

# PERSPECTIVES

## Teaching Legal Research and Writing

### ARE WE TEACHING OUR STUDENTS WHAT THEY NEED TO SURVIVE IN THE REAL WORLD? RESULTS OF A SURVEY

BY LAWRENCE D. ROSENTHAL

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#### Introduction

Have you ever wondered whether the skills you teach in Legal Research and Writing are the same skills our students need to survive in a law firm environment? During the summer of 2000, the Legal Research and Writing Department at Stetson University College of Law recruited students to become research consultants and help the department with a research and writing survey.<sup>1</sup> The primary objectives of the survey were to determine whether the department was adequately preparing the students for their summer clerkships, and to determine where in our course objectives and methods we could improve.

In the survey, the students were asked to report on

- the types of projects they were assigned;
- the length of the projects;
- the turnaround time for the projects;

<sup>1</sup>The department would like to thank Professor Rebecca Cochran of the University of Dayton School of Law for providing us with the survey. Professor Cochran is the individual who developed the idea for this survey and presented the idea at the 1999 ALWD conference in Boston. I also thank Cathy Fitch, Kristine Andromidas, Darby Dickerson, and Ann Piccard for their assistance.

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- the subject matter of the projects;
- what research resources they used on the projects;
- the successes they encountered during the projects; and
- the troubles they encountered with the projects.

The survey also provided space for the students to make any other work-related comments they thought were appropriate.

More than 20 students volunteered to help us with the survey; the results of this survey form the factual basis upon which this article is based. Although not every student returned the same number of surveys, the department received more than 200 responses throughout the summer. After the results were compiled, they were forwarded to all members of the Stetson faculty and administration, who gave positive feedback to the department after reviewing the results.

In this article, I will address some of the highlights from the survey results. I will start by explaining how the department recruited (and later rewarded) the research consultants, and will then discuss some of the more interesting trends the survey revealed. Throughout, I will discuss how the department prepares its students for their summer clerkships and junior associate lives, and will analyze whether these methods are effective. I will conclude with some general thoughts about the results of the survey.

## 1. How Did We Recruit and Reward Our Research Consultants?

The first step in getting this project off the ground was to recruit research consultants. In conjunction with Stetson's Office of Career Services, we obtained a list of students who had reported their job offers. After obtaining that list, I personally contacted the students and invited them to a lunch, which I used as an opportunity to explain the research consultant program to them.

The first aspect of the program we explained to them was *why* we wanted to start this program. Because the department is always trying to improve and be more responsive to student needs, we explained that this would be the best way to find out what was happening in the "real world."

The other issue we raised was that being a

research consultant could be used as a résumé builder. Although this is not the reason the program was started, we did indeed realize the value such a credential could have on the research consultants' résumés.

After the clerks returned to school and turned in all their questionnaires, the results were organized. This process took approximately one week, but was more time-consuming than it was mentally challenging. After the survey results had been compiled and analyzed, we rewarded our research consultants with a nice lunch, during which we thanked them and discussed the results with them. We also encouraged the research consultants to participate next year.

## 2. What Are Our Students Being Asked to Do?

Our first objective was to learn whether our students were still being asked to write objective memoranda, such as the ones we emphasize in Research and Writing I. To our surprise, the vast majority of the assignments involved drafting objective office memoranda. Specifically, of the roughly 200 responses to the survey, almost 50 percent indicated that the research consultants were assigned objective research memoranda.<sup>2</sup> This confirmed the department's belief in the importance of these memos, and also justified a labor-intensive Research and Writing I course load, which requires the students to draft one 10-page, open universe memorandum and another open universe memorandum with no page limit.<sup>3</sup> Additionally, throughout the memorandum writing process, we require our students to turn in drafts of their facts, issue statements, and discussion outlines. After we critique and return these assignments, the students typically have a better idea of what we expect in their final memoranda.

