Designing Assignments for Teaching Legal Analysis, Research and Writing

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Introduction

The design of assignments is perhaps the most important pedagogical activity in teaching legal research and writing. In a legal research and writing course, the assignments provide the heart and soul. Nothing else is as important because the assignments set the context in which all of the teaching and learning takes place. A legal research and writing course could be taught without textbooks and without class meetings, but it could not be taught without assignments. A well-developed assignment is the vehicle through which students are given the context that explains and justifies why they should learn research, composition and analysis. Even as crucial a course component as the teacher’s critique of student writing takes place within the context supplied by the assignment. If an assignment works well, then the rest of the course’s pedagogy may succeed. If an assignment does not work, or works poorly, then few other lessons may be taught and learned.

This article is intended to help teachers of legal research and writing design course assignments that simultaneously teach legal research and legal writing skills within the overall context of introducing students to basic legal analysis. Although the notions...
behind such integrated courses are not new.\textsuperscript{6} Integrated legal research and writing courses have only recently become accepted as the state of the art in course design.\textsuperscript{7}

A full discussion of course design and the teaching of legal research is well beyond the limited scope of this article. However, before proceeding to other issues, it must be noted that perhaps the most critical factor in the design of the research component of integrated assignments is to address multiple sources, both primary and secondary, in order to teach students about the complementary nature of the different research sources.\textsuperscript{8} A truly integrated course will treat research in a manner that simulates real-world practice and demonstrates how multiple sources and techniques must be brought to bear on a research problem. A very simple assignment requiring only the use of a digest and reporter to reveal the law is not much better than a short-answer research "treasure hunt" or a "closed universe" memorandum assignment. Research is rarely, if ever, so simple, and we do our students a disservice to suggest by example that it might be.\textsuperscript{9} Assignments should reveal the multiple paths to the discovery of primary authorities, the advantages and disadvantages of each, and the proper use of secondary sources.

### Issues to Consider in Assignment Design

Regardless of whether an assignment is designed for paper-based or computer-based research, or for first-year or upper-division students, it should be realistic, capable of holding the students' interest over the span of time the course devotes to the assignment, and one that the teacher finds interesting and involving. Such a problem can be created by giving it emotional "hooks" that will pique a student's interest, making it topical, and including believable people as characters in the story. Good assignments are believable fiction. Strive to write good fiction—consider whether the assignment would make a good television show, movie or short story. Ask yourself if you can see the characters in your mind's eye and if you can hear them speaking. Create a story that makes the students care about the people involved and not view them as abstractions. Use realistic names, actual places and even real experts (it may be possible to ask local experts to help you prepare the problem or at least review it, and you might even build them into the facts).

Legal research and writing assignments often are drafted in part to bring laughter to the classroom. Although many legal writing teachers go through a period of creating assignments with puns and ridiculous names, more experienced teachers generally abandon this approach. Students should take the assignments seriously, they should be able to use their work as writing samples and they should remember the assignment for good reasons. Particularly in the case of moot court assignments, the students should be able to treat the exercise as one that is real, not one in which the assignment drafter gave vent to an impulse to be a comedy writer.

First-year students need to begin their work on an assignment in which the major substantive\textsuperscript{10} issues

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\textsuperscript{7} See, e.g., Christina L. Kurz, Integration of Skills as an Overarching Goal in a Legal Writing, Reasoning, and Research Course: Its Influence on Curriculum, 2 Integ. Leg. Rev. 7 (Fall 1989); Helene S. Shapiro, The Frontiers of Legal Writing: Challenges for Teaching Legal Research, 78 L. Libr. J. 719 (1986).

