALL, and AALL. She earned her B.A. degree from the University of North Carolina at Charlotte, her M.L.S. degree, summa cum laude, from North Carolina Central University, and her J.D. degree from North Carolina Central School of Law.
2. Jonathan Z. Ludwig, *The Real World: Classroom Edition! 5 Task-based Language Teaching Activities to Simulate Key Situations*, FLUENTU GEN. EDUCATOR BLOG, <http://www.fluentu.com/educator/blog/task-based-language-teaching-activities/>.
3. *Id.*
4. Kathleen Elliot Vinson, *What's Your Problem*, 44 *STET. L. REV.* 777 (2015) (explaining that the role of the lawyer moves beyond knowledge of law and theory, but rather to lawyers as problem solvers that require collaborative work experience and creative thinking).
5. The current teaching model at Wake Forest University School of Law is that two legal writing professors are partnered with one member of the library faculty to teach Legal Analysis, Writing, and Research.
6. See, e.g., Carol McCrehan Parker, *The Signature Pedagogy of Legal Writing*, 16 *LEGAL WRITING* 463, 466 (2010) ("Indeed, within the signature pedagogy of legal writing, learning the law and writing in law are inextricably linked. In courses through law schools' curricula, legal writing pedagogy serves the profession by engaging students fully in working to solve legal problems within authentic contexts."); Kristin B. Gerdy, *Teacher, Coach, Cheerleader, and Judge: Promoting Learning Through Learner-Centered Assessment*, 94 *LAW LIBR. J.* 59, 60 (2002) ("Learning [legal research], like riding a bicycle, is active.").
7. See Ludwig, *supra* note 2.
8. See, e.g., Ellie Margolis & Kristen Murray, *Teaching Research Using an Information Literacy Paradigm*, 22 *PERSP.* 101 (2014); Phebe E. Poydra, *Developing Legal Information Literate Law Students: "That Dog Will Hunt,"* 32 *LEGAL REFERENCE SERVICES Q.* 183 (2013).
9. Our problem creation was a joint effort between the library faculty and the writing professors where we brainstormed and generated problem materials collaboratively. We found this model to be very effective for problem creation because it allowed all partners to come at the problem generation with their objectives in mind. It is not always the case that a writing problem is also a good research assignment and vice versa.
10. Robert M. Linz, *Research Analysis and Planning: The Undervalued Skill in Legal Research Instruction*, 34 *LEGAL REFERENCE SERVICES Q.* 60 (2015).
11. Nancy Levit, *Legal Storytelling: The Theory and the Practice - Reflective Writing Across the Curriculum*, 15 *LEGAL WRITING* 253, 263 n.49 (2009) (defining reflective writing as "students comment[ing] on their experiences and those of others.")
12. *Id.*
13. See generally Christina Glon, *Bright Idea: Connect the Power of Your Library to Your Law School's Pedagogy by Creating Research Courses that Fill Gaps in the Curriculum*, 24 *PERSP.* 62 (2016) (discussing Emory University School of Law's instructional model).
14. Susan Herrick & Sara Kelley Burriesci, *Teaching Legal Research Online* 28 *LEGAL REFERENCE SERVICES Q.* 239 (2009) ("Online instruction has great potential for accommodating the learning styles and preferences of Millennial law students, as well as for the effective teaching of legal research in the digital age.").
15. Paul D. Callister, *Time to Blossom: An Inquiry into Bloom's Taxonomy as a Hierarchy and Means for Teaching Legal Research Skills*, 102 *LAW LIBR. J.* 191 (2010).
16. See Margolis and Murray, *supra* note 8 at 127. Information literacy is defined by the ACRL as "the set of skills needed to find, retrieve, analyze, and use information." According to the ACRL, information literacy is increasingly important in today's world of "rapid technological change and proliferating information resource . . . An individual who is information literate has the skills to adapt to changes in the research environment and retain the ability of lifelong learning."
17. See, e.g., Ian Gallacher, "Who Are Those Guys?": *The Results of a Survey Studying the Information Literacy of Incoming Law Students*, 44 *CAL. W. L. REV.* 151 (2007); Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the "MTV/Google" Generation*, 54 *LOY. L. REV.* 775 (2008); Vicenç Feliú and Helen Frazer, *Embedded Librarians: Teaching Legal Research and a Lawyering Skill*, 61 *J. LEGAL EDUC.* 540 (2012).
18. Lorne Sossin, *Discourse Politics: Legal Research and Writing's Search for a Pedagogy of its Own*, 29 *NEW. ENG. L. REV.* 883 (1995) (discussing the widely accepted, and perhaps misguided, historical view that legal research and writing courses are meant to solely transfer technical skills, and works through the pedagogical purpose in which legal research and writing have in transforming legal education).
19. See also Nancy B. Talley, *An Old Problem Needs a New Solution: Incorporating Librarian-Led Legal Research Instruction into Directed Research*, 33 *LEGAL REFERENCE SERVICES Q.* 292, 294 (2014) (stating that "effective legal research instruction allows students to engage in metacognition, the process of understanding 'what 'skills, strategies, and resources' are entailed in a task' and, critically, 'how and when to deploy these skills, strategies, and resources.'").
20. *Id.*
21. Benjamin S Bloom, David R Krathwohl & Bertram B Masia, *TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS* (1956); see also Callister, *supra* note 15, at 198-99.
22. See generally Caroline L. Osborne, *A Methodical Approach to Legal Research: The Legal Research Plan, an Essential Tool for Today's Law Student and New Attorney*, 32 *LEGAL REFERENCE SERVICES Q.* 54 (2013).

Introduction to Legal Research: Connecting New Ideas To What Our Students Already Know



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Many legal writing professors and commentators have written about the need to change our approach to teaching legal research in light of the expanding availability of online resources, and our students' experience with and preference for using these resources.¹ The traditional, print-based approach is no longer as effective as it had been given our current students' reliance on technology and lack of familiarity with print-based sources.² To "meet our students where they are most comfortable,"³ I have redesigned my "Introduction to Legal Research" class.

Legal research is one component of the Introduction to Legal Analysis, Research and Communication course at Emory Law School. The research component of this course introduces first-year students to the fundamentals of legal research, including different types of sources and when and how to use them. This component starts with an overview or introductory class and then, over the next five or six classes, covers the specifics of the legal

sources. The redesigned introductory class is now an interactive exercise: I first poll the students about their prior research experience and then I introduce the fundamental concepts of legal research in a way that connects to and builds on the students' own experience. This exercise has turned what was once a dry lecture class into a much more interesting and effective introduction to the concepts the students will need as they develop their legal research skills.

This article will first describe the problems that have recently become more obvious in teaching an "Introduction to Legal Research" class. It will then briefly discuss the importance of the concept of "transfer" in helping students learn. Then it will explain the exercise that I now use in my introductory research class to capitalize on and encourage such learning transfer.

I. IDENTIFYING THE PROBLEM: HOW TO CONNECT TO CURRENT STUDENTS

For several years, I noticed that my method of introducing my students to legal research was not working; I was not connecting with my students and because they were familiar primarily with electronic research, they were not grasping the fundamental concepts they would need to know. My approach had been fairly traditional:⁴ introduce



“When given the choice between going to a library and finding a print source or using their computers, students now choose to stay in their own homes or the local coffee shop to research online.”

the different types of sources we would use during the research part of the course and explain what type of material was in each type of source the students might use in performing legal research. For example, the “traditional” approach is to start with secondary sources and then move to primary sources, introducing each source in turn and explaining why a student would consult that source. The secondary sources would include treatises, legal encyclopedias, and periodicals, and primary sources would include statutes and cases. Recently, however, these concepts did not resonate with my students, and in subsequent classes they were not particularly prepared to learn the more detailed material about each source.

This disconnect should not have been too surprising. Over approximately the last decade, incoming law students have changed. These students are sometimes referred to as “digital natives.”⁵ As Professor Ian Gallacher has noted, “we have reached the point where law students cannot remember a time when computers were not an integral part of their academic lives.”⁶ These students “have cut their teeth on personal computers in grade school. By the time they reach law school these students prefer and expect to conduct legal research for facts, rules and everything else electronically.”⁷ When given the choice between going to a library and finding a print source or using their computers, students now choose to stay in their own homes or the local coffee shop to research online.⁸

As a result of their experiences, these students tend to be skeptical of a research process that requires print research. They are not receptive to hearing about the downsides of computer or online research. For example, despite hearing about the limitations of computer research, the students do not believe these limitations.⁹ As one professor has noted, “[t]hey tend[] to be skeptical of nay-sayers from a different generation.”¹⁰ And since I, like most legal research

and writing professors, had taught research in a more traditional way, based on the fundamental concepts of print research, I faced what Professors Ellie Margolis and Kristen Murray have described as a “disconnect between the legal research course and . . . law students.”¹¹ My students were simply not prepared to learn the way I was trying to teach.

II. USING LEARNING TRANSFER

In an effort to reach students more effectively, I now frame the information in my introductory class in terms of the research the students have already done. In making this change, I hoped to help students connect what I was teaching in my introductory class to what they already knew. And, in doing so, I was incorporating learning transfer, the idea that using what students already know can help them learn something new.

The theory of learning transfer recognizes that “[p]ractically all educational and training programs are built upon the fundamental premise that human beings have the ability to transfer what they have learned from one situation to another.”¹² Transfer can be defined as a process “involving ‘prior learning affecting new learning or performance.’”¹³ Another way to understand transfer is through the idea that “information learned at one time comes to influence learning and performance at a later time.”¹⁴ Moreover, as Professor Tonya Kowalski explains, “general transfer is occurring all the time in our everyday lives. It happens almost instinctively whenever we build upon our previous general knowledge and learn new information or skills.”¹⁵ For example, according to one study evaluating students’ ability to understand text, “what students already know plays a significant role in what they comprehend.”¹⁶

Several legal writing professors have used transfer theory to help teach legal analysis. Professor Charles Calleros explains that “[u]nless students can relate

our words to some concrete experience within their present knowledge, our explanations will remain abstractions to most students . . . By relating a new concept to a student's existing intellectual foundation, we can help the student to assimilate the new concept more quickly."¹⁷ Professor Calleros uses non-legal examples and situations to help students learn legal analysis.¹⁸ He has concluded that using these examples from a "familiar nonlegal setting" helps the students more quickly assimilate the foundational ideas and helps the students apply these ideas to the more unfamiliar ideas in their legal education.¹⁹

Similarly, Professor Laurel Oates has relied on experiments in which researchers have sought to increase the students' ability to transfer ideas in learning.²⁰ She notes that "researchers have been able to increase transfer by encouraging their subjects to look for similarities in problems with similar problem structures but different surface features."²¹ Thus, by applying this approach, professors can likely increase transfer by instructing students to look to prior work and prior experience in working on a current project.²² Applying this idea to research, a professor should tell students to think back to research they have done in the past.²³

III. MY EXERCISE: USING WHAT STUDENTS ALREADY KNOW TO INTRODUCE LEGAL RESEARCH

Legal research is one component of the first-year course "Introduction to Legal Analysis, Research and Communication." The research part of the course comprises approximately six classes in the fall semester of the first year: an introductory class, several classes devoted to particular types of legal sources, and a wrap-up class. The first class, an "Introduction to Legal Research," now centers on an interactive exercise that I start by asking the students several open-ended questions designed to elicit information about their prior knowledge of and experience in conducting research. I then lead a discussion about this information in a manner designed to highlight how the students' prior knowledge and experiences are similar to fundamental concepts in legal research and also how conducting legal research will differ in important ways from what they have done previously. This

section will first summarize the questions I asked and what the students' answers reveal about what my students tend to know already. It will then compare their responses to a recent study about the research experience of incoming law students. Then, it will describe the way in which our discussion highlights the similarities and differences between the students' prior research experiences and their upcoming legal research; for example, we discuss the students' need to conduct thorough and complete research.