These survey results confirm that our students, and presumably students at all law schools, do need to master this skill before they begin their

<sup>2</sup> For a graphic explanation of the survey results, please look at the attached pie charts. [Chart: Type of Assignments]

<sup>3</sup> The Research and Writing I students also are required to complete several research exercises, give an oral presentation, and complete an *ALWD Citation Manual* exercise. They are also given research quizzes and a research test during the semester.

clerking positions with private law firms.<sup>4</sup>

Other frequent assignments for these law clerks were drafting persuasive motions and memoranda to be filed with the court and drafting “other” documents. In addition to drafting these “other” documents, such as releases and real estate documents, the research consultants drafted memoranda in support of or in opposition to motions for summary judgment, motions to dismiss, motions in limine, and other pretrial motions. Once again, an emphasis on these skills in Research and Writing II appears to be appropriate.

At Stetson, the department requires the students to draft an eight-page, closed universe memorandum of law in support of (or in opposition to) a motion, typically a motion in limine or a motion for a protective order. Additionally, Research and Writing II students are required to write a 22-page appellate brief.<sup>5</sup> Although only one research consultant was asked to write an appellate brief during her clerkship, the persuasive writing skills learned and honed in class undoubtedly prepared the research consultants for the memoranda they drafted in support of or in opposition to the various motions.

There were many other research projects the students were required to perform, some of which the department did adequately prepare them for, and some for which the department did not have the time or resources to fully prepare the students. Specifically, many students were asked to draft opinion letters and demand letters. As the Research and Writing II program is structured today, the students are required to draft a demand letter. This demand letter is based on a draft complaint (which later forms the basis for the appellate problem) and requires the students to perform some research. This two-page assignment is the students’ first exposure to persuasive writing at Stetson. One particular comment from a research consultant indicated that the demand

letter exercise did indeed help her with the demand letter she was asked to draft during her clerkship.

Although the Research and Writing II program used to require an opinion letter, that opinion letter requirement is no longer a part of the Research and Writing II curriculum. Nonetheless, an opinion letter assignment does exist in some of Stetson’s other course offerings.<sup>6</sup> Obviously, with limited class time during the semester, it is impossible to give the students experience in drafting every type of assignment they were given during the clerkships. However, as the accompanying pie chart illustrates, most of the research consultants’ assignments were covered in Stetson’s Research and Writing program or in other Stetson course offerings.

### 3. What Are the “Hot” Subjects?

Another fact that became clear as a result of the survey was the broad scope of topics in which the students were asked to complete research. Instead of being asked to perform research in the typical first-year topics of contracts, torts, property, criminal law, and civil procedure, most students were asked to research and write about topics to which they had no exposure during their first (and sometimes second) year of law school. This issue was addressed by one student who indicated that on many occasions he was asked to research areas of law that he “knew nothing about.”

The most common subject of these “upper-level” subjects was employment law, but subjects such as environmental law, insurance law, bankruptcy law, and copyright/intellectual property law were also subjects of student research. According to one research consultant, conducting research in unknown areas takes “twice as long” as conducting research in an area with which the student is somewhat familiar.

Because clerks are assigned tasks in various areas of substantive law, Research and Writing II instructors are justified in giving students

“Another fact that became clear as a result of the survey was the broad scope of topics in which the students were asked to complete research.”

<sup>4</sup> Most students who participated in the survey worked in medium-sized or large firms. This fact is highlighted in the accompanying pie chart. This might have been one reason why the number of objective research memoranda was so high. [*Chart: Firms Represented*]

<sup>5</sup> The Research and Writing II students also are required to draft a demand letter, complete a computer exercise, argue their motions and appellate briefs, and complete interim assignments during the brief-writing period.

<sup>6</sup> For example, in my Legal Research and Drafting in Employment Law class, students are required to draft an opinion letter. Additionally, they are required to draft a demand letter, a complaint, an Equal Employment Opportunity Commission (EEOC) charge, and a defensive position statement. [*Chart: Assignments Covered by Stetson’s Course Offerings*]

“[O]ne research consultant observed that law practice is ‘five times as busy as law school.’”

experience in all areas of the law in their memoranda and briefs, rather than limiting the memorandum topics to traditional first-year subjects. In fact, in my Research and Writing II class, most of the briefs are based on employment law, an area with which I am very familiar and an area in which many of my former students are being asked to perform research.

