

# PERSPECTIVES

## Teaching Legal Research and Writing

### YES, YOU WILL REALLY USE ALGEBRA WHEN YOU GROW UP: PROVIDING LAW STUDENTS WITH PROOF THAT LEGAL RESEARCH AND WRITING IS ESSENTIAL IN THE REAL WORLD

BY KELLY M. FEELEY  
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Every teacher is faced with that daunting question from the student with the very skeptical look: "Will we really use this stuff in the real world?" And every teacher responds with emphatic conviction, "Of course you will." However, saying it is so and getting the students to believe you are two very different things. This is especially true during first-year legal research and writing courses. Students question why we bother to teach them "paper" or "book" research when computer research is available. Students wonder if they will ever write an inter-office memo or a demand letter in "real life," or if we just enjoy torturing them with additional assignments. Although we assure the students that this is more than a hazing ritual, they seem to require more proof; they need to hear it from the proverbial "horse's mouth." That is why the Stetson University College of Law Research and Writing II program includes three "real world" class sessions.

To provide students with the incentive to work hard and reap the benefits of solid legal research and writing skills, we invite practicing attorneys,

judges, and upper-level law students who have clerked for law firms, government agencies, or courts to speak to our students. These participants help solve or demystify the equation of why honing research and writing skills early on will help students land clerking jobs sooner and shape better attorneys. The demystification begins during the first weeks of the Research and Writing II semester, which is the semester in which we focus on persuasive writing. We present a real-world panel consisting of attorneys, judges,

VOL. 10

NO. 3

SPRING

2002

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**Perspectives: Teaching Legal Research and Writing**

is published in the fall, winter, and spring of each year by West Group.

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and upper-level law students. We continue to solve the equation during the final two days of the semester, after students turn in their final appellate brief. One day we focus on “finding the dirt” — conducting factual research; the second day we simulate a clerking assignment with practicing attorneys.

### Research and Writing in the Real World

In math class, it helped to have a problem put into context instead of being given an equation in a vacuum. The solution was the dreaded word problem. But those word problems applied to real-life situations. Students realized it was important to know how much gas their car would use on a 2,300-mile trip if they traveled 65 miles per hour, and their car got 19 miles per gallon.

To give law students that same perspective, focus, and interest about legal research and writing, we use a panel of practicing lawyers, judges, and law students to relay real-life situations in which research and writing skills are invaluable. It is not enough that students listen to the research and writing faculty day in and day out. We like to give them a taste of what practitioners and judges think about, see, and like or dislike about research and written products in the real world. This panel is called “Research and Writing in the Real World” and is held during the first or second week of Research and Writing II.

The panel usually consists of at least one judge, a longtime practicing attorney, a recent graduate, and an upper-level law student who has clerked for a law firm, agency, or court.<sup>1</sup> The panelists address the following topics:

- computer versus book research (cost, availability, preferences)
- research tools (most/least used, most/least helpful, most/least misunderstood)
- judges’ expectations (work product, performance, professionalism)

<sup>1</sup> Through experience, we have found that the best panelists include judges who review a significant number of written motions, memoranda, and briefs; civil litigation attorneys who prepare motions, memoranda, and briefs and who review documents prepared by associates and law clerks; an upper-level law student who clerked for a small law firm; and an upper-level law student who clerked for a larger firm or judge. This diversity avoids giving a one-sided view of what is expected and required of law clerks and lawyers.

- attorneys’ expectations (skills on arrival versus on-the-job training, time management, work product)
- application of research and writing skills (the similarity between class assignments and real-world projects, the frequency of brief and memo writing, the reality of updating and refining research)

An entire class is devoted to this panel. The professor moderates the panel and asks specific questions on the above topics, and the students are encouraged to interject questions.<sup>2</sup> The class concludes with the panelists giving advice and sharing personal experiences.

We find that this panel, used early on in the persuasive-writing semester, encourages most students to put a great deal of effort into their writing.<sup>3</sup> They really see what research and writing means to the legal community. They realize that even though the research and writing curriculum is stringent and time-consuming, it will be worth the effort in the long run.<sup>4</sup> It is a good idea to show them this up front. And the panelists enjoy coming to speak to new, idealistic students. It is a great networking tool because the panelists will usually stay after class to talk to any student who makes the effort. This real-world experience lends perspective to the dreaded word problem known as research and writing.

<sup>2</sup> We share the topics with the panelists a week before the presentation to avoid a renegade panelist from veering from the direction of the class.

<sup>3</sup> The success of this program is evidenced by students’ feedback. For example, one student commented, “R&W in general is the *most important* class in law school. I think hearing people [who] were practicing talk about the skills R&W taught, or at least introduced us to, made me pay a little more attention.” While another student told us, “Hearing the attorney talk about the importance of ‘learning’ R&WII concepts made me want to work harder so I would have the necessary building blocks when I started working.”

<sup>4</sup> To complete the real-life equation, we conduct a research consultants program to keep up-to-date with trends. Lawrence D. Rosenthal, *Are We Teaching Our Students What They Need to Survive in the Real World? Results of a Survey*, 9 Perspectives: Teaching Legal Res. & Writing 103 (Spring 2001). The program is designed to determine whether the Research and Writing department is adequately preparing the students for their summer clerkships. *Id.* at 103. The results were positive, and the students felt as though they were intricately involved in the process. *Id.* at 108. In the summer of 2001, Stetson’s Research and Writing faculty also organized a roundtable discussion with local attorneys and librarians to keep current on research trends in law firms and courthouses.