A. Students' Prior Knowledge and Experience In Conducting Research.

The introductory research class begins with a series of open-ended questions to the students about their prior research experiences. These questions include the following:

- how many students have previously done academic research;
- how they conduct research (e.g. online or in print sources);
- whether they have written a research paper and if so, how long;
- whether they used secondary or primary sources, and if they know the difference;
- the benefits and drawbacks of using secondary sources; and
- how they know when they are done with their research

The students' responses to this series of questions demonstrate that most students have at least some experience conducting research and most have written a "research paper" of varying lengths. A recent study of incoming law students by Professors Margolis and Murray contains similar results.²⁴ According to that study, approximately 70% of students had undergone some research training before coming to law school.²⁵ Approximately 43% had taken a course that involved research and approximately 26% had taken a course that focused on research.²⁶ Over three quarters of the students had written a research paper of at least ten pages.²⁷ The students also reported a strong preference for conducting research online instead of using print resources.²⁸ Most used a general search engine (like Google) most frequently and as their first source.²⁹

These results are consistent with my anecdotal experience. In sum, as Professor Margolis describes, “today’s researchers arrive at law school with basic familiarity with—and a preference for searching with—search engines, development of key words, and search terms, and are used to culling through online search results.”³⁰

B. Class Discussion Moving From Prior Research Experience To New Legal Research Concepts

My questions also elicited more qualitative responses, and those were the responses that helped connect the students’ prior experiences to what they need to learn about legal research. Some of the key concepts I seek to convey in my introductory classes are: the difference between primary and secondary sources, when students might use secondary sources most effectively, how to keep track of the research process, and how students know that their research is complete. I used the students’ responses and previous experiences to introduce these topics. For example, most students were familiar with the difference between a primary source and a secondary source, even if only in the context of historical research or literary criticism. They were then easily able to understand the characteristics of primary and secondary legal sources.

I can almost always introduce the discussion of why to use a secondary source when a student inevitably mentions Wikipedia. Although the students tend to snicker initially at the idea of using Wikipedia, they are all familiar with the source and the reasons it is a quintessential secondary source. The main ideas students need to understand initially about secondary sources are that secondary sources provide background information about a topic and often provide links or citations to relevant primary sources. Wikipedia serves these functions clearly. The students know that they should not cite to Wikipedia when they write a research paper, but they also recognize that they learn important and useful information from the site. They are familiar with the process of then moving to other sources that they can cite authoritatively. In addition, they have seen the links on a Wikipedia page to primary sources, and they are therefore familiar with the idea of using a secondary source in order to find the relevant primary source(s). These skills will be crucial in conducting legal research and, therefore,

highlighting this concept early on is particularly helpful to the students.

Finally, the questions and answers also provide an introduction to what is likely the biggest difference between the students’ previous research experiences and legal research: when and how students know their research is complete. When I ask students how they know when to stop researching, I inevitably receive the answer: “when I have enough information to write ten pages.”³¹ Other students will answer that they are finished researching when they believe that they have enough information to “discuss” their topic.³² These answers indicate that for this important concept, I need to use the students’ experiences to help them learn why they need to approach legal research differently. With a series of questions, I try to elicit an understanding that when doing legal analysis, the students are not simply “discussing” the legal topic. They need to answer a question or predict an outcome. Or, if writing a brief, they need to persuade a court that their interpretation of the law is correct in that particular situation. The key difference is that they can “discuss a topic” without having read all information about that topic, but they cannot comprehensively and accurately analyze how the law applies to a set of facts if they have not read all of the relevant law. If they miss certain case law, they may miss a certain step in the development of a legal rule or in how a specific element of the rule might be applied to certain facts.³³

At this point, when we discuss the need for comprehensive research, the students can use learning transfer to build on analytical skills that they learned earlier in the semester (and not only from their undergraduate research experience). The students have already learned to synthesize a legal rule from multiple cases. They have seen that they need to take into account the varying ways that a rule can be articulated and applied. As a result, they have learned that if they ignore relevant case law, they run the risk of synthesizing a legal rule that is not accurate. My goal is to help the students build on this experience to realize that their goal in conducting legal research is to find all relevant binding authority so that they are able to synthesize the legal rule accurately. Thus, when discussing the need to conduct thorough research, the students build on prior research experiences and prior experiences in this specific law school class.

By the end of the class, the students have a solid grasp of the fundamental concepts I want to convey: what are secondary and primary sources and when should they be used, and how comprehensive the research must be. These are the important introductory concepts that the students should grasp in this first research class. They are not yet familiar with the types of legal secondary sources, but they understand when and why to use them. Similarly, they may not yet know how to find all of the relevant case law, but they understand why they must try. With this grounding, the subsequent classes on research move more quickly. Those subsequent classes address various types of legal secondary sources and when to use them, and involve researching statutes and researching case law directly.

Conclusion

The exercise described above capitalizes on learning transfer and is an effective introduction to legal research for today's first-year law students. It has helped my students learn fundamental concepts about legal research more efficiently because it allows them to connect these new ideas to their own prior research experiences. They are already familiar with the research process and with basic concepts like secondary and primary sources. After this introductory class, the students are able to more easily grasp basic ideas about secondary and primary sources and about the extent of the research they will need to conduct. Moreover, this exercise has also made the "introduction to legal research" class more interesting—for both the students and the teacher—because it is interactive and incorporates the students' own responses and experiences.

NOTES

1. See e.g. Ian Gallacher, *Forty-Two: The Hitchhiker's Guide to Teaching Legal Research to the Google Generation*, 39 *Akron L. Rev.* 151 (2006); Toree Randall, *Meet Me in the Cloud: A Legal Research Strategy That Transcends Media*, 19 *LEGAL WRITING: J. LEGAL WRITING INST.* 127 (2014).
2. See e.g. Carrie W. Teitcher, *Rebooting the Approach to Teaching Research: Embracing the Computer Age*, 99 *L. LIB. J.* 555 (2007).
3. Theodore A. Potter, *A New Twist on an Old Plot: Legal Research Is a Strategy, Not a Format*, 92 *L. LIB. J.* 287, 294 (2000).
4. See Ellie Margolis & Kristen E. Murray, *Say Goodbye to the Books: Information Literacy as the New Legal Research Paradigm*, 38 *U. DAYTON L. REV.* 117, 118 (2012) (noting that "[t]raditionally, legal research was taught through bibliographic instruction – explaining what materials were contained in various case reporters, code books, other primary legal sources, etc. and then teaching how to access those materials through digests, annotations, secondary sources, and the like.").

5. Randall, *supra* note 1, at 128 n.10 (citing Marc Prensky, *Digital Natives, Digital Immigrants*, 9 *On the Horizon* 1, 1 (Sept.-Oct. 2001) (noting that a digital native is "a native speaker of digital language of computers, video games and the internet.")).
6. Gallacher, *supra* note 1, at 163-164.
7. Lee F. Peoples, *The Death of the Digest and the Pitfalls of Electronic Research: What Is the Modern Legal Researcher to Do?* 97 *L. LIB. J.* 661 (2005).
8. Teitcher, *supra* note 2, at 559.
9. *Id.* at 563.
10. *Id.*
11. Margolis, *supra* note 4, at 125.
12. Tonya Kowalski, *True North Navigating for Transfer of Learning in Legal Education*, 34 *SEATTLE U. L. REV.* 51 (citing James Desse, *Transfer of Training: The Psychology of Learning* 213 (McGraw Hill 1958)).
13. *Id.* at 60.
14. *Id.*
15. *Id.* at 61.
16. Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 *SANTA CLARA L. REV.* 1, 15 (2002).
17. Charles R. Calleros, *Using Classroom Demonstrations in Familiar Nonlegal Contexts to Introduce New Students to Unfamiliar Concepts of Legal Method and Analysis*, 7 *LEGAL WRITING: J. LEGAL WRITING INST.* 37, 38 (2001).
18. *Id.*
19. *Id.* at 58.
20. Laurel Currie Oates, *I Know That I Taught Them How to Do That*, 7 *LEGAL WRITING: J. LEGAL WRITING INST.* 1 (2001).
21. *Id.* at 14.
22. *Id.* at 15.
23. *Id.* at 16 ("[I]n assigning a research project, we should specifically tell our students that they should think about the other research projects that they have done to determine which ones involved similar types of research questions.").
24. See Margolis, *supra* note 4, at 135-139.
25. *Id.* at 135.
26. *Id.*
27. *Id.*
28. *Id.* at 139.
29. *Id.*
30. *Id.* at 151.
31. This answer is consistent with what Professor Margolis calls "satisficing" or "doing just enough research to get by." See Margolis, *supra* note 4, at 131.
32. This answer is also consistent with the Margolis study in which 64.7% of students said that they determined that they were finished researching when they found enough information to competently discuss the topic. See *id.*, at 147.
33. Of course, once in practice, students and/or lawyers could face professional and ethical consequences if they fail to address all relevant and binding case law.

Not “Who?” but “How Much?”: Prioritizing Legal Research Instruction in First-Year Legal Writing Courses



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For ages, it seems, the debate has raged regarding who should teach legal research.¹ And the legal academy has not yet reached a consensus on this question—as revealed by the diversity of legal research teaching structures in American law schools.² The fact that law schools allow different types of instructors to teach legal research is fine. As a law librarian, I may favor more institutional power for my fellow librarians, but I do not operate under the delusion that my M.L.I.S. degree makes me inherently more qualified to teach research than anyone else. There are both exceptional and dreadful teachers among each pool of potential research instructors, whether they be law librarians, full-time legal writing faculty, adjunct faculty, or anyone else. But we seem to put too much emphasis on the question of “Who?” and, in doing so, neglect a more important question: “How much?”

Caroline Osborne, Assistant Dean for Legal Information Services and Professor of Legal Research at Washington and Lee University School of Law, recently published an article in *Law Library Journal* discussing a survey about how legal research is structured, taught, and graded in American law schools. Among other interesting findings, Osborne’s survey concluded that the large majority of law schools incorporate a grade for legal research into the overall grade for the first-year legal writing course.³ This is not necessarily problematic, but as Osborne dug deeper, some disturbing trends emerged. First, Osborne’s survey shows that writing instruction takes up significantly more time than research instruction.⁴ Second, many respondents reported that while writing assignments are graded, legal research assignments are not. And among those respondents reporting that legal research assignments are graded, many reported that they represent 25 percent or less of the

overall LRW grade.⁵ Ultimately, as Osborne puts it, the survey answers “imply that writing and other skills development are the focus of the class, with research as the orphan child.”⁶

This trend toward de-emphasizing research in first-year legal writing courses is troubling. In a world where a new associate can expect to spend nearly half (or more) of her working hours conducting legal research,⁷ law schools ought to be prioritizing legal research. But when research instruction represents 25 percent or less of a first-year legal writing class (and most students will receive no additional formal research training beyond that),⁸ we can be sure that we are not equipping law students for the real world, where they will be conducting legal research nearly every day. And this underrepresentation of research sends the message to students that legal research is either not that important or not that difficult (or both).⁹



While law schools are sending the message that legal research is not that important, practicing attorneys claim that it is the most important skill. In a survey of attorneys by the Institute for the Advancement of the American Legal System, attorneys rated the ability to “effectively research the law” as the most important skill for new attorneys to develop in the short term, ahead of other skills such as “draft[ing] pleadings, motions, and briefs”; “request[ing] and produc[ing] written discovery”; and “gather[ing] facts through interviews, searches, document/file review, and other methods.”¹⁰ In another attorney survey by the National Conference of Bar Examiners, more attorneys said

they conducted research than “draft[ed] memo[s] summarizing case law, statutes, and regulations, including legislative history”¹¹—a hallmark of the LRW experience.¹² And attorneys ranked the ability to research as more significant than the ability to draft memoranda.¹³ Similarly, in a LexisNexis survey, attorneys rated legal research as more important than appellate brief drafting and trial brief drafting,¹⁴ two of the skills most likely to be taught in a first-year legal writing course.¹⁵

Attorneys recognize the importance of legal research, but law students do not—and that is partly the fault of law schools. Millennials arrive at law school mistakenly believing that they know how to do legal research.¹⁶ Law school curricula must disabuse them of that notion, and quickly. As Osborne concludes, “The common refrain that law students lack the most basic legal research skills is likely to continue until law schools make fundamental structural changes in the method of teaching legal research.”¹⁷ Curricula and syllabi should communicate to students that research is just as essential as writing, by giving them equal time and equal weight. Curricula also need to show students just how difficult legal research is, so that they take it seriously. Increasing students’ research load and avoiding “closed universe” problems can help achieve this goal.¹⁸

None of this is to argue that writing is unimportant. The point is that attorneys consistently rank legal research as more important than the specific types of writing most commonly taught in LRW courses, yet, as Osborne has shown, many LRW programs give research short shrift, either by not teaching very much research in the first place or by not grading what is taught.¹⁹ Given that the results of the surveys discussed herein clearly demonstrate the importance of legal research in the “real world,” this is unacceptable. The data demonstrate that legal research is the most commonly used and the most important skill for new attorneys to develop. It is not clear why law school curricula have not evolved to address this issue, but they need to do so; every year of inaction produces another class of law graduates unequipped for their careers. The question of who should teach legal research can wait for another day; we need to first agree to address the issue of how much legal research is being taught.