\textsuperscript{8} The appropriate time and manner for teaching students how to do computer-assisted legal research are controversial issues, see, e.g., Marilyn R. Walter, Breaking Control Over Teaching Research, 43 J. Legal Educ. 569 (1993), and no attempt is made to address them here. This exclusion is based on the complexity of the issues as well as the presumption that the initial research instruction given to first-year law students will focus on print-based sources. Many teachers believe that first-year students are just too unsophisticated to be allowed to have access to Boolean search mechanisms in their first semester of law study. I agree. First-year law students must begin their training by learning and using the indexing systems prepared by experts; even the finest first-year law students are capable of creating only the most rudimentary frameworks for organizing the vast amount of complex original legal source materials, and they run the risk of learning bad habits that have the potential for financial disaster if applied in a summer clerkship. Even the new natural language systems require a fairly sophisticated understanding of the language of the law. I permit students in our program to use LEXIS and WESTLAW\textsuperscript{\texttrademark} to update materials and to retrieve cases and statutes, but restrict their system passwords until the second semester of the program.

\textsuperscript{9} For example, I try to have the first assignment deal with cases and statutes, even if the statute is only of peripheral interest. The primary case would be retrieved by using digests and perhaps the annotated code, but it also would be cited in secondary sources such as articles and an ALR annotation. If at all possible, I want the students to find a new case via Shepard\textsuperscript{\textregistered} or by looking at the digest pages in the reporter advance sheets.

\textsuperscript{10} Procedural issues are often quite difficult for first-year students to research and to understand, especially if it is the main issue in the assignment. Most of my initial assignments are the kind that ask, "Does our client have a cause of action?" A procedure-oriented question might deal with standing or capacity. Later assignments might combine substance and procedure, but it is, unfortunately, difficult to get first-year students excited about procedure, let alone understand it well enough to research and write about it.
The teacher must be careful of inserting "hidden agendas" into the problem, whether or not done intentionally. Hidden agendas might be jurisprudential or political in origin or both. Examples include law and economics theory, critical legal studies theory, feminist legal theory, critical race theory, professional ethics, political correctness, disability, race, religion and diversity. When these issues are included and made explicit, the student reaction may range from anger and dismay to joy and happiness. The faculty reaction may be to ask, "Who are you to be teaching that?" The primary focus of the teaching should remain on the lessons.

11 Upper-division students often have experience in real-world law practice. They may have just finished, or are now taking, courses with your colleagues, who are experts. With upper-division students, you must be absolutely certain that you are teaching substantive law in which you too are an expert. With upper-division students, you might use one substantive context for several assignments in sequence. This lesson demands on teacher and students, and enables you to devote more attention to writing and research instead of learning new substantive law.


14 The greatest ambiguity in first-year assignments is built into the typical moot court appellate brief assignment, which must be balanced between the two sides in order to permit the students the best possible learning experience. If you are going to be creating a moot-court type assignment, try to create full records, or excerpts from full records. Be alert in the holes in the record, try to avoid unintended gaps, but put certain ones in on purpose. Try to have one overall issue with two parts, instead of a patch of issues. If you have multiple issues, try to relate them in a realistic manner, not as a procedural issue tacked onto a substantive issue without any real connection. Finally, prepare a bench brief as a teaching tool for you, not just for the judges.

15 It would be wise to talk over the topics with the teachers who are also teaching your students; this can be done to suggest the benefits of complementary coverage, and not be presented as preemption or conflict.

16 For example, an assignment may require an initial look at state law, and although the Supreme Court may have something to say about it, eventultly, the students could be told to assume that all the topics of a later memorandum. You might limit the research or scope to law within a particular federal circuit, but tell the students that factually analogous cases in other circuits are fine to use, or that similarly reasoned Supreme Court cases about other statutes should be mentioned. Similarly, a memorandum prepared to aid evaluation of a client's potential lawsuit is different from one prepared to prepare for trial, or for an appeal.

17 My own assignments often address issues of mental illness, child abuse and neglect, sex-based discrimination or disability, in part because of my own law practice experience in those areas, but also because those issues lend themselves to emotionally interesting assignments permitting discussion of deeper issues in jurisprudence.

18 Perhaps because of the second-class status of moral research and writing teachers, they are more susceptible to status-based distinctions and more vulnerable to student and faculty complaints.
the problem was designed to address in analysis, research and writing, not on the other more complex theoretical or political issues. Finally, be wary of unintentionally offending or hurting students if the assignment involves issues about sex, race, politics, or religion.  