## “Finding the Dirt”— Conducting Factual Research

Equations contain several variables. Students must not only identify those variables, but also gather information about them. In the legal context, those variables include the players and facts involved in any given case. Although most research and writing courses focus on legal research—such as finding statutory or case law—they often omit an important part of the equation—researching factual information.<sup>5</sup>

Legal research and writing courses typically provide students with all of the factual information they need to complete the assignment. However, we know that in the real world, factual research can be crucial to success. Stetson’s “Finding the Dirt” class demonstrates how to find important factual information. It emphasizes finding the good, the bad, and the ugly about clients, opponents, witnesses, experts, and other parties, to give the case perspective and meaning.

Since students are already familiar with computer-assisted legal research, this class takes that skill one step further. Westlaw®, LexisNexis, and the Internet are great tools for doing research on individuals and corporations. To illustrate that point, the professor conducts the class by using the classroom computer, projector, and screen so that all students can view the demonstration. Additionally, students are required to bring their own laptop computers to class that day.<sup>6</sup> A student volunteers his or her name, or a random name is chosen, to conduct searches regarding newsworthy events, property owned, corporate involvement, vital records, ancestry, or criminal activity. For example, in both Westlaw and LexisNexis, searches can be run in the following types of databases: public information, records, and filings or newspapers, magazines, and news. Finally, on the Internet, students can run searches in <www.ancestry.com> for family histories, <www.anybirthday.com> for birth dates, or <www.infospace.com> for addresses and phone

<sup>5</sup> Attorneys also can use fact investigation to organize a case file, to develop a theory, and to ensure that each element of a claim is met. Paul J. Zwier & Anthony J. Bocchino, *Fact Investigation: A Practical Guide to Interviewing, Counseling, and Case Theory Development* (NITA 2000).

<sup>6</sup> Stetson requires each entering student to have a laptop computer.

numbers. Also, most states have a Web site that allows access to criminal records, court calendars, corporation status, and much more (e.g., in Florida, the Web site is <www.myflorida.com>). The students learn that these searches can produce detailed information such as someone’s next scheduled court appearance or property taxes paid for the previous year.

Although some students are familiar with private investigators who can search court and other public records and perform surveillance, this class teaches them to conduct preliminary and even in-depth searches themselves very inexpensively. Students pay particular attention in this class because they discover more ways to participate in the fact-finding process as opposed to working with only facts generated by the professor.<sup>7</sup> This class also emphasizes how thorough preparation and investigation are the best ways to represent a client. Not knowing all of the factors in the equation can result in surprise, poor representation, and even malpractice. To avoid these results, students learn how to investigate themselves.

## Simulated Clerking Experience

No math class would be complete without a test. Therefore, the last factor in the real-world equation is for students to try their hands at a mock clerking assignment. This completes the cycle from being told how important research and writing skills are to actually applying those skills to a project.

In this last class of the semester, we secure an attorney—who often heads the summer associate program at a local law firm—to conduct a mock research assignment with the class. The attorney brings one or more assignments and either hands out the assignments on a sheet of paper or discusses them orally. We ask that the assignment be similar, in terms of length and complexity, to one that would be given to a summer associate. For approximately 20–25 minutes, students work individually or in small groups to construct

<sup>7</sup> Stetson has started writing memo and brief problems that require students to conduct both factual and legal research. For example, in one memo problem regarding bribing Florida Gov. Jeb Bush, it was important for students to discover that the defendant, a 1949 graduate of Yale University, had attended that school at the same time as Bush’s father, former president George H.W. Bush.

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“The students feel the real-world impact of knowing how to evaluate a problem and how to solve it—they literally solve the equation.”

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a research plan. The students must spot issues, choose the best research tools, and evaluate the time and costs involved to complete the assignment. The attorney then calls on an individual or group to present its plan. The class discusses the pros and cons of each approach, and the attorney gives feedback about the correctness, ingenuity, and feasibility of each plan. Additionally, the attorney addresses what firms expect from summer associates regarding complexity of assignments, number of assignments, and time management. The class also provides the attorneys the opportunity to meet and interact with students who might apply for summer clerkships with the attorneys' firms.

The students feel the real-world impact of knowing how to evaluate a problem and how to solve it—they literally solve the equation. The class also allows the students to brainstorm, be creative, and receive feedback from a “real” attorney rather than “just” a professor. This class also reinforces the importance of organization and research skills.

### Conclusion

The truth is, algebra is part of our everyday lives. It took years for most students to accept that truth. At Stetson University College of Law, we do not want our students to take years to understand and accept the importance of research and writing. We employ these real-world classes to make that reality clearer and more believable early in law school.<sup>8</sup> The more real-world exposure the students get, the more appreciative they are of the skills taught in law school. The sooner we can answer why algebra is really important, the better attorneys we will produce.

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<sup>8</sup> The success of these real-world classes caused us to add a new real-world class for the fall 2001 semester. This new class focuses on the importance of billing, the ethics involved in billing, and the relationship between the time billed, the amount charged, and the attorney's productivity rating. This supplements a timekeeping/billing exercise assigned to the students early in the semester. In that assignment, the students keep track of and record “billable” time, which includes studying and attending classes, preparing outlines for classes, and preparing research and writing assignments.