

Pace Environmental Law Review Online Companion

Volume 2
Issue 1 *Practically Grounded: Best Practices for
Skill Building in Teaching Land Use,
Environmental, and Sustainable Development
Law*
Summer 2011

Article 3

July 2011

Academic Research and Writing as Best Practices in a "Practically Grounded" Land Use Course

Matthew J. Festa
South Texas College of Law

Follow this and additional works at: <https://digitalcommons.pace.edu/pelroc>

Recommended Citation

Matthew J. Festa, *Academic Research and Writing as Best Practices in a "Practically Grounded" Land Use Course*, 2 Pace Envtl. L. Rev. Online Companion 49 (2011)
Available at: <https://digitalcommons.pace.edu/pelroc/vol2/iss1/3>

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Environmental Law Review Online Companion by an authorized administrator of DigitalCommons@Pace. For more information, please contact dheller2@law.pace.edu.

Academic Research and Writing as Best Practices in a “Practically Grounded” Land Use Course

MATTHEW J. FESTA*

I. INTRODUCTION

Land use is a field of law (and policy) that is becoming increasingly diverse, complex, and interdisciplinary in the Twenty-First century. To become an effective land use practitioner, a new lawyer must develop broad knowledge and skills. Two leading scholars in the field declared recently that teaching students to become effective land use practitioners “is no longer possible using the traditional approach to legal education.”¹ In the meantime, two recent reports have inspired a great deal of pedagogical discussion in the legal academy about developing students’ practical skills and promoting best practices in teaching.² As Professors Patricia Salkin and John Nolon pointed out in their recent article, land use is perhaps an ideal

* Associate Professor, South Texas College of Law, B.A., M.A., M.P.A., J.D. I wish to thank John Nolon and Patricia Salkin for organizing the *Practically Grounded* conference on best practices in teaching land use; the scholars, practitioners, and students who participated in the conference; and my colleagues who have discussed with me the importance of research and writing in education, especially Amanda Cooley, Elizabeth Festa, and Katerina Lewinbuk. Thanks also to the editors of the PACE ENVIRONMENTAL LAW REVIEW.

1. Patricia E. Salkin & John R. Nolon, *Practically Grounded: Convergence of Land Use Law Pedagogy and Best Practices*, 60 J. LEGAL ED. 519, 519 (2011).

2. See WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (“EDUCATING LAWYERS”); see also ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) (“BEST PRACTICES”), available at http://law.sc.edu/faculty/stuckey/best_practices/best_practices-full.pdf (last visited June 7, 2011).

field for the application of the best practices movement in legal education.³

Many academic discussions tend to associate the recent focus on best practices and skills development primarily with clinical approaches to teaching. There are a variety of ways, however, that law teachers can incorporate best practices into doctrinal as well as clinical legal studies. One of the most crucially important—and in some ways, least developed—professional skills for all lawyers is writing. Communicating by writing, whether for clients, bosses, judges, or for the zoning board or planning commission, is what lawyers do. What may be less intuitive is that some experience with scholarly writing can also help develop a new lawyer's practical skill set, in land use as well as other fields of practice. Teaching academic research and writing in a doctrinal land use course will develop this critical lawyer's skill, and can advance law student outcomes as conceived within the best practices movement.

In Part II of this paper, I will focus on how academic research and writing fits within the best practices movement and its emphasis on developing capable new lawyers. In Part III, I will explore land use as a discipline that is uniquely appropriate for teaching academic research and writing. In Part IV, I will describe my recent experience teaching academic research and writing as a major class component in a large section of the doctrinal land use course. I will conclude that while it is not a perfect research-and-writing experience, teaching a writing component in a larger doctrinal land use course provides significant benefits, and offers an example that can suggest alternative pedagogies in teaching new professionals.