The message this information delivers is that limiting student memos to traditional first-year topics is not the best way to prepare them for their clerkships, and that doing so gives the students a false sense of security. Because these students will be asked to perform research in all areas of the law during their clerkships and during the first few years of their associate lives, giving them experience with unfamiliar topics will benefit them in the long run. By doing so, we will force the students to concentrate on the research process as a whole, give them experience in different areas of the law, and make them start their research from scratch, thereby forcing them to become more familiar with the research process. Knowing how to perform research from scratch is more important than knowing what the probable answer is and working back to the law to support the conclusion.

#### 4. Research and Writing Assignments: How Long Is Too Long, And How Much Time Do I Have?

The one area of the survey that perhaps indicated that the department might be a bit out of step with the “real world” addressed the average page length of the assignments. While the Stetson Research and Writing I program requires a 10-page and a 10- to 15-page memorandum, and the Research and Writing II program requires eight-page and 22-page assignments, the students in our survey were typically being asked to write assignments between one and five pages. The second most common length of assignments was six to 10 pages.<sup>7</sup>

Therefore, most of the assignments the clerks were asked to perform were shorter than our

<sup>7</sup> See the accompanying pie chart for a graphic illustration of this. [*Chart: Length of Assignments*]

shortest Research and Writing I assignment.<sup>8</sup> Although this might indicate that law firm mentality indicates that shorter is better,<sup>9</sup> requiring students to be experienced in writing longer assignments certainly does have benefits and can be easily justified. Specifically, if we were to assign five-page memoranda, we would not be able to determine the depth of our students’ analytical skills, and would not be adequately preparing them for the longer assignments when they are inevitably assigned.

The other real-life surprises many students discovered were the limited time they had to complete written projects and the extended workplace hours these demands required. While students typically have between three and five weeks to draft a memorandum in school, the turnaround time for many of the clerking projects was much shorter. Specifically, the turnaround time for many of these assignments was hours rather than days or weeks.

Many research consultants thought these time pressures were unreasonable, while one observed that she did not like the “extreme pressure” placed upon her for turning an assignment around in days rather than weeks. She expressed her dislike of supervising attorneys constantly asking whether she had found anything on point. Another research consultant indicated that he disliked the “very high degree of pressure to do a good job and do it quickly.” As a result of these added time pressures, one research consultant observed that law practice is “five times as busy as law school,” and that being a lawyer is “not a nine-to-five job, but rather a seven-to-nine job.”

#### 5. Electronic Research: Sooner Rather Than Later?

Perhaps this discussion will open up a new topic that is better suited for an article by itself, but the issue of computerized research is one that will be with us for the foreseeable future. The

<sup>8</sup> Stetson’s Research and Writing II program requires students to write an eight-page memorandum in support of a motion and a 22-page appellate brief. The memorandum assignment is certainly within the page range most students used during their summer clerkships, while the brief is significantly longer.

<sup>9</sup> In fact, one research consultant indicated that “lawyers only want answers, not explanations.” Perhaps this attitude explains the shortness of the written assignments.

results of the survey clearly indicate that most students did in fact use Westlaw®, LEXIS®, and other forms of computerized research. Consultants at large and small firms did have access to these resources, indicating that firms of all sizes are using this form of research. Despite its popularity, however, there was some apprehension about the overuse of electronic research.

An important statement about computerized research was written by one research consultant who worked at one of Florida's largest firms. Specifically, he indicated that the department must continue emphasizing book research, and that we should not allow computerized research to replace a thorough and exhaustive explanation of manual research sources.<sup>10</sup> Another research consultant echoed that sentiment when he indicated that students must "learn the books because Westlaw is not the end-all."

Interestingly enough, he was one of the last students at Stetson who was not given access to Westlaw or LEXIS until close to the end of his first semester of Research and Writing I. Since that time, we have become more computer-intensive, beginning with LEXIS and Westlaw closer to the middle of the semester (rather than toward the end of it). Although computer research has grown enormously in the seven years I have been out of law school, and will undoubtedly continue to grow in the future, I am still somewhat leery of giving students access to these tools before they fully understand *why* they are using them.