Attention must be paid to the diversity of clients. Of outcomes and of answers. Students must learn how to give a client good and bad news about winning and losing, and also how to deal with the ups and downs themselves. A lawyer will have clients who may be likeable or despicable, and the “moral justice” of the lawyer’s research and analysis may be difficult for the prospective lawyer to accept. There are eight possible variations on these themes of which a teacher should be aware:  

- The lawyer has a good and likeable client who will prevail, and should—this is a typical easy opening memo;  
- The lawyer has a good and likeable client who will prevail, and should not—the student’s reaction may be to take the client’s money and think about not practicing law;  
- The lawyer has a good and likeable client who will lose, and should—the student may feel sorry for clients, but resign himself to the result;  
- The lawyer has a good and likeable client who will lose, and should not—this is often the best motivator of detailed research and creative analysis;  
- The lawyer has a bad and despicable client who will win, and should—perhaps this is for corporate attorneys in the making;  
- The lawyer has a bad and despicable client who will win, and should not—this may further motivate the already idealistic students to find a career in public interest law;  
- The lawyer has a bad and despicable client who will lose, and should—this puts some pressure on the students to deal with telling a paying client he is not going to prevail no matter how much the lawyer’s bill may be; and  
- The lawyer has a bad and despicable client who will lose, and should not—this is often the best final teaching tool about the real world.  

Teachers also may play with the students’ client allegiance by dividing a class between plaintiffs and defendants, or even switch the allegiance between different writing projects on one fact scenario over the semester or year to illustrate how research and analysis, and the writer’s own voice, are subject to pressures based on client allegiance. Those changes could also be joined with changes in a document’s purpose, from predictive to persuasive. For example, I have students prepare a final memorandum for one side of a civil dispute to evaluate the client’s case, and then in the next semester the students write an appellate brief and deliver an oral argument for the opposing side.  

The assignment drafter also has to make choices about the format for the assignment’s transmission to the students. Mere verbal recitation is subject to interpretation and memory lapses. An in-class interview depends on student questions (and first-years’ questions are usually quite naive) and it is subject to interpretation and follow-up questions. It is hard for everyone to remember what went on, unless the session is taped and students have access to the recording. A memo to the students about the facts is the traditional method, but this means that the teacher’s writing will be closely scrutinized and often copied by the students as they write the fact sections of their own memoranda.  

An excellent alternative is the full or partial transcript of a client interview. This is fairly easy for the teacher to write and hard for students to copy in a fact section. It often makes the assignment and characters come alive, and you can prepare different interview transcripts for the opposing sides to illustrate that there are two sides (at least) to every story. This can be combined with the distribution of selected documents that support or contradict the client’s story.  

A careful teacher will create answers and teaching materials for the assignments. Sample answers and outlines of the discussion of authority in the resulting memoranda are an absolute necessity for good assignments and good teaching. Writing the memo helps refine the teacher’s own research and analysis, which parallels the purpose of assigning the whole thing to the students in the first place. Furthermore, the sample can be placed on reserve as an exemplar for students, it can be used as a basis for 

19 The wise teacher has an alternative assignment ready for any such students.  
20 After all, the profession’s overall batting average is only .500. For every “loser” there is a “winner” on the other side.  
21 The most extensive documentary support for an assignment is usually seen in an appellate record for a moot court assignment. This would typically include a trial court ruling, intermediate appellate court rulings, plus trial documents, evidentiary exhibits and trial transcripts. This is most effective if done well, but it requires lengthy and painstaking preparation. For example, you should create a calendar to check internal consistency, weekday and weekend dates, statutes of limitation and appeal schedules.
discussion in the teacher's office, or it can serve as a source of examples for critique and comment sheets. Ways to make this task less onerous include making detailed notes of how the assignment can be researched while initially creating it, keeping copies of the digest pages, taking notes about the descriptive words that helped in the indexes, maintaining records of the dates you worked on and updated the assignment, and keeping copies of all relevant materials on hand. A corollary admonition is that a teacher should never use an assignment without having first tried it out on another legal writing teacher or a student assistant. If at all possible, research the problem yourself and then have someone else double-check it (blindly, at first), because the creation of the assignment may have involved working backward from the central case or cases.