NOTES

1. For an excellent discussion of the various arguments, see Ian Gallacher, *Forty-Two: The Hitchhiker's Guide to Teaching Legal Research to the Google Generation*, 39 AKRON L. REV. 151, 171-78 (2006).
2. See Caroline L. Osborne, *The State of Legal Research Education: A Survey of First-Year Legal Research Programs*, or "Why Johnny and Jane Cannot Research", 108 LAW LIBR. J. 403, 412 (2016) (showing nearly even split in number of law schools where law librarians are primary research instructors and law schools where legal writing faculty teach research); ASSOCIATION OF LEGAL WRITING DIRECTORS & LEGAL WRITING INSTITUTE, REPORT OF THE ANNUAL LEGAL WRITING SURVEY 11 (2015), <http://www.alwd.org/wp-content/uploads/2017/03/2015-survey.pdf> (When asked who teaches legal research, 32 percent of responding schools said both LRW faculty and librarians, 27 percent said LRW faculty only, 21 percent said librarians only, 8 percent said teaching assistants or students, and 12 percent said other).
3. Osborne, *supra* note 2, at 411.
4. *Id.* at 408.
5. *Id.* at 411-12.
6. *Id.* at 409.
7. THOMSON-WEST, WHITE PAPER: RESEARCH SKILLS FOR LAWYERS AND LAW STUDENTS 2 (2007), http://nsulaw.typepad.com/nowalawcity/files/town_hall_legal_research_white_paper1_2.pdf ("According to 'day in the life' qualitative research conducted by West, a new associate at a law firm can expect to spend 80 percent of his time researching, drafting and writing documents" with a split of 45 percent research and 35 percent drafting and writing); LEXISNEXIS, WHITE PAPER: HIRING PARTNERS REVEAL NEW ATTORNEY READINESS FOR REAL WORLD PRACTICE 3 (2015), https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf (reporting that the average new associate spends 43% of her time conducting legal research, while 26% of new associates spend 60% or more of their time doing so).
8. Barbara Glesner Fines, *Out of the Shadows: What Legal Research Instruction Reveals About Incorporating Skills Throughout the Curriculum*, 2013 J. DISP. RESOL. 159, 175 (2013) ("Only ten law schools require an upper-level course specifically focused on legal research skills.").
9. Osborne, *supra* note 2, at 409 (noting that the current structure of many first-year legal writing programs "fail[s] to signal the importance of legal research in the practice of law").
10. INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT 11-12 (2016), <http://iaals.du.edu/foundations/reports/whole-lawyer-and-character-quotient/analysis-results-survey-category>.
11. Susan M. Case, *The NCBE Job Analysis: A Study of the Newly Licensed Lawyer*, 82 THE BAR EXAMINER 52, 52, 56 (March 2013), http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2013/820113testing-column.pdf. In the survey, 86% of attorneys reported that they drafted memos, while 96% responded that they performed electronic legal research. *Id.* at 56.
12. Frances C. DeLaurentis, *When Ethical Worlds Collide: Teaching Novice Legal Writers to Balance the Duties of Zealous Advocacy and Candor to the Tribunal*, 7 DREXEL L. REV. 1, 20 (2014) (stating that office memoranda were among the most common LRW assignments in the 2012-2013 academic year).
13. The survey asked attorneys to report what tasks they perform and to rank the significance of those tasks on a scale of 0-4, with 4 being the most significant. Case, *supra* note 11, at 56. Attorneys gave memo drafting a significance ranking of 2.81 but gave electronic legal research an average significance ranking of 3.41. *Id.*
14. LEXISNEXIS, *supra* note 7, at 4.
15. DeLaurentis, *supra* note 12, at 20 ("During the 2012-13 academic year, the most common writing assignments in first-year legal research and writing courses included: office memoranda, appellate briefs, client letters, email memos, and pretrial briefs.").
16. Sarah Valentine, *Legal Research As A Fundamental Skill: A Lifeboat for Students and Law Schools*, 39 U. BALT. L. REV. 173, 190 (2010) ("[S]tudents are convinced their nonlegal research skills will easily translate into legal research success and they are impatient with anything other than systems such as Westlaw and Lexis once in law school. All of this culminates in a belief that they are successful with electronic researching even when confronted with proof to the contrary.").
17. Osborne, *supra* note 2, at 419.
18. Lucia Ann Silecchia, *Designing and Teaching Advanced Legal Research and Writing Courses*, 33 DUQ. L. REV. 203, 229 n.81 (1995) ("The problem with the closed universe packets arises when they are overused. This denies students the opportunity to have the realistic experience of completing their own research and writing as they must do in practice.").
19. Osborne, *supra* note 2, at 411-12.

This Really Happened: Incorporating Legal News Items and Current Events into Legal Research Courses



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The notion of incorporating legal news items and current events into legal skills classes is not a new one.¹ Legal research professors, in particular, can use novel legal issues or controversies to illustrate and reinforce the very research skills that law students are in school to learn.² The practical steps that must be taken to regularly incorporate these items and events into legal research classes, however, may seem overwhelming to a new legal research professor, particularly when faced with the realities of limited time and resources. In fact, a new professor may be unsure of how to integrate news items and current events in a way that would be most useful for students. This article explains why legal research professors should overcome these relatively minor obstacles and how they can begin to do so.

THE BIG DEAL ABOUT LEGAL NEWS

Using legal news items and current events as part of a legal research course can benefit both the students and the professor in several ways. First, students seem to get more excited about legal research when examples from recent court cases or new legal controversies are involved.³ It has been my experience that including issues that are contemporaneously occurring in the legal world lends an “importance” to legal research assignments that might not otherwise be recognized by the students. Students need to understand that they will use the legal research skills they have learned in law school when they are practicing attorneys. As legal research professors, we can increase law students’ interest in legal research by leveraging their potential excitement at dealing with a “real” legal issue in class. This would further prove the practical value of legal research courses and reinforce the importance of legal research as a necessary skill.⁴

Second, exposing students to legal news items and current events can encourage them to regularly monitor these items on their own because these items are being used as part of their course work.⁵ To the extent that items found in current awareness sources like Bloomberg BNA’s *United States Law Week*, legal blogs,⁶ law journals,⁷ and even law-related social media can be worked into legal research assignments, students gain more practice with and exposure to

those sources. Over time, we may find that a desire to continue to keep up with legal news has been fostered within our students simply through the experience they gained with these sources in legal research classes.

Third, regularly using news items and current events in legal research courses can benefit legal research professors by encouraging us to more frequently update our course exercises and assignments. While the extent to which such exercises might need to be regularly updated or “recycled” is a matter of some debate,⁸ legal research professors who choose to regularly do so may find that the use of current events and news items in their exercises will stimulate them intellectually and encourage them to regularly create new assignment or exercises.⁹ Understandably, there is only a limited amount of time to devote to the creation of new course materials, so it makes sense to *strategically* rework existing assignments to improve their relevance and usefulness to students.¹⁰ However, regularly incorporating the latest news and current event items into course exercises and assignments is one method to prevent the likelihood of legal research assignments becoming stale and predictable from overuse by providing important motivation to continually rework and improve them.

GETTING STARTED

As a legal research professor, I incorporate news items and current events into my assignments to illustrate key legal research principles. Admittedly, because the curriculum at the Northern Illinois University College of Law consists of separate legal research and legal writing courses, the amount of time that our students are required to participate in research-specific activities and the amount of time that I have to devote to such exercises in my course is increased.¹¹ However, even in legal curricula in which legal research, legal writing, and legal analysis are combined, legal news items and current events can be used to help students understand the important role that research plays in lawyering.¹² Below are a few suggestions for employing news items and current events in legal research courses:

Suggestion #1: Retrieving and Updating Court Opinions

News items about an appellate opinion can form the basis for a useful legal research exercise. Items that identify a specific opinion from an appellate court could be used to illustrate the following legal research skills through the following legal research tasks:

LEGAL RESEARCH SKILL #1: Case Retrieval and Evaluation

Task #1: Retrieve the appellate court’s opinion (in one or more electronic databases and/or online through the Court’s website);

Task #2: Update the court opinion through a resource such as KeyCite, Shepard’s or BCite to determine if the opinion is still good law;¹³

Task #3: Use the court opinion to understand the direct history of a case;

LEGAL RESEARCH SKILL #2: “Mining” a Case for Other Relevant Resources

Task #1: Use a resource like KeyCite, Shepard’s or BCite to analyze the Table of Authorities for a court opinion and to find primary or secondary sources that may have cited the court opinion;

Task #2: Use an electronic database to retrieve and analyze the briefs and memoranda that were filed in the case;

LEGAL RESEARCH SKILL #3: Proper Case Citation

Task: Provide accurate Bluebook citations for the court opinion and other relevant primary sources referenced in the court opinion; and

LEGAL RESEARCH SKILL #4: Case Analysis

Task: Explore the relevant substantive law issues addressed in the court opinion.

Suggestion #2: Conducting Docket Research

A news article about a lawsuit can also lend itself to the creation of a docket-based legal research assignment. As part of the assignment, students can be taught the following legal research skills through docket-related tasks:

LEGAL RESEARCH SKILL #1: Locating and Reviewing A Court Docket

Task #1: Locate the docket information for the specific court case referenced in the news item via the Court's website or through a service like PACER or Bloomberg Law;

Task #2: Identify any relevant pleadings found through the case docket, as well as the dates such pleadings were filed;

LEGAL RESEARCH SKILL #2: Case Analysis

Task #1: Determine the specific case law, statute(s), and/or regulation(s) at issue in the court case;

Task #2: Use the primary sources addressed in the pleadings to make a prediction as to the outcome of the case;

Task #3: Explore the relevant substantive law issues raised in the case pleadings;

Task #4: Analyze the arguments made in the relevant pleadings; and

LEGAL RESEARCH SKILL #3: Proper Case Citation

Task: Provide accurate Bluebook citations for the primary sources at issue in the court case.

It is important to reiterate that because docket-related research requires students to use their legal research skills to retrieve and analyze information about an actual court case, the students may come to better appreciate how these skills can help them in their careers as attorneys.

Suggestion #3: Finding and Using Forms

Legal news items and current events can also be used to help students better understand the role of the attorney in a legal proceeding. For example, a legal news item about a motion filed in a court case can be used to support an assignment on finding relevant legal forms and sample pleadings. Depending on the topic of the news item, legal research exercises could allow students to practice the following research skills:

LEGAL RESEARCH SKILL #1: Form Identification and Retrieval

Task: Locate an appropriate form that an attorney might use based on the information provided in the news item, either in print or electronically;

LEGAL RESEARCH SKILL #2: Resource Usage and Evaluation

Task: Analyze potential options for obtaining sample forms and pleadings (including print or electronic sources), as well as the pros and cons of each option;

LEGAL RESEARCH SKILL #3: Incorporating Primary Resources into Forms

Task: Use specific primary sources to draft a sample motion or pleading in support of or in opposition to the motion referenced in the legal news item; and

LEGAL RESEARCH SKILL #4: Locating and Understanding Court Rules and Procedures

Task: Determine the specific court rules at issue in relation to the motion filed.

Because these suggested tasks are complex, exercises related to finding forms and sample pleadings may be best suited for the final weeks of a basic legal research course or for an advanced legal research course.

"[I]ncluding issues that are contemporaneously occurring in the legal world lends an "importance" to legal research assignments that might not otherwise be recognized by the students. Students need to understand that they will use the legal research skills they have learned in law school when they are practicing attorneys."