3. Salkin & Nolon, *supra* note 1, at 527 (asserting that “land use should be the ‘poster child’ for best practices”).

II. ACADEMIC RESEARCH AND WRITING AND THE BEST PRACTICES MOVEMENT

A. The Carnegie Report, Best Practices Movement, and Writing

The legal profession has long been interested in studying the effectiveness of the American legal education system in preparing lawyers for professional practice, and in evaluating the traditional model of legal education that focuses on doctrinal instruction through the Socratic method and assesses students with a final exam. In 1992, the ABA focused the academy's attention on what was perceived as a need for greater focus on teaching skills and values in *Legal Education and Professional Development—An Educational Continuum*.⁴ The 2007 publication of the Carnegie Foundation for the Advancement of Teaching's *Educating Lawyers* (the "Carnegie Report") and of the Clinical Legal Association's *Best Practices for Legal Education* ("*Best Practices*") have pushed the discussion further.⁵ The Carnegie Report takes a theoretical approach toward linking the needs of the legal profession (and the public) with the interests of the legal profession, and offers some criticism of the traditional reliance on Socratic teaching.⁶ The *Best Practices* report encourages law schools to devote significant attention to developing a best practices statement, and offers recommendations for how law schools can organize their curricula, deliver instruction, and assess student learning, to improve their effectiveness in teaching the skills a new lawyer will need in practice.⁷ The best practices movement has

4. AMERICAN BAR ASSOCIATION TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992) (commonly referred to as the "McCrane Report").

5. See generally EDUCATING LAWYERS, *supra* note 2; BEST PRACTICES, *supra* note 2.

6. EDUCATING LAWYERS, *supra* note 2, at 4. The Carnegie Report's Summary is available online at <http://www.carnegiefoundation.org/publications/educating-lawyers-preparation-profession-law> (last visited June 7, 2011).

7. BEST PRACTICES, *supra* note 2, at 7-11.

generated a great deal of attention and discussion in the legal academy.⁸

Best Practices—published by the Clinical Legal Education Association—is associated (correctly) with a desire for law schools to provide more of the kind of practical, hands-on experiential learning that is traditionally offered by clinical courses and programs. In fact, three law schools currently operate specific land use clinics.⁹ But the best practices movement can extend to the entire law school curriculum, including traditional doctrinal courses. Including a writing component is among the many ways in which a doctrinal course can incorporate best practices recommendations. Practice-focused writing projects, such as memoranda, briefs, and in a land use course, drafting documents such as zoning amendments or variance requests, would certainly fall in line with the goals of the best practices movement. Many of those goals, however, could also be advanced through the production of individual academic research and writing projects.

A number of the report's recommendations would be advanced by including a writing component in a doctrinal course, including the integration of teaching theory, doctrine, and practice; supporting student autonomy; high expectations; using multiple methods of instruction; and using context-based instruction to produce law-related documents (legal writing and drafting).¹⁰ Requiring an academic writing component to a doctrinal course also furthers the best practices goal of offering multiple forms of assessments, rather than relying solely on a comprehensive final exam—the report lists a paper assignment among the potential alternative assessments.¹¹ An individual research and writing project can furthermore provide the opportunity to include both formative and summative

8. For instance, Professor Mary Lynch maintains a blog called *Best Practices for Legal Education*, <http://bestpracticeslegaled.albanylawblogs.org/> (last visited June 8, 2011).

9. The three U.S. law schools with land use clinics are the University of Georgia; the University of Montana; and the Vermont Law School. Pace Law School also has a Land Use Law Center. Many other schools operate environmental law clinics that work with land use issues.

10. BEST PRACTICES, *supra* note 2, at 93, 113, 116, 132, 148.

11. *Id.* at 253-54.

assessments.¹² For example, having the students turn in thesis statements, outlines, and drafts can serve as formative assessments designed to give feedback, while the final paper can serve as a summative assessment for the purpose of assigning a grade.

It is important, therefore, and consistent with the goals of the best practices movement, to include writing as one of the practical skills that a legal education ought to provide to students. While often thought of as something at the opposite end of the educational spectrum from practical skills, academic writing can also promote best practices.