A final administrative issue to consider when designing assignments is whether or not you intend to revise what you create now in subsequent years or to develop new assignments each year you teach the course. The oft-repeated reason for not reusing assignments is the fear that students will cheat if assignments are reused. Although fear of cheating is legitimate, it should not be dispositive. First, remember that even with "new" assignments, cheating can occur. Students may, unfortunately, receive illicit assistance from other students or from sources outside of the law school, regardless of whether or not the assignment was ever used before. Second, recycling helps the teacher improve because the process of refining a previously used assignment forces the teacher to reflect on the earlier experience with the problem. The teacher will also have more time available to read and review student papers, and to conduct other scholarly activities, instead of playing catch-up all year long. Students will write better papers each time an assignment is reused because the teacher is more experienced using the material. For these reasons, assignments should be reused unless the assignment no longer has utility as a teaching tool, perhaps because the research skills targeted are no longer applicable, the issue was mooted by a new development or the teacher is tired of teaching the assignment.

Not only are there good reasons to reuse assignments, it is possible to structure a legal writing course to provide systemic disincentives to cheating. The best ways to remove the temptation to cheat are to require evidence of research (including narrative reports about the students' research efforts and copies of finding aids) and prewriting activities (including outlines and partial drafts), and to conduct individual conferences with the students. The system can be structured to make it harder and less rewarding for students to cheat than to do the work properly in the first place.

Where to Get Ideas for Assignments

Legal writing teachers often find inspiration in the mass media. Many problems have their genesis in television shows and movies, television "news magazines" and trials with national or regional attention. During the year, a legal writing teacher should establish a screening and filing system for ideas for possible assignments. Ask the library to route certain publications through your office, make copies of interesting articles and cases, and set up an ECLIPSE search on LEXIS or a WESTClip search on WESTLAW.

The National Law Journal, the ABA Journal and other similar publications contain practitioner-oriented columns and stories that summarize new litigation or a developing area of the law. Regular features contain synopses of new and noteworthy cases and statutes. The periodicals also contain articles about the people behind the law, which can help make the issues or characters in an assignment come alive. Finally, remember that an article results from a professional having made a prior determination that something is interesting enough to write about, maybe your students will find it interesting as well.

Peruse American Law Reports (ALR) for assignment topics. In ALR, an expert has conducted research about an interesting issue on which not every court agrees. The ALR coverage is split helpfully between state and federal law, the annotations show majority–minority splits among state courts and the federal circuits, and ALR is easily updated. It also quickly demonstrates the amount of attention given to an issue and refers to other sources that you and your students may find helpful. In short, all of the reasons for your students to learn to use ALR are also applicable to you as an assignment draf ter.

Looseleaf services are very helpful. Have the library route United States Law Week and topical services such as the Family Law Reporter to you. Once more, a professional editor has already made a

22 For a selective listing of sources that provide legal writing assignments developed by other teachers, see the box accompanying this article.

23 It is a foregone conclusion that many legal research and writing assignments in 1994 and 1995 will be based on the issues in the O.J. Simpson trial.
determination that an issue or development is interesting and noteworthy. The services pick up pending appeals and provide an easy way to screen the nation in areas in which you have some knowledge and interest. They often contain short articles as well. Case reporter advance sheets and digests are not too helpful unless you are screening a particular key number or statute for new cases on an issue you have already identified as a good one, but you might see something interesting in the "new developments" page of the reporter advance sheets.

Practicing lawyers are also a good source of assignments. Take your friends in practice to lunch and ask about life in the "real world." Look over redacted files or memoranda, ask about good cases, and get examples of good and bad pleadings and local or state practice. You could go downtown and look through a court file to see what local practice is like, using the forms and styles you find to guide your creation of an assignment. Your own practice may be a source of assignment topics, but using current problems can be dangerous. Often you are not distanced from the case, and you can give students the impression you are using them. Another disadvantage is that there is a temptation to teach the class that your way was the way to deal with the case. The advantage is that you know the material, you enjoy it, you know what happened and it was tested in a real situation.