Suggestion #4: Identifying and Understanding Administrative Law

Legal news items frequently reference issues related to administrative law. For example, an article about a food recall can easily be used as the basis for a legal research exercise about the Food and Drug Administration and the administrative regulations it promulgates. Such an exercise would allow students to practice the following legal research skills:

LEGAL RESEARCH SKILL 1: Understanding the Role of Administrative Agencies

Task #1: Identify the appropriate federal and/or state administrative agency that regulates the issue discussed in a legal news item;

Task #2: Locate the enabling statute that created the relevant agency;

LEGAL RESEARCH SKILL #2: Regulation Retrieval and Evaluation

Task #1: Identify the appropriate federal or state regulations at issue;

Task #2: Update those regulations through a resource such as KeyCite, Shepard's or BCite to determine if they are still good law;

Task #3: Identify and analyze any potential changes to the relevant regulations that have been proposed;

LEGAL RESEARCH SKILL #3: Resource Usage and Evaluation

Task: Identify, access, and evaluate specific tools for accessing regulatory law, including the Federal Register, the Code of Federal Regulations, and Internet sources such as FDsys and Regulations.gov; and

LEGAL RESEARCH SKILL #4: Proper Citation of Regulations

Task: Provide accurate Bluebook citations for the regulations at issue.

Suggestion #5: Researching the Legislative Process and Legislative History

Current events items related to pending legislation often lend themselves to research exercises dealing with the legislative process and legislative history. In such exercises, students could practice the following legal research skills:

LEGAL RESEARCH SKILL #1: Locating Pending Legislation

Task: Locate the pending legislation discussed in the news item;

LEGAL RESEARCH SKILL #2: Tracing the Legislative Process

Task: Determine where the pending legislation is in the legislative process;

LEGAL RESEARCH SKILL #3: Retrieving and Analyzing Legislative History Documents

Task: Identify, review, and analyze the most relevant portions of the legislation's history so far (e.g., relevant bill versions, committee reports, floor debates, etc.);

LEGAL RESEARCH SKILL #4: Resource Usage and Evaluation

Task #1: Use free government resources such as FDsys, e-CFR, and Congress.gov to locate legislative history information;

Task #2: Compare the information available about the legislation in the free government resources to that found in commercial legal databases; and

LEGAL RESEARCH SKILL #5: Proper Legislative/Statutory Citation

Provide accurate Bluebook citations for the pending legislation at issue and the relevant portions of the legislation's history thus far.

Similar tasks can also be tied to legal news items about state or federal laws that have recently been enacted. Exercises about recently enacted laws might also include questions about the codification process or about Bluebook citation formats.

ONE LAST THING . . .

The preceding suggestions are just a few of the many ways in which legal news items and current events can be incorporated into a legal research course to reinforce specific research skills. In addition to the suggestions provided above, a final important use for legal news items and current events is to serve as the starting point for creating hypotheticals to use in problem-based legal research assignments. The facts of an actual court case can be modified as needed and used in a legal research exercise. In many instances, when students find the “real case” on which the hypo is based as part of their research, it increases their excitement about that legal research exercise and about legal research in general.

Regardless of how you decide to incorporate legal news items and current events into your legal research courses, however, I urge you to jump in and get started! Doing so will benefit your students and yourselves.

NOTES

1. See Amy R. Stein, *This Time It's For Real: Using Law-Related Current Events in the Classroom*, 20 PERSP.: TEACHING LEGAL RES. & WRITING 1 (2011) (providing examples of how the author creates “research, analysis, writing, and oral advocacy” exercises based on a “real fact pattern” in her legal writing courses); Amy R. Stein, *This Time It's For Real Continued: More Ways to Use Law-Related Current Events in the Classroom*, 21 PERSP.: TEACHING LEGAL RES. & WRITING 18 (2012) (providing additional examples of how the author uses law-related news items in her legal writing courses).
2. Kathleen (Katie) Brown, *Dang You Tricked Me into Learning: Chaos, Current Events, Clickers and Competition in the Legal Research Classroom*, (manuscript at 13), <http://ssrn.com/abstract=1602102> (quoting Chiwen Bao et al., *Left Learning: Theory and Practice in Teaching From the Left in Law School*, 31 N.Y.U. REV. L. & SOC. CHANGE 479, 481 (2007)).
3. See Stein, *This Time It's for Real*, *supra* note 1, at 1 (noting that “[u]sing law-related current events in the classroom is a great way to engage first-year students, as well as help them develop the habit of keeping up-to-date on the current state of the law.”).
4. See Patricia Morgan, *Stop Me If You've Heard This Before*, AALL SPECTRUM, Sept.-Oct. 2014, at 21, 22 (noting that a legal research class in which she “saw several of [her] students at other times to help with their work assignments, other schoolwork, and even just to discuss current events from a research perspective” ultimately “[t]urned out to be [her] most engaged.”) (emphasis added).
5. See Stein, *supra* note 1.
6. Legal blogs and online publications such as SCOTUSblog (<http://www.scotusblog.com/>) and Jurist (<http://www.jurist.org/>) are two sources that I frequently refer to for ideas on current awareness items to incorporate into my legal research coursework. However, there are many other legal blogs and online publications that may be useful to the legal research professor.
7. The *ABA Journal* (<http://www.abajournal.com/>) and the *National Law Journal* (<http://www.nationallawjournal.com/>) are helpful sources for legal and lawyer-related news items. State and local bar journals often prove similarly useful.
8. See Rita Barnett-Rose, *Reduce, Reuse, and Recycle: How Using “Recycled” Simulations in an LRW Course Benefits Students, LRW Professors, and the Relevant Global Community*, 38 U. DAYTON L. REV. 1, 4, 30-31 (2012) (describing recycling LRW problems as “turning old materials into valuable new resources”, but noting that some professors note intellectual reasons for wanting to create new LRW problems); James D. Dimitri, *Reusing Writing Assignments*, 12 PERSP.: TEACHING LEGAL RES. & WRITING 27, 27, 29-30 (2003) (arguing that reusing assignments saves time but also presents other issues that must be addressed, including the possibility of student academic misconduct); Ellie Margolis & Susan L. DeJarnatt, *Moving Beyond Product to Process: Building a Better LRW Program*, 46 SANTA CLARA L. REV. 93, 131-34 (2005) (noting various reasons to reuse LRW assignments, but noting that their LRW problems are still “update[d] and tweak[ed]”).
9. See Barnett-Rose, *supra* note 8.
10. See *id.*; Margolis & DeJarnatt, *supra* note 8.
11. Legal research professors at the NIU College of Law teach three credits of basic legal research over two semesters. Legal writing is also taught separately over two semesters, although the legal research and legal writing professors choose to collaborate closely to create as cohesive a research and writing experience for our students as possible. Our students also have the option of taking advanced legal research courses after their basic legal research requirements are met. More information on these research requirements can be found at http://www.niu.edu/law/academic/first_year/index.shtml and http://www.niu.edu/law/academic/second_third/index.shtml.
12. See Stein, *supra* note 1, at 5.

Using Animal Law to Teach Legal Research



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First-year law students often struggle to begin² and end their research.³ As law professors, we unrealistically expect students to quickly distinguish between primary and secondary sources, federal and state law, statutory and common law, as well as to engage in legal research using an unfamiliar technique: terms and connectors.⁴ This task is complicated because students often do not have a good grasp on the underlying law, and they can become easily overwhelmed by the number of results that are returned from a poorly constructed search.⁵ Animal law can minimize student confusion about and opposition to legal research and is a good basis for legal research exercises for three reasons: (1) animal law builds on first-year legal concepts; (2) animal law is, for the most part, state-specific; and (3) animal law, while a relatively new legal discipline, is familiar to everyone.

ANIMAL LAW INTEGRATES FIRST-YEAR LEGAL CONCEPTS

Legal research can be challenging to first-year law students because students are often tasked with researching an unfamiliar area of law using an unfamiliar research process. First-year law students often struggle to begin their research because they do not understand the law they are researching.⁶ While students can be instructed to start with secondary sources, even finding a good secondary source requires some basic understanding of the law so that search terms can be entered in to a search function. If the research topic is too obscure or foreign, law students might revert to a guessing game approach where random words are inserted one after another in the hopes of finding a relevant source.

However, animal law topics are in essence first-year legal concepts, and using animal law research exercises allows students to focus on the process of legal research thereby avoiding a game of trial and error. Animal law intersects with a number of first-year courses including Torts, Property, Contracts, and Criminal Law.⁷ As one practitioner noted: “[a]nimal law cuts across all substantive areas of the law. Every type of law that you learn in law school can involve animal law—torts, commercial law, contracts, criminal, elder, health, negligence, family—any type of law has an animal law component to it.”⁸

As a result, students confronted with an animal law legal research question already have a basic vocabulary from which to build their search. The concept of damages provides a good example. In the context of animal law, an animal owner may be entitled to damages if his or her pet is injured. Asking students to generate search terms for a research problem involving veterinary malpractice should not be as challenging as asking students to generate search terms about copyright law or election law.⁹ Students might not have encountered a veterinary malpractice claim before, but they should be able to transfer what they have learned about negligence in Torts to create an effective search.¹⁰ Because animal law applies concepts learned in first-year law school classes, students already have a starting point for their research. They can consult secondary sources, if necessary, but are not dependent on secondary sources for locating search terms that will later lead them to primary sources.

ANIMAL LAW IS STATE-SPECIFIC

Many rules governing the rights and interests of animals are found at the state level in both common law and statutory law.¹¹ For example, breed-specific legislation,¹² anti-cruelty laws,¹³ and pet trusts¹⁴ are all regulated at the state level and are state-specific. Research exercises can highlight the differences among state laws as well as between state and federal laws, the importance of narrowing a search by jurisdiction, or the benefits of an annotated statute. In addition, these statutes often lead to good discussions about police powers, the law-making process, and society’s influence on our laws. For example, in 2011,

an Ohio resident released fifty-six exotic animals including monkeys, tigers, and wolves from their cages before the owner took his own life.¹⁵ While some of the animals were captured, most were killed.¹⁶ As a result of this incident, the Ohio legislature moved quickly to introduce the Ohio Dangerous Wild Animal Act,¹⁷ and the bill was signed into law in 2012. The Act requires current owners of dangerous wild animals to microchip and register their animals¹⁸ and prohibits the future possession, acquisition, purchase, sale, trade, or transfer of dangerous wild animals.¹⁹

In addition to regulating exotic animals, state agricultural, natural resources, or wildlife agencies promulgate regulations that affect farm animals and wildlife.²⁰ An exercise based on the facts above

can expose students to administrative law concepts. Finally, attitudes about the treatment of animals and their place in society is constantly evolving, with states leading the way. As a result, exercises can also examine amendments to statutes or changes to regulations.²¹

A similar evolution can be seen in the common law context. Animals are traditionally viewed as property,²² but increasingly, courts are recognizing that animals, particularly domesticated animals, are different from a chair or car.²³ More courts allow for greater protections to animals and damages to animal owners as a result of harm to pets.²⁴ These topics can lead to thoughtful discussions on the development of common law and the importance of validating and updating case law research.

ANIMAL LAW IS A NEW DISCIPLINE THAT IS FAMILIAR TO EVERYONE

Animal law is a relatively new legal discipline,²⁵ but chances are your students have a personal story about animals. Many grew up in a house with pets or on a farm or ranch. Some enjoy hunting or fishing, while others are vegan or vegetarian. Many have experienced the benefits of an emotional support animal or volunteer at a local shelter. A law student with no experience with animals is rare. Even those few students who do not have a connection to animals probably have a close relative or friend who does. Few areas of law have such a universal or expansive reach where all law students can relate. This familiarity

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*“[W]hen looking for a legal
research topic, look no further
than animal law.”*
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makes animal law research exercises interesting to students and often generates lively class discussions. Animal law stories also permeate the popular press, and the professor need only consult her preferred local or national news outlet for a research topic.²⁶ Yet because animal law is still relatively new, the body of law students need to sort through to answer a research question is narrow, minimizing the degree of frustration students might experience.

CONCLUSION

Learning how to conduct legal research is easier when students know a little about the law they are researching and can relate to the topic they are researching. Animal law research exercises can be designed to apply concepts from any number of first-year courses. When students have a basic understanding of a legal concept like negligence, they can focus more on the research process, including generating search terms, selecting relevant case or statutory law, and updating that law. The newness of animal law guarantees a limited number of results on any given animal law research topic, reducing the confusion that can often arise when students feel like they are looking for a needle in a haystack. In addition, the changing legal treatment of animals provides an opportunity for state comparisons and exercises that trace the evolution of common law and statutes. Finally, because most students have some experience with animals, animal law topics can engage and interest almost any law student. So when looking for a legal research topic, look no further than animal law.