B. Writing—Including Legal Writing—is a Critical Skill

1. Lawyers are communicators

Communication is perhaps the most important thing that lawyers do for and on behalf of their clients, and it is often written communication that is most critical in practice. Most if not all law schools require a legal research and writing course in the first year. Many law schools put an incredible amount of emphasis on this course. Students often see it as an introductory course that they need to finish before moving on to more “substantive” courses. What students don’t always understand is that legal analysis and writing will be the most important skill that they will be able to offer at the beginning of their careers.

Traditional essay-based final exams are also, in a sense, legal writing events, but they have severe limitations for teaching or improving student writing. Many students make the mistake, in this context, of failing to recognize that “knowing the law” or getting the right conclusion is not enough—a lawyer needs to be able to communicate that information to others. A well-written essay exam answer (just like well-written attorney work product) comes from not only the appropriate legal knowledge but also from organization, analytical reasoning, and judgment. Exams are important tools for assessing legal knowledge and reasoning, particularly in the foundational first-year subjects and bar exam

12. *Id.* at 255.

topics, but often the time pressure prevents students from producing good writing. Another limitation is that an end-of-term final exam does not encourage students to develop their writing skills throughout the semester.

For many law students, their next—and final—experience with a research and writing project is the “graduation writing requirement.” At many if not most law schools, this requirement centers around producing a significant paper, and is often met by writing a law review or journal note; an independent study with a professor; or by taking a writing seminar. These methods can lead to great results, but this one additional writing project may not be enough to develop student writing skills as much as we might hope. All students could improve their writing by having to do more of it, and with increased faculty involvement.

What many students don’t understand, and what we as teachers need to emphasize, is that writing is perhaps the single most important thing that lawyers do. Cases are won and lost on the briefs; clients make decisions based on the reasoning and analysis set forth in their lawyers’ memoranda; and transactions succeed or fail based on how they are drafted. Writing is also important to lawyers beyond the practice work product; development of both individual lawyers and the profession, not to mention public understanding of law and policy, depends on things that we write. It is particularly important for new lawyers, but communicating complex concepts, critical thinking, and sophisticated analysis to clients, stakeholders, decisionmakers, and colleagues is the coin of the realm for lawyers and other professionals.

2. Law Students Need More Development of Writing Skills

In addition to the potential of writing as an element of best practices in law teaching, and the critical importance of writing as a professional skill, there may be reason to believe that students have an even greater need to focus more on writing during law school: they may be significantly underprepared to be good writers. I have not been a teacher long enough to evaluate trends in student writing over time, but some recent commentary leads to a concern that technology and the higher education

experience are interfering with the development of writing ability.

One common problem with law student writing ability is that they may not have done enough of it—writing, and the critical thinking and complex reasoning that go into good writing as well as into legal analysis. Sociologists Richard Arum and Josipa Roksa conducted a study of undergraduate learning that leads them to the alarming observation that students are not learning much. Their recent book, *Academically Adrift: Limited Learning on College Campuses*, presents their depressing results.¹³ The book concludes that there is little to no significant improvement in college students' abilities in what the authors identify as the principal higher education goals of "critical thinking, complex reasoning, and writing."¹⁴ In particular, most freshmen in the authors' study report minimal writing requirements, and half of all seniors had not written a paper over twenty pages. It is difficult to improve at writing without doing very much of it. If students are entering law school without significant writing experience, they need to get as much as they can in their legal education.

Another potential challenge to law students' writing ability is technological and perhaps generational: the typical law student today has grown up on the internet. While it is common to bemoan the habits of "kids today" and their addiction to social media, texting, and so on, my concern here is more about the way our internet-focused society may be reshaping our cognition. In his recent book *The Shallows: What the Internet is Doing to our Brains*, author Nicholas Carr examines the possibility that the reading and thinking habits that come from an internet-dominated approach—with massive amounts of information available by hyperlink—may be changing the way we think.¹⁵ Instead of encouraging us to read with the focused, sustained attention that allows for engagement with complex ideas, reasoning, and creativity, Carr argues that the internet creates a

13. RICHARD ARUM & JOSIPA ROKSA, *ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES* (2011).

14. *Id.* at 35.