Ideas for assignments may also be found within the law school itself. The legal writing program may have files with old assignments. Looking at such assignments is a good way to see what others have used, but it is often more work to fix an outdated assignment than it is to come up with a new one, especially if the file does not contain all the associated material for the old assignment (sample memos and research). The director or an experienced teacher may be available to consult with you as you adapt an old assignment. Other members of the faculty may be helpful if you are thinking of using assignments in their areas of expertise and have a draft of an assignment on which you would like a second opinion. Asking law professors who do not teach legal research and writing for germinal ideas may not be fruitful, however, because the pedagogical demands placed on a legal research and writing assignment are often quite different from the ways many professors see cases as fodder for classroom discussion or placement in a casebook.

Conclusion

The design of assignments is not only the most important pedagogical task for legal writing teachers, but it may also be the most creative endeavor in which most teachers will engage. Creating a detailed and believable story in the context of teaching lessons about research and analysis uses many of the same skills exercised by a writer of a short story or a novel about the law. As you create, think of writers such as John Grisham and Scott Turow. You never know, you might have an alternative career in the making, paying the way to retirement from teaching legal writing after writing a million-dollar screenplay adapted from your best-selling novel.

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24 Or have them take you; after all, they are probably making more money than a legal research and writing teacher.

25 Once in a while, the students may have a better solution than the one you provided, or they might not think much of the way you handled the case. Neither is a comfortable situation for the teacher.
Sources for Existing Assignments

Following are several sources of integrated legal writing assignments developed by other teachers, both in print-based and electronic media.
—Jan M. Levine

* The Legal Writing Institute publishes several resource catalogs that contain indexes of integrated and closed-universe assignments. Legal Writing Institute, Resource Catalog: Memos; Legal Writing Institute, Resource Catalog: Appellate Records (formerly the ABA Appellate Record Library); Legal Writing Institute, Resource Catalog: Documents. The Legal Writing Institute is located at the Seattle University School of Law, 950 Broadway Plaza, Tacoma, WA 98402; telephone (206) 591-2273. If you are using something from these sources, it might be wise to contact the problem drafters, and ask to see a sample answer and typical student papers.

* The Society of American Law Teachers (SALT) has legal writing teaching materials available that address diversity issues, although some of the assignments are in the closed-universe format. For more information, contact Deborah Schmedemann at William Mitchell College of Law, (612) 290-6388, or Bari Burke at the University of Montana School of Law, (406) 243-4311. SALT is not located at one place, but Professors Schmedemann and Burke constituted the legal writing working group for the 1994 SALT conference.

* The Pike Institute at the Boston University School of Law has available problems dealing with disability law for all kinds of law school courses. For more information, contact Henry A. Beyer, Pike Institute, Boston University School of Law, 765 Commonwealth Ave., Boston, MA 02215; telephone (617) 353-2910.

* There are two moot court problem serial collections: the New York University School of Law Moot Court Casebook and the Wake Forest University School of Law Moot Court Board Problem Book. Your library might already subscribe to one or both. Other national moot court competition problems are available to serve as models or inspiration, and can probably be found in your school's moot court files, but you should check with the team's coach to find out about the problem's good points and flaws.

* The Legal Writing Program at the Villanova University School of Law recently created PROBNET, a "computerized repository for legal writing programs," which can be accessed through the Internet. Contact Professor Louis J. Sirico Jr., Director of the Legal Writing Program, Villanova Law School, Villanova, PA 19085-1682; telephone (610) 519-7071. People joining PROBNET must contribute materials in order to gain access to the secure database of other teachers' assignments.

* Finally, my own assignments are available for licensing in Jan M. Levine, Analytical Assignments for Integrating Legal Research and Writing (Adams & Ambrose 1994). The assignments are available to legal writing teachers in WordPerfect 5.1 diskette or in hard-copy printed form, and include fact patterns, detailed research instructions and sample answers. The assignments may be used without charge if the teacher has assigned Christopher J. Wren and Jill Robinson Wren, The Legal Research Manual (2d ed. Adams & Ambrose, 1986). Contact the publisher at 1220 South Park St., P.O. Box 9684, Madison, WI 53715-0684; telephone (608) 257-5700.