To make sure Stetson students are indeed competent in computerized research, the Research and Writing II program at Stetson includes a rigorous section on computerized research, and requires students to complete a rigorous, hands-on computer exercise. This experience in Research and Writing II (after first familiarizing the students with computerized research in Research and Writing I), along with advanced training from Westlaw and LEXIS representatives and two years of free access to these computerized databases, should prepare these students to use computerized

<sup>10</sup> His specific statement was, "I heard a rumor that Research and Writing classes were going to introduce students to e-research at the beginning of the semester. If this is true, this is a mistake because most students will not be permitted to use e-research in their jobs. All students need to have the skills to use the books."

research, but not at the expense of not understanding how to perform manual research.

### Other Student Thoughts

Perhaps the most interesting responses to the survey were those responses that answered the question regarding "law practice realities." Other than the expected griping about keeping billable hours,<sup>11</sup> the research consultants did have many interesting statements that should be passed on to future Research and Writing students. The most common topic in this area of the survey was the difficulty many students experienced with their supervising attorneys. These problems included unclear instructions from supervising attorneys, lack of assistance, failure to give strict (and accurate) deadlines, unreasonable time demands, and attorneys' failure to tell the students they no longer required the research they originally assigned.

Perhaps the lesson to be learned here is that not only do we need to give clear, concise instructions and be as accessible as possible to our students, but we must also convince the students not to be afraid of asking questions of their supervising attorneys. This will save them billable hours, frustration, and the sinking feeling that they are not doing well on the particular assignment. In fact, one research consultant noted, "I find more and more that people are the greatest resource."<sup>12</sup>

Another common theme that we attempt to emphasize at Stetson is attention to detail. While some students might not understand the importance of proper spelling and grammar, practicing attorneys certainly do. Many research consultants discussed the amount of proofreading and editing that occurs in law firms. This point was made emphatically by one research consultant, who noted that she was impressed that an appellate brief she was reviewing had been proofed and edited 56 times before she reviewed

<sup>11</sup> In Stetson's Research and Writing II program, students are taught how to keep billable hours and are required to track four days in which they can "bill" at least eight hours. The students' clients are their professors, and the "billable" time includes class attendance, class preparation, outlining, briefing cases, etc. Some students commented that the billable-hour exercise was extremely helpful, while others indicated that four days was not enough.

<sup>12</sup> Echoing this thought, one student wrote, "Don't reinvent the wheel. Go to others first."

“[W]e must also convince the students not to be afraid of asking questions of their supervising attorneys.”

“Law firms are still requiring clerks to churn out research memoranda, to draft memoranda in support of motions, and to draft other legal documents.”

.....

it. Perhaps this anecdote will be good to use when the issue of proofreading and the importance of it comes up in class.

### 6. What Has the Survey Taught Us?

Fortunately, the survey results confirmed that the department is preparing its students well for their summer clerkships. Law firms are still requiring clerks to churn out research memoranda, to draft memoranda in support of motions, and to draft other legal documents. These tasks were very common assignments in the clerkship programs, and they form the bulk of the work our students perform during the first year. This justifies our emphasis on these tasks. Firms are requiring students to research in all areas of the law, again justifying our approach of not limiting the subject matter of the memos to traditional first-year subjects.

One of the most popular subjects of the survey involved the use of electronic research sources. While many students were happy that they were exposed to LEXIS and Westlaw, some students still took the approach that allowing students to have access to these electronic resources too soon can adversely affect their manual research skills.

The high-pressure atmosphere of most firms definitely affected the law clerks, as they realized that the quick turnaround time can lead to late nights and stress. Being more assertive with supervising attorneys and making sure they know what is expected of them will undoubtedly assist in lowering the stress level at these firms.