15. NICHOLAS CARR, *THE SHALLOWS: WHAT THE INTERNET IS DOING TO OUR BRAINS* 7-10 (2011).

different “ethic,” one focused on speed, consumption, and jumping from one small bit of information to the next.¹⁶ If there is anything to this, it makes it all the more challenging for a law student to engage in the thorough analytical and reasoning skills of law practice. Including a significant academic research and writing component in a doctrinal course, therefore, could provide the chance for a student to engage a topic independently, to build knowledge and expertise in the topic, and to develop ideas and arguments over the course of a term, all of which could contribute to student’s professional legal writing.

C. Academic Writing can Lead to Positive Teaching Outcomes

Many different types of writing assignments could potentially promote the goals of the best practices movement, and improve law students’ skills in written communication. There are some particular advantages, however, to adding an academic research and writing component to a doctrinal class—particularly an upper-level elective such as land use.

For one thing, scholarly research and writing is one of the things that most law professors do best. Practitioners sometimes complain—rightly, in many cases—that legal academics often don’t have as much practical knowledge as many experienced practicing attorneys. Academics respond that they bring different assets to legal education, including subject-matter expertise, teaching ability, and scholarly research in their field. If that is the case, then why not focus on our strengths? Law schools should by all means offer as many clinical and practical-skills learning opportunities as possible. But in doctrinal courses, there is plenty of room for teachers to also incorporate the best practices skill of writing. Because academic research and writing is one area in which law faculty are supposed to excel, it makes sense to offer that as a component of the courses that we teach.

An academic research and writing component, in addition to helping develop professional writing skills, can also help develop professional values. Once law students get the hang of law

16. *Id.* at 75-77.

school, it becomes easier for them to hang back, do the bare minimum of preparation, and cram for the final exam. But an independent research project can require the students to take ownership of their projects and work on them throughout the semester. The students will have to select topics they are interested in; do the research that will make them familiar with the field and become subject-matter experts; and be assessed on the overall quality of their work on the final project. An original research and writing project will also require students to adhere to academic ethics. Hopefully, meeting these requirements of professionalism will also lead to students' pride in their independent, original work.

Finally, academic writing can be very helpful to students in practice and in their career development. The professional legal writing that a lawyer might produce is not limited to attorney work product. There has been an extended discussion in recent years about the relevance of legal scholarship to the legal profession, from Judge Harry T. Edwards' famous 1992 article,¹⁷ to a recent interview with Chief Justice John Roberts.¹⁸ But assigning an academic writing project to law students does not necessarily mean that they will be doing abstract, irrelevant research. Every year, thousands of practicing lawyers publish articles in law reviews, bar journals, specialty journals, and in other venues. These publications advance the state of knowledge in the profession, advocate legal reform, and help make their authors into more educated and helpful experts. Students who write particularly good papers might have the chance to publish them; whether they do so or not, they might be intrigued by the idea, and ought to be made aware that there are potentially career-enhancing opportunities to write and publish. At a minimum, coming out of a doctrinal course with a quality academic paper can provide a law student with a good writing sample and an example of subject matter expertise that can help them in their career beginnings.

17. See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

18. See Bryan A. Garner, *Interview with Chief Justice John G. Roberts, Jr.*, 13 SCRIBES J. LEGAL WRITING 5, 37 (2011) ("What the academy is doing, as far as I can tell, is largely of no use or interest to people who actually practice law.").

Academic writing therefore has a great deal of potential to promote best practices in teaching; to help develop law students' practical writing skills; and to provide additional professional benefits to students in a doctrinal course. One of the best doctrinal courses in which to include an academic writing component is land use.