NOTES

1. I am happy to share any of the animal law exercises I have created.
2. Kari Mercer Dalton, *Bridging the Digital Divide and Guiding the Millennial Generation's Research and Analysis*, 18 BARRY L. REV. 167, 180 (2012) ("Millennials tend to simply search for words instead of using their legal analysis and reasoning skills to develop a research plan.").
3. See Brooke J. Bowman, *Researching Across the Curriculum: The Road Must Continue Beyond the First Year*, 61 OKLA. L. REV. 503, 534-35 (2008) (explaining that students often stop researching "too soon" when they believe they have found the perfect case or "continue researching beyond when they need to because they have yet to find the 'perfect' case").
4. Legal Research and Writing Professors are tasked with teaching novice legal researchers how to research, what to research, and where to research. This can be challenging for both professor and student. See Ian Gallacher, *Forty-Two: The Hitchhiker's Guide to Teaching Legal Research to the Google Generation*, 39 AKRON L. REV. 151, 205 (2006) ("Legal research programs today face the challenge of teaching research techniques to students who might have neither the experience nor the vocabulary to properly understand fundamental research concepts while simultaneously teaching students about the materials used to conduct legal research."); see also Bowman, *supra* note 3, at 524 (describing some of the roadblocks first-year law students experience including having little or no experience with conducting research). As a result "[w]hen [students] start[] their research online, [they] are not thinking about the importance of source evaluation or selection." *Id.* at 527.
5. Dalton, *supra* note 2, at 181 ("Millennials also get lost in the uncontrolled volume of information and reach a paralyzing information overload.").
6. One legal research and writing scholar has advocated for teaching legal research across the curriculum. See Bowman, *supra* note 3, at 550 ("[I]ncorporating legal research instruction across the curriculum will only help to reinforce, refocus, and repeat the initial skills that the students learned in their first-year legal research and writing classes and set the students on the path towards research competency, while stressing the importance of ongoing research skills development beyond law school.").
7. See, e.g., *United States v. Stevens*, 559 U.S. 460 (2010) (holding a statute criminalizing the commercial creation, sale, or possession of certain depictions of animal cruelty to be overbroad and therefore invalid under the First Amendment); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) (concluding that a city ordinance banning animal sacrifice violated the Free Exercise Clause of the First Amendment). Furthermore, questions about damages, standing, and police power often arise in animal law cases. See *Brooks v. Jenkins*, 220 Md. App. 444, 104 A.3d 899 (2014) (discussing damages for shooting a dog during the execution of an arrest warrant); *Alternatives Research & Dev. Found. v. Glickman*, 101 F. Supp. 2d 7, 14 (D.D.C. 2000) (deciding that a laboratory researcher suing under the Animal Welfare Act had demonstrated the elements of constitutional standing); *Toledo v. Tellings*, 114 Ohio St. 3d 278, 282, 871 N.E.2d 1152, 1156 (2007) (explaining that "[d]espite the special relationships that exist between many people and their dogs, dogs are personal property, and the state or the city has the right to control those that are a threat to the safety of the community").
8. Janet Stidman Eveleth, *What Is Animal Law?*, 40 MD. B.J. 4, 8 (2007).
9. See, e.g., *McMahon v. Craig*, 176 Cal. App. 4th 1502 (2009) (holding that in a veterinary malpractice claim, the plaintiff had failed to establish a prima facie case of negligence); *Fleischer v. Henvy*, 2000 Conn. Super. LEXIS 3389 (Conn. Super. Ct. 2000) (demonstrating principles of contract law through the lens of veterinary malpractice).
10. See, e.g., *McGee v. Smith*, 107 S.W.3d 725, 727 (Tex. App. 2003) (explaining that "veterinarian negligence cases are to be analyzed under the same standard applied to physicians and surgeons in medical mal-

practice cases” and therefore the plaintiff must “establish by expert testimony: (1) the applicable standard of care; (2) the facts that show appellants deviated from that standard, and (3) that the deviation caused the [animal’s] death”.

11. Federal regulation of animal welfare is limited to a few statutes the most relevant of which is the Animal Welfare Act, 7 U.S.C. § 2131 et. seq. (2012). This statute is limited to the treatment of research animals and the sale and transportation of animals. *Id.*

12. Many states have enacted legislation that prohibits municipalities from enacting breed-specific legislation. See, e.g., UTAH CODE ANN. § 18-2-101 (West 2017) (Utah); R.I. GEN. LAWS § 4-13-43 (2017) (Rhode Island); S.D. CODIFIED LAWS § 40-34-16 (2017) (South Dakota). Other states allow for the regulations for “dangerous dogs” as long as the regulation is not specific to a particular breed of dog. See, e.g., TEX. HEALTH & SAFETY CODE ANN. § 822.047 (West 2017) (Texas); MINN. STAT. § 347.51 (2016) (Minnesota).

13. All fifty states have some form of animal anti-cruelty legislation. See <http://aldf.org/blog/50-states-now-have-felony-animal-cruelty-provisions/>; see also N.M. STAT. ANN. § 30-18-1 (2017) (New Mexico); 18 PA. CONS. STAT. § 5511 (2017) (Pennsylvania).

14. All fifty states have a statute that allows for the creation of pet trusts. See <https://www.bna.com/50-states-pet-n57982073867/>; see, e.g., COLO. REV. STAT. § 15-11-901 (2017) (Colorado); 760 ILL. COMP. STAT. 5/15.2 (2017) (Illinois); ARIZ. REV. STAT. ANN. § 14-2907 (2017) (Arizona).

15. Craig Bishop & Timothy Williams, *Ohio as Veld: Wild Animals Hunted Down*, N.Y. TIMES, Oct. 20, 2011, at A1.

16. *Id.*

17. OHIO REV. CODE ANN. § 935.01 et. seq. (West 2017).

18. *Id.* § 935.04

19. *Id.* § 935.02

20. For example, the Ohio Department of Agriculture is responsible for administering the Ohio Dangerous Wild Animal Act.

21. Breed-specific legislation provides a good example of changing attitudes and changing statutes. Thirty-five years ago breed-specific legislation or regulating a specific breed of dog was thought to be an effective way to manage dog bites and dog attacks. See Sabrina DeFabritiis, *Fido’s Fallacy*, 9 ALB. GOV’T L. REV. 168, 175 (2016). However, breed-specific legislation has been found to be ineffective. *Id.* at 178. These laws also provoked significant opposition. Recently, many states have decided to repeal breed-specific legislation or enact generic, non-breed specific dangerous dog laws rather than breed specific laws. *Id.* at 181-813.

22. Susan J. Hankin, *Not A Living Room Sofa: Changing the Legal Status of Companion Animals*, 4 RUTGERS J.L. & PUB. POL’Y 314, 321 (2007) (“The law has traditionally treated all non-human animals, including pets, as property.”). Domestic animals have individual owners, while wild animals are considered the property of the state. *Id.*

23. See *Strickland v. Medlen*, 397 S.W.3d 184, 185-86 (Tex. 2013) (explaining that while “a beloved companion dog is not a fungible, inanimate object like, say, a toaster...recovery in pet-death cases is, barring legislative reclassification, limited to loss of value, not loss of relationship”).

24. See Kelsey Kobil, *When It Comes to Standing, Two Legs Are Better Than Four*, 120 PENN ST. L. REV. 621, 626 (2015) (discussing animals as “quasi-property”); *Barrios v. Safeway Ins. Co.*, 97 So. 3d 1019, 1023-24 (La. Ct. App. 2012) (taking “judicial notice of the emotional bond that exists between some pets and their owners and the ‘family’ status awarded some pets by their owners” and affirming a \$10,000 judgment to plaintiffs-owners for mental anguish and property damages for loss of their dog).

25. See David Favre, *Twenty Years and Change*, 20 ANIMAL L. 7, 17 (2013) (noting that “[t]he animal movement had almost zero visibility within legal institutions in the early 1990s, but it can be found [in] many different places today”).

26. Legal writing professors can also subscribe to any number of animal law blogs to get updates on current animal law issues. For example, the Animal Law Legal Defense blog recently posted on a new ag-gag bill in Arkansas, an appeal over the approval of two primate breeding facilities in Florida, a San Francisco ordinance banning retail stores from selling commercially bred dogs and cats, and a United States Sixth Circuit Court of Appeals decision upholding the dismissal of a civil suit involving the fatal shooting of two family dogs by police officers executing a search warrant for drug-related activity. See <http://aldf.org/blog/>.

Relinquishing Legal Research



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If legal writing has, for too long, been relegated to a second-class status within law schools,¹ legal research has arguably fared even worse. Following the release of the MacCrate report in 1992,² law schools greatly increased their investment in helping students to develop essential lawyering skills.³ Major beneficiaries of this new focus on skills included legal writing programs, law school clinics, and trial and moot court competitions.⁴ Yet, although the MacCrate report specifically identified it as a “fundamental lawyering skill,” legal research saw no comparable investment of resources.⁵ Whereas other fundamental lawyering skills identified in the MacCrate report now enjoy “...distinct program[s] with specialized faculty,” legal research is treated as a subset of legal writing rather than as its own discipline.⁶

In this paper, I argue that this folding of legal research into legal writing results in a net negative for both legal writing faculty and their students. First, I briefly discuss the lack of legal research skills demonstrated by law school graduates and why it matters. Second, I explain how placing responsibility for legal research

training chiefly in the hands of legal writing professors contributes to this problem. Finally, I suggest a path forward, in which legal writing professors cede some control of legal research instruction, enabling legal research to become a true partner to legal writing.⁷ Such a move would strengthen both disciplines and allow for more robust training in legal research, writing, and analysis all around.

1. RECENT LAW SCHOOL GRADUATES AND THE LACK OF IMPORTANT RESEARCH SKILLS

The ability to perform efficient, thorough, and cost-effective legal research is essential to the practice of law. Studies show that attorneys spend between one-fifth and one-third of their time on legal research.⁸ The American Bar Association explicitly recognizes the importance of legal research in Standard 302, listing it as one of the skills in which law schools must demonstrate they are training students to show “competency as an entry-level practitioner.”⁹ In fact, the ABA has even explored the possibility of requiring a legal research component on the bar exam.¹⁰

Unfortunately, studies show that law students and recent law school graduates are lacking in legal research competency. Over and over, the bench and bar report dissatisfaction with the research skills of new associates.¹¹ Clinical faculty report similar concerns.¹² While there is some indication that graduates are becoming more competent in the basic skills of case law research and updating, new associates remain woefully underprepared in

areas like administrative law, legislative history, and performing cost-effective legal research.¹³ According to one study, “Over a quarter of new lawyers were rated as having poor or unacceptable skills in using secondary sources effectively, researching court documents, locating non-legal information, or researching administrative decisions.”¹⁴

The consequences of poor legal research skills can be dire, for both the attorney and the client. Attorneys who fail to properly research their cases may face professional sanctions, malpractice lawsuits, or even disbarment. At a minimum, they fail to live up to their professional obligations. Clients, in turn, may receive poor representation or even no representation at all. In a very real sense, law graduates’ lack of research skills directly impede the pursuit of justice.

2. THE PROBLEM WITH PLACING RESEARCH INSTRUCTION PRIMARILY IN THE HANDS OF LEGAL WRITING FACULTY

There are almost as many models for providing legal research instruction as there are law schools, and it is hard to get a definitive picture of the exact status of legal research from the available studies.¹⁵ Nonetheless, some patterns emerge. In most law schools, first-year legal research instruction is integrated into the first-year legal writing course.¹⁶ In one recent study of the top 200 law schools, only sixteen percent of respondents reported having a stand-alone legal research course.¹⁷

When looking at who actually provides the legal research instruction, the numbers are nearly evenly split between law librarians and legal writing faculty, at forty-four and forty-three percent respectively.¹⁸ But this number is deceiving when thinking in terms of who has primary *responsibility* for research instruction. For example, here at the University of North Dakota, law librarians provide a substantial amount of the legal research instruction in the first-year Lawyering Skills class. However, the amount of instruction to be provided, when it should be provided, what should be covered, and how it will be assessed is ultimately the province of the individual legal writing professor. Thus, although law librarians participate in legal research instruction, primary responsibility for it remains with the legal writing faculty.

