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Two Pedagogies in Search of Synergy

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TWO PEDAGOGIES IN SEARCH OF SYNERGY

How to integrate legal research and legal writing instruction into advanced legal research and writing courses to better prepare students for the practice of law.

A blurred background image of a person working at a laptop. The person is in the upper right, and their hands are visible in the lower right, interacting with the laptop. The laptop keyboard is in the lower left. A network diagram with nodes and lines is overlaid on the image, primarily in the upper right and lower right areas. The overall color palette is light blue and white with some orange accents.

Anyone who has taught a first-year legal research course understands the dilemma: How do we weave research skills into the writing program without sacrificing the quality or quantity of either discipline? In fact, it is difficult and time consuming to interweave any serious legal research instruction into a first-year writing course. What the students need to know is not just how to do a little case law research or how to find a statute: they need to also know how to formulate a research plan, how to evaluate a database, what kind of search works in different information environments, and how to assess the quality of information. It is hard to shoehorn that much research into the typically over-burdened first-year course. In addition, legal research professors have similar yet different pedagogical goals than legal writing professors.

Research, writing, and doctrinal analysis exist together as part of the creative legal problem-solving process. In the first-year curriculum, however, the goals of legal research pedagogy have been secondary to the goals of legal writing's pedagogy. Making this instruction match up with a writing curriculum is not impossible, but it requires the kind of collaboration and time that very few first-year programs have the resources or the teachers to provide. In this article, instructional services director Lisa Schultz and associate professor and director of the law library, Susan Nevelow Mart, share their experiences and advice.

AN EXEMPLAR ADVANCED LEGAL RESEARCH & WRITING COURSE

BY LISA SCHULTZ



The difficulties of weaving the two disciplines into one class fall away when we move out of first-year and into upper-division courses. Most students have already been taught the fundamentals of each skill set. Students also possess a substantive knowledge that allows them to move beyond the fact pattern and focus on a much deeper analysis of the material. Most importantly, advanced classes provide the perfect opportunity to offer a joint course that integrates these skills that are so closely aligned, but are so often taught separately.

Because research and writing are skills that apply across all doctrinal and practice areas, these advanced courses can be tailored to the strengths and interests of the particular instructors. In *Advanced Legal Research and Writing for Practice*, which I co-taught with legal writing professor Amy Griffin, our goal was to provide multiple opportunities to engage in complex problem-solving by allowing students to see the entire research and writing process from beginning to end. We wanted to move beyond a traditional research class, where students are given a problem and told to find relevant resources. Attorneys do not perform the research and then hand their clients a stack of cases. We also wanted to introduce research earlier than a traditional writing class does, where students are given a small universe in which to conduct their research and are then asked to analyze and

synthesize their resources, which is a no more realistic scenario than the previous.

To meet these goals, we solicited research problems from practicing attorneys. When possible, we brought those attorneys into class to introduce the problem and to answer questions, much like a supervising attorney might do when giving a summer associate a new assignment.

This model allowed us to move beyond the canned world of first-year research and writing, where even in an “open universe” the questions have been vetted and the professors know the answer. Not having the answer leads to challenges, both from the students’ and the professors’ perspectives. The best way to discuss these challenges is with an illustration. One of our assignments dealt with a historic building in downtown Denver. The historic building shared a wall with the building next to it. The owner of the abutting building wanted to tear down their building and replace it with a parking lot. Our client wanted to know if he could keep the owner from tearing down the building. The students discovered that there were two possible courses of action: they could either pursue a potential property right in the “shared wall,” or they could petition the Denver Historical Society and stop the demolition by having the building declared a historic site. While either of these solutions had merit, one turned out to be much more expedient than the other.

This assignment also created an unexpected challenge for the students: There was no binding law in Colorado. In the canned universe, and even in the open, but vetted universe, there is usually binding law. In this case, many students located a case from Wisconsin and argued that Colorado should adopt the court’s reasoning. Authority is taught in both research and writing courses, but it is typically a hierarchy of sorts, with the caveat that students may sometimes have to turn to persuasive authority. But rarely is there the opportunity to dig deeper and discuss which authority the students should rely upon in those situations.

Finally, creating a course based on real-world legal issues that had not been vetted meant that we did not know the answer either. The goal of providing our students with ample opportunities to practice and hone their skills meant that we had to become subject specialists in six discrete areas of law. It is not possible to fairly assess and grade a student without becoming familiar with the legal doctrine involved. However, this is no reason to shy away from the challenge. One way to mitigate this difficulty is to work directly with the attorneys who supplied the problems. In some cases, these attorneys also acted as sounding boards for us. They helped us understand the law and how the court system or a specific type of authority worked in a given area of law.

Despite the challenges, the students almost unanimously reported that by the end of the class they felt much more confident in their ability to take on and handle new research and writing assignments. The students who had already been summer associates prior to taking the course often commented that they would have liked the opportunity to mess up and experiment in a classroom before they had to figure everything out in a firm setting.

GETTING TO COLLABORATION: WRITING AND RESEARCH IN THE REGULATORY CONTEXT

BY SUSAN NEVELOW MART



In a smaller, more advanced class, if there are two professors they will have the luxury of meeting regularly to determine what legal research instruction students need in order to successfully analyze, research, and write on a certain topic and in a given format, and to tailor the research and writing instruction to the unique kinds of writing that gets produced in a regulatory practice. I co-teach a class with professor Gabrielle Stafford called Writing and Research in the Regulatory Context. We spend hours planning the syllabus so that there is a good mix of research and writing assignments, both in class and as homework. (View the syllabus at bit.ly/MA18wise.) The syllabus is also structured so that we can ensure students have both the specialized research skills and the specialized writing skills they need before we ask them to produce a written product. One of our homework assignments requires the students to choose a topic that is not the subject of a current Congressional Research Service (CRS) report, research the topic, and then draft the summary and the table of contents for their CRS report. Students must know some essential skills before they can do the required research, such as:

- Advanced legal internet searching
- How to evaluate online resources
- How to navigate an unknown specialized legal database

- What grey literature is and how to find it
- How to locate resources in a new subject area
- What the structural and organizational features of good, non-partisan summaries are
- How summaries vary depending upon the breadth or currency of the topic
- What to think about in terms of tone and language when writing for a legislative audience

Only after acquiring these skills do students have the specialized legal research skills necessary to ensure there is not already a CRS report on their topic, and know how to do the legal, factual, and policy research that goes into drafting a CRS summary.

In each class, students do either a research or a writing assignment. Those assignments are reviewed and critiqued in class so that students see the varieties of acceptable methods for researching and drafting. The research problems come from practicing attorneys or from current news articles that discuss unresolved legal issues.

The Payoff

It is not surprising that each of us has benefited, as professors, from the multiple ways that our respective pedagogies complement each other, nor is it surprising that our students have gained a better understanding of the

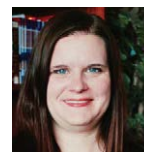
ways in which doctrine, research, and writing form a whole. On the road to understanding a legal problem well enough to communicate one's results, research is the iterative process that informs writing, and writing is the iterative process that reveals the need for further or more nuanced research. The combination of these two pedagogies can powerfully prepare students for solving real-world problems through research and writing. ■

AALL2go EXTRA

Watch the 2015 AALL Annual Meeting program "Communicating with Everyone: Clear Writing and Expression," at bit.ly/AM15Writing.

READ

Rebecca A. Mattson and Theresa K. Tarves' article "Teaching Cost-Effective Research Skills," from the March/April 2016 issue of *AALL Spectrum* at bit.ly/MA16Research.



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