III. LAND USE LAW AND ACADEMIC WRITING

Land Use courses are especially well-suited for inclusion of an academic research and writing component. The nature of the subject lends itself well because land use is both highly interdisciplinary and fundamentally practical. In their article *Practically Grounded: Convergence of Land Use Law Pedagogy and Best Practices*, Professors Salkin and Nolon made the definitive case for why land use is a particularly good course for the application of the principles of the best practices movement.¹⁹ In this Part, I will build on those observations by adding a specific focus on why academic writing is useful to a land use course.

A. Land Use as a Subject is Broad and Interdisciplinary

Land use is interdisciplinary both within the law and across professions. As an academic subject, the study of land use involves a number legal fields ranging from property, contracts, and real estate, to public law fields such as constitutional, administrative, state and local government, and environmental law. Land use study and practice also requires lawyers to engage with other professional fields, such as city planning, public policy, architecture, engineering, geography, and environmental science, to name just a few. Such frequent crossing of disciplinary boundaries makes it harder to get a complete feel for land use solely from a traditional law school casebook, but provides a much richer opportunity for the students to learn from independent study of a selected topic.

The scope of the subject has grown tremendously in recent years, to encompass not only planning and zoning but also

19. Salkin & Nolon, *Practically Grounded*, *supra* note 1, at 529-30.

sustainability, growth management, community development, transit and transportation, and alternate forms of development. Some of the most interesting and controversial issues in American society today are to some degree land use issues. This gives students an extremely wide choice of topics to research, and there is likely to be something within the field to interest every student. Also, as Professor Tony Arnold has noted, land use as a field is often “thin” on law but “thick” on policy, which makes it much easier for students to come up with topics that are original.²⁰

Writing in an interdisciplinary field has benefits beyond adding to the students’ understanding of the subject and their likelihood of finding an interesting, original topic. It can also help the students push beyond the confines of the materials they are used to seeing—appellate cases in casebooks—and do research in other fields that can have the practical and professional benefits of increased creativity and a broader perspective on law and policy. Particularly with the modern explosion in the availability of information, students can profit from having some experience in making intellectual connections and building analyses from other disciplines.²¹

B. Land Use as a Practice is Complex and Wide-Ranging

The nature of a land use practice is similarly broad, including property transactions, traditional litigation, alternative dispute resolution, navigating the complex regulatory system, appearing before various boards and other administrative and even legislative bodies, and awareness and interpretation of a wide range of statutory and regulatory rules from often-overlapping jurisdictions. Successful land use lawyers serve their clients not only by knowing doctrine, but also by being able to understand and apply a wide variety of often rapidly-evolving laws; by understanding the political and personal aspects of land use

20. Craig Anthony (Tony) Arnold, *The Structure of the Land Use Regulatory System in the United States*, 22 J. LAND USE & ENVT’L L. 441, 447 (2007).

21. See ANNE KRESS & SUELLYN WINKLE, NEXT TEXT: MAKING CONNECTIONS ACROSS AND BEYOND THE DISCIPLINES 8 (2008).

management; and by being adaptable and creative. In other words, land use is “practically grounded.”

This places a limitation on teaching land use as a traditional Socratic course, because all of these practical nuances are difficult to convey through case crunching alone. When students conduct independent research and writing projects, however, they are often forced to engage more deeply with at least one area of land use practice. The practical nature of land use, along with its entanglement with policy issues, means that students pursuing sustained, independent projects can through their research obtain a much more holistic understanding of how land use works in the real world.

Perhaps because it is a subject so perfectly suited for creative applications of best practices, there are already a number of land use professors incorporating unique and approaches to teaching land use in (and sometimes outside of) their classrooms.²² While academic research and writing by itself is far from a new pedagogical concept, it can also be considered as a nontraditional approach that advances best practices in teaching land use.