It was not always this way. In a 1986 article, Helene Shapo noted:

In the prevailing curricular model of approximately forty or more years ago, law schools offered legal research as a separate course. That course, often called legal bibliography, was taught by the law librarian or other library personnel. Under that model, the first-year students also took a legal writing course which may or may not have been coordinated with their progress in research.¹⁹

In fact, as late as 1973, 32 percent of law schools still taught legal research as a separate course.²⁰

So, why did things change? It turns out that, for all of the important and positive changes that have resulted and continue to result from an ever-growing emphasis on solid legal writing instruction, one negative side effect has been the de-emphasis of legal research. The key reason for this is that the chief responsibility for legal research instruction has shifted to legal writing faculty. While at one time, this shift may have made sense from a resource perspective, a variety of developments have now made it problematic.

First, legal writing faculty, quite naturally, tend to emphasize writing instruction over research instruction. Some evidence of this can be seen in the names of the major professional organizations for the discipline, the Legal Writing Institute (LWI) and the Association of Legal Writing Directors (ALWD), which include “writing” directly in their names. Additionally, those organizations’ joint survey, the annual ALWD/LWI survey, devotes only two questions out of 110 to legal research instruction.²¹

More direct evidence of this lack of emphasis on legal research instruction is evident from how 1L research is graded. At most law schools, the legal research grade is assigned as part of the legal writing course, either as a separate grade or incorporated into the legal writing grade.²² Often, the portion of the grade assigned to legal research is minimal. In comments on a recently conducted survey of legal research programs, only one respondent school indicated that legal research counted for more than 25% of the grade; most indicated that legal research was worth less than 20%, and several did not grade legal research at all.²³

This lack of emphasis is understandable. Legal writing professors, more than any others in the legal academy, are expected to be “jacks- (and jills-) of-all-trades.”²⁴ As Roy Mersky, a prominent law librarian who led the Tarlton Law Library at the University of Texas Law School for more than forty years, put it, legal writing professors “have been forced to embrace legal research, legal writing, remedial writing, basic writing, grammar, legal method, advocacy, counseling, and a whole smorgasbord of other activities.”²⁵ Further, the more attention paid to students’ inadequate writing skills,²⁶ the more pressure is put on legal writing professors to find new and better ways to improve those skills. The result is that, given their other obligations, legal writing professors simply do not have the resources to devote as much time and energy to legal research instruction as they would like to and as it requires.

Another reason assigning responsibility for legal research instruction to legal writing professors is problematic is that, for all of their talent and skills, legal writing professors are typically not the most qualified experts in legal research at their institutions. No doubt, this is why so many of them outsource the legal research instruction portion of their classes to law librarians. Legal writing and legal research, while inherently connected as lawyering skills, require different knowledge and skill sets.²⁷ It follows, then, that they also require different pedagogies. Yet the common system of legal writing professors determining the level, content, timing, and assessment of legal research instruction and only then, if they choose, turning that instruction over to law librarians ignores this seemingly intuitive fact.

This is especially troubling given the increasing complexity of legal research and the changing expectations for new graduates. The landscape of legal practice has shifted drastically in the past few decades with the growth of the administrative state and increased globalization.²⁸ Such changes mandate that law students receive more instruction in such areas as regulatory research and foreign and international legal research, areas that have not traditionally been covered in the required research curriculum.²⁹

Technological changes have also increased the complexity of legal research. More sources of information are available than ever before, and, consequently, more sources of information are relied

upon than ever before.³⁰ Today’s law students need deeper training in information literacy.³¹ Students also need further instruction in how to sort and manage all of the information they find. Restructuring legal research instruction to emphasize all of these new skills without losing other important skills requires the ability to focus on legal research full time. Legal writing professors simply cannot be expected to take this on with all of their other duties; fortunately, law librarians are already being hired and paid to serve as the resident experts in legal research. They simply need more authority and autonomy to put their expertise into action.

Finally, continuing improvements in the status of legal writing professors and the attention paid to legal writing as a discipline counsel in favor of shifting primary responsibility for legal research instruction away from legal writing professors. As more and more legal writing faculties gain tenure-track or other protected faculty status³² and shift from a centralized, director-led model to a more decentralized, autonomous one,³³ legal research risks further losing its place as a central lawyering skill. In autonomous programs, choices about the content, scope, method, and timing of coverage will likely vary from professor to professor. Important choices about legal research instruction will become not a curricular decision, but an individual one, subject to the quirks and interests of individual professors.

While this could potentially be true of any skill taught in the first-year legal writing class, the discipline of legal writing is developed enough that all but the boldest of experimenters are likely to ensure sufficient coverage of the basic building block skills of legal analysis, reasoning, and writing. Further, even if those skills were somehow given short shrift, the advent of upper-level writing requirements and writing-across-the-curriculum initiatives ensures that students will likely receive that sort of coverage again elsewhere in their legal educations.³⁴

Not so with legal research. A legal writing professor who did not prioritize legal research instruction could easily justify finding ways to minimize its presence in the class. Basic instruction in researching and updating cases will often be sufficient to allow students to practice their legal writing chops in an open memo or appellate brief. In fact, the evidence available suggests that legal writing professors are

doing a good job in this area. The problem lies in the fact that most legal writing professors do not have the time, incentive, or expertise to develop a more robust program of legal research instruction.

As things currently stand, this deficit is rarely corrected for in the upper level curriculum. According to the most recent study of legal research programs, ninety-nine percent of responding schools offered an advanced legal research class; however, a mere nine percent required that students take it.³⁵ Further, upper level research courses often have student caps, so only a limited number of seats are available each year.³⁶ There is also little evidence that professors who supervise writing projects in seminars, which are often used to meet upper-level writing requirements, place much emphasis on teaching or assessing research.³⁷

3. RELINQUISHING LEGAL RESEARCH

It is clear that if legal research instruction is to meet the needs of today's law students and graduates, many more resources will have to be devoted to it. Creating a comprehensive legal research curriculum, adequate to current needs, requires time, disciplinary expertise, and new and creative thinking on legal research pedagogy. It also requires rethinking the curriculum as a whole, looking at how research may fit in from the first day of law school to the last. While some legal writing professors may relish this challenge, for many, their plates are already overfilled. Thus, as a discipline, it is unrealistic to expect legal writing to take on this monumental task.

Fortunately, they do not have to. Every law school in the country has a law library, staffed with law librarians who have the professional interest, obligation, and resources to build and maintain expertise in legal research methods and pedagogy. Many of these law librarians are already involved in legal research instruction at their schools,³⁸ via both upper-level and first-year courses. However, apart from those who teach upper-level advanced legal research courses or the few stand-alone first-year courses, they are missing a key ingredient necessary to truly move the ball forward in legal research pedagogy—autonomy.

Legal writing professors could assist in providing this autonomy by voluntarily relinquishing some of their

control over the legal research portion of the first-year legal writing curriculum. Indeed, many are likely eager to do this, overburdened as they are with all of the other responsibilities associated with their positions. Yet some may be reluctant. They may wonder: Will the law librarian teach legal research as well as the legal writing professor does? Will the students be trained in the skills the legal writing professor needs them to have in order to get the full experience out of their first-year assignments? Still others may not have sufficient autonomy themselves to even make such a choice.

Such concerns are valid, but they ought not to be used to prevent real change. While few legal writing professors likely have the ability to immediately and single-handedly make drastic changes in the curriculum, many have the means to assert that change is necessary. Many are also able to take smaller steps on their own, and this is where their true power lies. Indeed, one of the most important steps in making change is within the power of nearly every legal writing professor: to begin treating legal research as a discipline in its own right and law librarians as full partners in legal research instruction.

For those with more power and independence, this may mean exploring the possibility of turning primary responsibility for the first-year legal research curriculum over to law librarians. While it would be a mistake for legal writing faculty to wash their hands of the legal research mission entirely—after all, legal writing and legal research, like other lawyering skills, are interdependent—it also does not make sense for legal writing faculty to be the primary drivers behind a legal research curriculum for which they have an ever-shrinking amount of time. Instead, legal writing professors might provide their input into the research curriculum, but then cede ultimate responsibility for choosing content, coverage, and methodology to the law librarians. In institutions where the only way for this to happen would be to increase legal writing credit hours or create a stand-alone research course, legal writing faculty ought to advocate for these things. Similarly, when advocating for upper-level writing requirements, legal writing faculty might work with law librarians to find new and innovative ways in which legal research instruction could also become an upper-level project, rather than remaining limited to the first-year curriculum.

Legal writing professors have made great strides over the years, increasing their profile both in their own institutions and in the legal profession as a whole. But, with this increased visibility and status comes increased pressure and the need to keep ever more balls in the air. Exploring ways to hand off primary responsibility for legal research instruction to law librarians will both alleviate some of this pressure and ensure that law students get the most thorough, up-to-date, and relevant research instruction possible. However, this will only work if legal writing professors view law librarians as equal partners and trust them to do what they do best: use their expertise in legal research to ensure students learn the full scope of research skills they will need to practice law.

NOTES

1. See Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562, 562 (2000).
2. ABA, Section of Legal Education and 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, Statement of Fundamental Lawyering Skills and Professional Values* (1992) [hereinafter the MacCrate Report].
3. Barbara Bintliff, *Legal Research: MacCrate's "Fundamental Lawyering Skill" Missing in Action*, 28 LEGAL REFERENCE SERVS. Q. 1, 1 (2009).
4. *Id.*
5. *Id.* at 5.
6. *Id.*
7. This article focuses on reforms that might be made at the majority of law schools that couch legal research within the legal writing curriculum. It does not purport to represent all of the program models that currently exist.
8. See, e.g., Caroline L. Osborne, *The State of Legal Research Education: A Survey of First-Year Legal Research Programs*, or "Why Johnny and Jane Cannot Research," 108 LAW LIBR. J. 403, 405 (2016); Barbara Glesner Fines, *Out of the Shadows: What Legal Research Instruction Reveals about Incorporating Skills Throughout the Curriculum*, 2013 J. DISP. RESOL. 159, 163 (2013).
9. ABA standard 302(b).
10. Sarah Valentine, *Legal Research as a Fundamental Skill: A Lifeboat for Students and Law Schools*, 39 U. BALT. L. REV. 173, 174 (2010).
11. See, e.g., *id.*; Fines, *supra* note 8, at 171; Osborne, *supra* note 8, at 406.
12. See Carolyn R. Young & Barbara A. Blanco, *What Students Don't Know Will Hurt Them: A Frank View from the Field on How to Better Prepare our Clinic and Externship Students*, 14 CLINICAL L. REV. 105, 116-17 (2007).
13. Jan Bissett & Margi Heinen, *Facing the New Normal*, 92 MICH. B.J. 52, 52 (2013) (discussing the results of a study found in ALL-SIS Task Force on Identifying Skills & Knowledge for Legal Practice, *A Study of Attorneys' Legal Research Practices and Opinions of New Associates' Research Skills* (June 2013), available at <http://www.aallnet.org/sections/all/storage/committees/practicetf/final-report-07102013.pdf>).
14. Fines, *supra* note 8, at 172.
15. See generally, Osborne, *supra* note 8; ALWD/LWI 2015 Survey Results, www.alwd.org/wp-content/uploads/2017/03/2015-survey.pdf. The difficulty with using any of these studies as a definitive gauge of how

legal research is treated in the curriculum is that the questions asked do not adequately reflect the true level of training that is or is not provided. For example, two different schools might indicate that legal research is integrated into both semesters of the first-year legal writing course. In one school, this could mean that students receive substantial legal research training on an ongoing and regular basis. At another school, this could mean that the students receive a few hours worth of legal research training in the fall with a quick review in the spring. From the current surveys that exist, there is no way to differentiate between the level of training provided at these schools, even though it is substantially different.