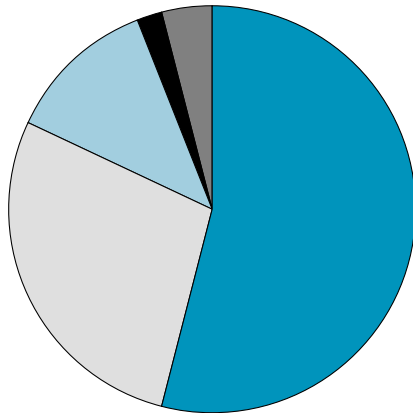
Now that the first Stetson survey has been completed, what has the department done in response to these results? Fortunately, the results will not require the department to make radical changes to its program. The Research and Writing I emphasis on legal research and objective memoranda is appropriate in light of the high number of objective memoranda our research consultants were asked to write.

The department's Research and Writing II program also seems to be preparing its students for their clerkship experiences, as much of the work that is required in Research and Writing II was

also required as part of the research consultants' clerkship experience. Although no radical change is necessary, Research and Writing II has recently been increased to three credit hours, and with that extra hour, the department has been able to add classes that will assist students with their clerkships. Specifically, we have been able to have a panel discussion on the clerkship experience (with returning law clerks as panelists) and a panel discussion with practicing attorneys explaining what they expect from their summer clerks. These panels have been well received.

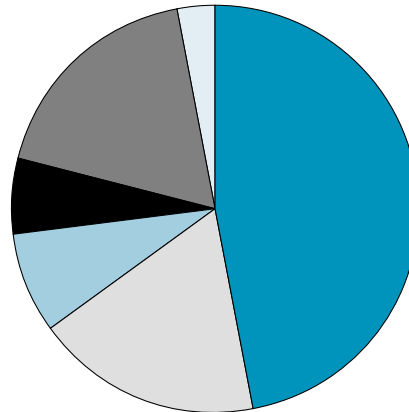
I hope that the results of this survey will be helpful in determining whether your Research and Writing program is adequately preparing its students for their summer clerkships. Next year, the department hopes to have more research consultants participate in the program. After the results of that survey are compiled, I will of course make them available.

## Length of Assignments



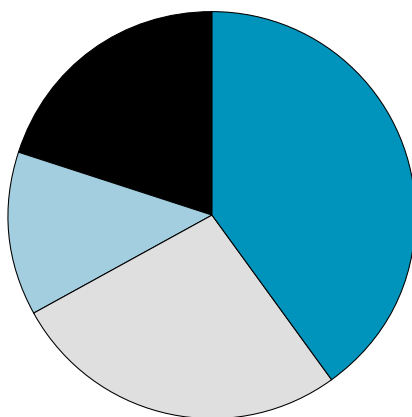
- 1-5 pages: 54%
- 6-10 pages: 28%
- 11-15 pages: 12%
- 16-20 pages: 2%
- 20+ pages: 4%

## Type of Assignments



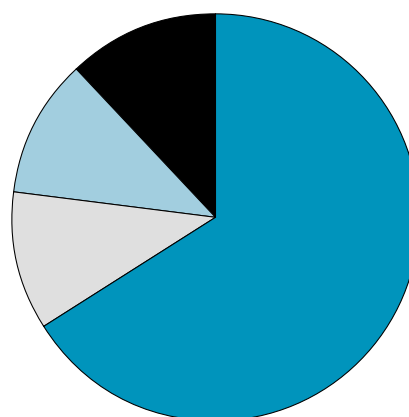
- Objective memorandum: 47%
- Research without full memorandum: 18%
- Motions with or without memorandum in support: 8%
- Discovery: 6%
- Drafting "other" documents: 18%
- Other assignments: 3%

## Firms Represented



- More than 100 attorneys: 40%
- 50-99 attorneys: 27%
- 10-49 attorneys: 13%
- Fewer than 10 attorneys: 20%

## Assignments Covered by Stetson's Course Offerings



- Assignments covered by Research and Writing I: 66%
- Assignments covered by Research and Writing II: 11%
- Assignments covered by other Stetson offerings: 11%
- Assignments not covered: 12%

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