16. ALWD/LWI 2015 Survey Results, *supra* note 15, at x (noting, "Approximately 86% of LRW courses integrate the teaching of legal research with the teaching of legal writing.>").
17. Osborne, *supra* note 8, at 408.
18. *Id.* at 412.
19. Helene S. Shapo, *The Frontiers of Legal Writing: Challenges for Teaching Research*, 78 LAW LIBR. J. 719, 724 (1986).
20. *Id.*
21. ALWD/LWI 2015 Survey Results, *supra* note 15, at 11-12 (Questions 18 and 19). In addition to Questions 18 and 19, legal research instruction is mentioned or alluded to in Questions 32, 33, 35, and 36 on upper-level classes; Questions 54 and 82 on class preparation time and workload; and Questions 87, 94, and 97 on adjuncts and teaching assistants.
22. Osborne, *supra* note 8, at 409-12.
23. *Id.*
24. Roy M. Mersky, *Legal Research Versus Legal Writing Within the Law School Curriculum*, 99 LAW LIBR. J. 395, 396 (2007).
25. *Id.*
26. Bintliff, *supra* note 3, at 2.
27. *Id.* at 1.
28. Valentine, *supra* note 10, at 174.
29. *Id.*
30. *Id.* at 174-75.
31. *Id.* at 175.
32. ALWD/LWI 2015 Survey Results, *supra* note 15, at xvii.
33. *Id.* at vii.
34. *Id.* at x.
35. Osborne, *supra* note 8, at 414.
36. Valentine, *supra* note 10, at 188 (citing Anne Hemmens, *Advanced Legal Research Courses: A Survey of ABA-Accredited Law Schools*, 94 LAW LIBR. J. 209, 223 (2002)).
37. Fines, *supra* note 8, at 188.
38. ALWD/LWI 2015 Survey Results, *supra* note 15, at 11 (Question 18) (indicating that in 143 responding schools, legal research is taught by either law librarians or a combination of law librarians and legal writing professors).



Discovering a Predictor of Reading Comprehension Difficulties



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Sometimes you stumble upon a possible solution to a problem when you're not searching for a solution, and when you don't even realize there is a problem. This is what happened when I began to notice that a number of my students did not read smoothly when asked to read aloud.

I was teaching a Law Practice Management class the first time that I noticed students reading haltingly or reading word by word instead of reading words that flowed into each other. A guest speaker was calling on my students to each read a different sentence off some PowerPoint slides. Because I was observing my students rather than focusing on my teaching, I was able to notice more things about them than normal, including their oral reading difficulties. At the time, I didn't realize that their struggle was significant. I thought, "Hmmm. They don't read very well. I didn't expect that." But I didn't wonder about the significance.

This oral disfluency occurred again the next time I taught the course. And, again, I noted the odd occurrence.

But it wasn't until I was in a one-on-one bar counseling session with a student last spring that I realized oral disfluency might be a symptom.

I had asked the student, a 3L, to read a practice multiple-choice question aloud from a book, then read the four possible answers, then read the book's reasoning for why each answer was right or wrong.

As the student read, I was surprised to hear that her reading was not fluid. Her disfluency was subtle, but I noticed it immediately. She read words in a semi-staccato rhythm, sometimes missing words, sometimes inadvertently substituting words, occasionally mispronouncing common multisyllabic words, etc.

I mentioned this to two colleagues, one who teaches Intellectual Property and one who teaches Legal Process. Both told me that they had witnessed the same phenomenon among students in their classes. Neither of these professors had thought about whether this oral disfluency might be a symptom of something else. But I began to wonder. The problem seemed too pervasive not to be significant.

A neighbor just retired from a long career as an elementary school reading specialist, so I asked her if she knew anything about oral reading disfluency. Luckily, she knew a lot. To my surprise, she told me that she wouldn't be surprised if this was a pervasive problem because many elementary schools stopped requiring students to read aloud in class about 20 years ago, as a reaction to complaints from parents that children who struggled to read aloud were stigmatized. She also said that elementary school

“Law school’s technical terms, complex fact patterns, heavy work load, and rule-based knowledge are difficult for even the most facile of readers, but they are daunting for students who do not read fluidly in their heads.”

educators had written articles showing a link between oral reading disfluency and reading comprehension problems in primary school students. I subsequently read some of these articles and discovered that, indeed, there was a link, at least at the primary school level.

This led me to wonder if our law students’ oral disfluency issues also were symptomatic of reading comprehension difficulties. Perhaps the oral reading issues of these students had not been diagnosed and remediated in elementary school because no teacher had ever heard the students read aloud.

According to the published literature, elementary school students with oral reading disfluency also exhibit disfluency with silent reading because they never learned the techniques necessary to read fluently in any form, either aloud or silently.

Some students who have attended elementary school in the past 20-or-so years learned to read fluently on their own or with the help of parents and/or tutors. But other students who didn’t learn to read fluently might have learned to compensate. They could have pushed themselves to read silently with just enough speed and comprehension so they didn’t attract the attention of teachers looking for reading comprehension issues. These students, however, would still have been operating at a disability and were, to some extent, struggling to read fluently in their heads. They could read fast enough and comprehended well enough to perform adequately in primary school, secondary school, and even college. In some cases, they even excelled, but when they hit the rigors of law school, they couldn’t keep up. Law school’s technical terms, complex fact patterns, heavy work load, and rule-based knowledge are difficult for even the most facile of readers, but they are daunting for students who do not read fluidly in their heads. Thus, their grades suffer, and many of these students cannot process the amount of reading necessary—and acquire the amount of knowledge necessary—to pass the bar exam on the first try.

Certainly, oral disfluency is not the culprit for all reading comprehension difficulties in law students, but I believe it may well be one significant reason.

To that end, I constructed a research project to test my hypothesis and received a Presidential Research Development Grant to fund it. My preliminary results are due by the end of 2017.

If my hypothesis is correct, we can look for ways to remediate the problem. But how do we do this? Do we ask experts in elementary school education what they do and use the same techniques? Will these techniques be age-appropriate? Or can we fashion our own methods without the benefit of a PhD in elementary education? Would this work?

As part of my research project, I am looking at the possibility of using a free app called Spreeder. It's designed to enhance speed reading. I won't be using it to enhance speed reading, though; I'll be using it to enhance reading fluency. I discovered this "off-market" use of the app by accident.

Using hunch and intuition, I adjusted the app to flash a sentence on the computer screen one word at a time. Each word disappeared when the next word appeared. Then I slowed the speed way down so the words flashed at a much slower pace. I watched the words as they appeared, one at a time, slowly, one replaced by another. As I watched, I realized that the slow, one-word-at-a-time appearance of words on the screen made me impatient. Further, I had trouble focusing on the overall meaning of the sentence because I was reading the individual words so slowly.

Then I set the app to do this with a paragraph made up of many sentences. I had trouble focusing on the meaning of the paragraph because I was too busy focusing on the slow visual procession of words. This is how some law students read: one word at a time.

Next, I tried speeding up the procession of words. I found that I was able to concentrate better. It was easier to concentrate on the overall meaning of the paragraph.

After that, I adjusted the app so that the words appeared two at a time. After trying that, I set it so that they appeared three words at a time. Then I tried four words. My ability to remember and understand the sentences and paragraphs improved. I've asked several colleagues and friends to try this, and they all had the same reactions that I did.

After using the app this way, I realized that this app, or one like it, could be a tool for retraining law students to become more fluid readers. The question is whether their reading comprehension will improve as a result. According to the large body of literature about reading fluency in elementary school students, an improvement in reading fluidly results in an improvement in reading comprehension.¹ Although there is only a small amount of research about this issue in regard to secondary school students, the reports are similar.² There is not, however, any significant literature about this issue at the level of higher education, and certainly not at the law school level. My use of the Spreeder app demonstrated that there was likely to be a link at the adult level, too. And this is what I hope to learn in my research project—whether there is a link between oral reading disfluency and reading comprehension difficulties in law students. (As part of my grant study, I also hope to test students in other types of graduate programs, and even in undergraduate programs.)

The bottom line is that if your students seem to be struggling with reading comprehension issues, don't immediately think that you can remediate the problem by sending them to the law school's Academic Support professionals for additional instruction on law-related matters like how to break down the meaning of cases. The students might need that kind of help, but they also might have a much more basic problem that needs to be remediated first. That is, the students might have an underlying problem that they are not reading words fluently in their heads.

So ask your students to read aloud, and then listen carefully. If they falter or if the reading is choppy, consider asking your school to hire a consultant who knows how to treat reading disfluency in adults. The consultant does not have to be familiar

with working at a law school because this issue is not specific to law students. Alternatively, you can wait until I finish my study and publish my results.³

The benefit of acting now is that you will be able to help the current population of law students who are struggling through school because of reading disfluency problems. If you help them to read more fluently, you will be helping them to get better grades. You also will be helping them to gain the confidence they need to succeed in both law school and life.

NOTES

1. See, e.g., John J. Pikulski & David J. Chard, *Fluency: Bridge between Decoding and Reading Comprehension*, 58 *READING TEACHER* 510, 510-19 (2005); Timothy V. Rasinski, *Why Reading Fluency Should be Hot*, 65 *READING TEACHER* 516, 516-22 (2012).

2. See, e.g., David D. Paige, Timothy V. Rasinski, & Theresa Magpuri-Lavell, *Is Fluent, Expressive Reading Important for High School Readers?*, 56 *J. ADOLESCENT & ADULT LITERACY* 67, 67-76 (2012); Soonha Seok & Bonaventura DaCosta, *Oral Reading Fluency as a Predictor of Silent Reading Fluency at Secondary and Postsecondary Levels*, 58 *J. ADOLESCENT & ADULT LITERACY* 157, 157-66 (2014).

3. You can also suggest that your students try to increase their reading fluency via the "Immersive Reader" at <https://onenote.com/learningtools>. Be aware, though, that this is not a substitute for working one-on-one with a reading specialist. That is, the problem with directing students to an online self-study program is that students who need it the most often do not make time to help themselves. Therefore, in-person intervention via a reading specialist is likely to be more effective.



PROGRAM NEWS

Arizona State University - Sandra Day O'Connor College of Law

Following the Rocky Mountain Legal Writing Conference, ASU hosted an ALWD Scholars Forum. **Terry Pollman** facilitated our discussions. The participants were **Linda Anderson** (Stetson), **Leslie Culver** (California Western), **Rachel Stabler** (University of Miami), and **Carolyn Williams** (Arizona State). The morning included an excellent panel discussion about scholarship, and **Terry Pollman**, **Kim Holst**, and **Sue Chesler** spoke. Thanks to the participants and to ALWD for funding this wonderful event.

Northeastern University Law School

The Lawyering for Social Justice (LSJ) Program at Northeastern University Law School is now staffed by full-time faculty members, and for the first time this fall will fully integrate traditional legal skills teaching and social justice lawyering. Northeastern's innovative LSJ program allows first-year students to develop their lawyering skills while working on a social justice project for underserved populations in the context of a required 8-credit, full-year course.

University of North Carolina School of Law

UNC hosted the 2017 Carolinas Colloquium on May 19, 2017. This biennial legal writing conference featured interactive conversation panels to discuss pedagogy, persuasion, practical skills, and more! We were delighted to host attendees and panelists from across the country, including **Peter Nemerovski**, who joined the legal writing faculty as UNC's ninth full-time legal writing professor in the fall of 2017. Learn more at <http://www.law.unc.edu/academics/wlrc/events/>.

University of Oregon School of Law

The University of Oregon School of Law has named Professor Michelle McKinley the 2017-18 Galen Scholar in Legal Writing. An expert in international law and prolific writer, she will spend the year studying best practices in teaching seminar papers and recommend ways to enhance the school's upper-level writing requirement.

UNLV - William S. Boyd School of Law

UNLV has been overwhelmed by exiting awards news. **Mary Beth Beazley**, joining us next fall, won the Majorie Rombauer Award. **Linda Berger** won the AALS section award, **Linda Edwards** won the Burton Award, and **Terry Pollman** won the UNLV Foundation Distinguished Teaching Award.

HIRING AND PROMOTION

Elon University School of Law

Sue Liemer is the new Director of the Legal Method & Communication Program and a Professor of Law.

Professor of Law **Catherine Wasson** has moved her focus to the upper level curriculum at Elon. The two professors will be working on creating a coordinated communication curriculum.

Suffolk University Law School

Dyane O'Leary was promoted to Associate Professor of Legal Writing, effective July 2017.

Suffolk University Law School is pleased to welcome **Danielle Tully** to its Legal Practice Skills Program faculty. Danielle received her J.D. from Boston College and her Master of Arts in Law and Diplomacy from the Fletcher School at Tufts University. She has spent the last decade working domestically and internationally in a range of social justice fields including as a Clinical Teaching Fellow in the Civil Rights and Constitutional Litigation Clinic at Seton Hall University School of Law.

Suffolk University Law School is pleased to announce that **Carol Didget Pomfret** is returning as a Visiting Professor to teach in the Legal Practice Skills Program's required first-year course. Carol was a full-time member of the LPS faculty between August 2000 and June 2003.

Texas A&M University School of Law

Mark Edwin Burge, **Tanya Pierce**, and **Neil L. Sobol** have been granted tenure and promoted to full Professor, effective September 1, 2017.

Texas A&M is also excited to announce the hiring of **Brian N. Larson** as an Associate Professor in its unified tenure-track program where he will teach Legal Analysis, Research & Writing. Brian holds a Ph.D. in Rhetoric and Scientific and Technical Communication from the University of Minnesota. He previously taught at University of Minnesota and Georgia Tech.

UMass Law

After a one-year visit, **Julie A. Baker** has been hired as a full-time Professor of Legal Skills at UMass Law. Professor Baker teaches first-year research, writing, and oral advocacy, as well as upper-level transactional drafting. Formerly a Professor of Legal Writing at Suffolk Law for 14 years, Professor Baker's research focuses on Neuroscience and Learning: specifically, using science to improve law student learning outcomes. She can be reached at julie.baker@umassd.edu.

University of Kentucky College of Law

Professors **Kristin Hazelwood** and **Diane Kraft** were promoted to Associate Professor for Legal Research and Writing, effective July 1, 2017.

Professor **Jane Grise** was hired as Director of Academic Enhancement & Assistant Professor of Legal Research and Writing, also effective July 1, 2017.

University of Louisville, Louis D. Brandeis School of Law

JoAnne Sweeny was awarded tenure in January 2017.

University of North Carolina School of Law

University of North Carolina School of Law promoted **Sara B. Warf** from Clinical Assistant Professor of Law to Clinical Associate Professor of Law and hired **Peter Nemerovski** as a Clinical Associate Professor of Law.

University of North Dakota School of Law

Anne Mullins was promoted to Associate Professor.

UND also welcomes Professor **Patti Alleva** to its legal writing program. New to legal writing, Patti is a veteran professor who has served UND for 30 years. If her name rings a bell, it might be because you remember her as one of the featured law professors in *WHAT THE BEST LAW TEACHERS DO*. We are thrilled to have her teaching legal writing!

Washburn University School of Law

Joseph Mastrosimone received tenure and was promoted to Professor of Law and to Associate Dean for Academic Affairs as of July 2017.

Mary L. Matthews will join Washburn's Legal Analysis, Research, and Writing Program for a one-year visitorship in 2017-18. Mary is a Washburn Law graduate and a career law clerk for The Honorable Judge Vratil of the United States District Court for the District of Kansas. She is also an experienced adjunct law professor.

Aida M. Alaka completed her sixth year as Associate Dean of Academic Affairs and—after a one-year sabbatical—will return to the regular faculty as Professor of Law to teach in the Legal Analysis, Research, and Writing Program.

PUBLICATIONS AND ACCOMPLISHMENTS

Kevin Bennardo (University of North Carolina School of Law) was appointed by President Tommy E. Remengesau, Jr., to be a Non-Resident Associate Justice of the Supreme Court of Palau in January 2017. Kevin's recent publications include: *The Third Precedent*, 25 *GEORGE MASON LAW REVIEW* (forthcoming 2017); *Rethinking Victim-Based Statutory Sentencing Enhancements*, 44 *FLORIDA STATE UNIVERSITY LAW REVIEW* (forthcoming 2017); and *Dear Congress: Remove the "Committed an Offense" Requirement from 18 U.S.C. § 3553(e)*, 29 *FED. SENT'G REP.* 93 (2017).

Heidi K. Brown (Brooklyn Law School) published a new article, *Breaking Bad Briefs*, 41 *THE JOURNAL OF THE LEGAL PROFESSION* 259 (Spring 2017). Heidi's new book, *THE INTROVERTED LAWYER: A SEVEN-STEP JOURNEY TOWARD AUTHENTICALLY EMPOWERED ADVOCACY*, was published by Ankerwycke Books in March 2017. The book is designed to help quiet (introverted, shy, or socially anxious) law students and lawyers amplify their voices in an authentic manner. Link: <https://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=273855314&term=the+introverted>.

Alexa Z. Chew and **O.J. Salinas** (University of North Carolina School of Law) were awarded the Charles E. Daye Award for Excellence in Service in May 2017. The award honors exemplary public service, measured by the time, effort and creativity devoted to service, as well as the impact on the community. Alexa's service includes chairing the law school's Diversity and Inclusion Task Force. Alexa's forthcoming article, *Citation Literacy*, has been accepted for publication by the *Arkansas Law Review*.

Lurene Contento (The John Marshall Law School, Chicago) was the recipient of a 2017 Global Legal Skills Award for her contributions in promoting and improving global legal skills around the world.

Liz Ruiz Frost (University of Oregon School of Law) spent the Spring 2017 semester on sabbatical. While on sabbatical, she worked on an article about student failure and law school remediation policies.

Heidi Gilchrist (Brooklyn Law School) has an article forthcoming in the *University of Richmond Law Review*: *Security Clearance Conundrum: The Need for Reform and Judicial Review*, 51 *UNIVERSITY OF RICHMOND LAW REVIEW* ____ (forthcoming 2017). You can download it here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2943013.

Russell Gold (Wake Forest University School of Law) published *Clientless Lawyers*, 92 *WASH. L. REV.* 87 (2017). This article considers what class action law can learn from criminal law regarding lawyer accountability.

Emily Grant's (Washburn University School of Law) article *Helicopter Professors* was accepted by the *Gonzaga Law*

Review for publication in 2017, and her article *Best Practices: Lessons from Tina Stark About the First Day of Class*, was accepted by the *Oregon Law Review* for publication in 2017.

Rachel Gurvich (@RachelGurvich) (University of North Carolina at Chapel Hill) co-founded and facilitates a weekly Twitter discussion about a particular topic in legal writing or law practice. Participants in the lively conversations include legal professionals (attorneys, judges, and professors) and law students across the country. Find it and join the conversation every Tuesday at #PracticeTuesday.

Rebekah Hanley (University of Oregon School of Law), after serving as the Outreach Committee Co-Chair for the Legal Writing, Reasoning, and Research Section of the AALS, was elected to the section's Executive Committee. During her 2017-18 sabbatical, she will complete the first year of an MFA in Creative Writing with an emphasis on non-fiction.

Stephanie Roberts Hartung (Northeastern University School of Law) published the following articles and book chapters this year: *Habeas Corpus for the Innocent*, 19 UNIVERSITY OF PENNSYLVANIA LAW SCHOOL JOURNAL OF LAW AND SOCIAL JUSTICE 1 (2016); *Social Justice and Legal Writing Collaborations: Promoting Student Engagement and Faculty Fulfillment* (with Kirsten Clement), 10 DEPAUL JOURNAL FOR SOCIAL JUSTICE 1 (Winter 2017); *Post-Conviction Procedure: The Next Frontier in Innocence Reform*, in WRONGFUL CONVICTIONS AND THE DNA REVOLUTION: REFLECTIONS OF TWENTY-FIVE YEARS OF FREEING THE INNOCENT (Daniel S. Medwed ed., 2016).

Jeffrey Jackson (Washburn University School of Law) was appointed Interim Director of the Washburn Law Center for Excellence in Advocacy and co-authored the *Interactive Citation Workbook*.

Liz McCurry Johnson (Wake Forest University School of Law) received the 2017 AALL/LexisNexis Call for Papers—Open Division Award.

Lori D. Johnson (UNLV - William S. Boyd School of Law), along with her colleagues **Prof. Eric Franklin** and Associate Dean **Jeannie Price**, published their article, *Approaches to Incorporating Research Instruction Into Transactional Skills Courses*, 18 TENN. J. BUS. L. 635 (2016). Professor Johnson also received the Award for Most Applicable Teaching Practice at UNLV's University-Wide Best Teaching Practices Expo in January 2017.

Philip C. Kaplan (Suffolk University Law School) was elected Chair of the New England Consortium of Academic Support Professionals (NECASP) on May 18, 2017.

Tonya Kowalski (Washburn University School of Law) co-authored a book chapter on tribal courts in *FLORIDA'S OTHER COURTS: UNCONVENTIONAL JUSTICE IN THE SUNSHINE STATE* (University Press of Florida, forthcoming Fall 2017). Additionally, she continued to serve on the ALWD Board of Directors.

Harold Anthony Lloyd's (Wake Forest School of Law) *Law as Trope: Framing & Evaluating Conceptual Metaphors*, 37 PACE L. REV. 89 came out this spring and further develops themes from his *Good Legal Thought: What Wordsworth Can Teach Langdell About Forms, Frames, Choices, & Aims*, 41 VERMONT L. REV. 1. The TaxProfBlog listed his forthcoming *Cognitive Emotion & the Law in the Law & Psychology Review* as one of

"the best legal education articles for 2016." He also blogs on law & language: <http://haroldanthonylloyd.blogspot.com/>.

Joseph Mastrosimone (Washburn University School of Law) was awarded Professor of the Year by the Washburn Law student body. He also published *Benchslaps* in the *Utah Law Review*: <http://washburnlaw.edu/profiles/mastrosimone-joseph.html>.

Samantha Moppett and **Kathleen Elliot Vinson** (Suffolk University Law School) wrote an article, *Closing the Legal Aid Gap One Research Question at a Time*, that will be published in July in the *Houston Law Review: Off the Record*, an online publication of the Houston Law Review.

Eunice Park (Western State College of Law) published *The Elephant in the Room: What is a "Nonroutine" Border Search, Anyway? Digital Device Searches Post-Riley*, 44:3 HASTINGS CONST. L. Q. 277 (2017). The article proposes obviating the distinction between routine and nonroutine digital device border searches and rethinks the applicability of notions of ingress versus egress, and imminent versus ongoing crime in balancing the tension between law enforcement and privacy.

Carol Pauli (Texas A&M University School of Law) accepted an offer from the *Ohio State Journal on Dispute Resolution* to publish her article, *Enemy of the People: Negotiating News at the White House*.

Abigail Perdue's (Wake Forest University School of Law) latest book, *THE ALL-INCLUSIVE GUIDE TO JUDICIAL CLERKING* was published by West Academic Publishing in April 2017. Its accompanying Teacher's Manual became available in June. The book is a comprehensive resource that explores the purpose and function of a law clerk, how to apply for and obtain a clerkship, and most importantly, how to perform it well. Abigail's article, *Man Up: Exploring Perceptions of Women in Leadership*, appeared in *Marquette Law Review*.

Joan Rocklin's (University of Oregon School of Law) *Exam-Writing Instruction in a Classroom Near You: Why It Should Be Done and How to Do It* has been accepted for publication by the *Journal of the Legal Writing Institute*. The article explains the benefits of teaching exam-writing in doctrinal classes from developing structured analyses to alleviating law school stress. It then provides methods to introduce those skills into doctrinal classrooms. A draft is available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2923247.

O.J. Salinas (University of North Carolina School of Law) received the Frederick B. McCall Award for Teaching Excellence by the graduating Class of 2017. This award has typically been given to faculty who teach large-section doctrinal courses. O.J. also shared the Charles E. Daye Award for Excellence in Service with **Alexa Chew** in May 2017. O.J.'s service includes extensive work with the law school's Academic Excellence Program, serving on the law school's Diversity and Inclusion Task Force, and coaching several moot court teams.

Neil L. Sobol (Texas A&M University School of Law) published *Fighting Fines & Fees: Borrowing from Consumer Law to Combat Criminal Justice Debt Abuses*, 88 COLO. L. REV. 841 (2017). On March 17, 2017, he testified about the recommendations in his article at a hearing before the U.S.

Commission on Civil Rights in Washington, D.C. The hearing was entitled, *Targeted Fines & Fees against Low-income Minorities: Civil Rights and Constitutional Implications*.


Elizabeth Z. Stillman (Suffolk University Law School) was elected Secretary of the New England Consortium of Academic Support Professionals (NECASP) on May 18, 2017.

Wanda M. Temm (University of Missouri-Kansas City School of Law) was awarded the 2017 Daniel L. Brenner Faculty Publishing Award for her scholarship including her bar prep book, *CLEARING THE LAST HURDLE: MAPPING SUCCESS ON THE BAR EXAM*. This is the first time a non-tenured faculty member has won the award.



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