IV. APPLICATION: ACADEMIC WRITING PROJECTS IN A LARGE LAND-USE COURSE

Not only is writing a critical skill consistent with the goals of the best practices movement and well-suited to the study of land use, but I also learned in previous years that land use students tend to enjoy the exposure to the wide variety of issues related to the field. With many of the foregoing thoughts in mind, I assigned an academic research paper as a significant component of my most recent land use course. In this Part, I will discuss this experience and the benefits, challenges, and other takeaways from incorporating academic writing to promote best practices in a doctrinal land use elective.

22. A number of these creative approaches were discussed at the conference “Practically Grounded: Best Practices for Skill Building in Teaching Land Use, Environmental, and Sustainable Development Law,” sponsored by Pace Law School and Albany Law School, on May 5, 2011.

A. Managing course expectations

There were several important considerations that I took into account in designing the course, including doctrinal coverage, scope of the potential writing project, and assessment. While I was excited about the prospect of including an independent writing component, I was concerned that if I made the paper the only graded requirement for the class, it would provide a disincentive for students to prepare for class and to learn the basic doctrine of land use. I eventually settled on a course design²³ that included a paper, a test, and participation:

- Term paper, approx. 15-20 pages (50% of course grade)
- Exam on assigned reading and class discussion (30% of course grade)
- Participation, including several assignments (20% of course grade)

The obvious challenge to this course design is that the students had to both write a paper and take a final exam, and some felt that it was too much work. I decided it was a workable tradeoff (and the students were warned in advance) to ensure that doctrinal coverage wasn't sacrificed while students pursued their research.²⁴

One factor that I hadn't fully anticipated was the size of the course. When I decided to include a research and writing component to the doctrinal course, I had imagined the course as running something like a bigger seminar, and I was motivated to work closely with the students on their papers. When I arrived on the first day to a classroom with over sixty students, I was pleased with the enrollment but quite unsure about the viability of the plan. I made sure that the students understood the nature and amount of work that I would expect from them, but after the drop/add period ended there were still fifty-eight students in the class. I therefore had to adjust my own expectations—the course

23. Professor Matthew J. Festa, South Texas College of Law, Syllabus, "Land Use Management and Control," Spring 2011 (on file with author).

24. A helpful modification of this approach might be to give the doctrinal exam as a midterm, and then spend the last month of the term focusing on non-doctrinal subjects (e.g., smart growth or sustainability) and allowing more time for student writing. Thanks to Michael Lewyn for this suggestion.

could not work as a big writing seminar. But I concluded that even if I could not work as closely with each student as I could in a typical writing seminar, the assignment could still provide many of the best practices benefits discussed above, including student skill development, independent work, critical thinking, and alternative assessment.

I broke down the process of researching and writing the paper into several phases. Approximately once every week or two, I would give a twenty-minute lecture on some aspect of the academic writing project, and open it up for questions.

B. Topic Selection & Thesis Development

The students had approximately six weeks to select a topic and submit a preliminary thesis. I gave them this extended time frame because I wanted them to get some familiarity with the vast range of potential topics related to land use, and to also get a sense of how land use is so fundamentally interdisciplinary, policy-oriented, and “practically grounded.” To assist with this, we often started class sessions by examining a current events news story and discussing the land use aspects involved. I tried to choose a wide range of stories to illustrate the breadth of the field, and encouraged the students to look to their other classes, their communities, or personal interests to think about paper topics. Several students came to me with concerns that their idea might not be “land-usey” enough, but we always found a way to make it relate to the course.

All students were required to post their topic and thesis statements on the class TWEN page, and they were instructed to read all of their classmates’ postings. I intended this to accomplish two things: first, so they could gain a bit of familiarity with all of the land use topics that their classmates were studying; and second, to help them understand what a thesis statement is by reading others.

The topics that the students chose to write about were really interesting. In my opinion, the diversity and creativity of the research topics may have been the most successful part of the writing assignment for the class. Out of the fifty-eight student topics, here are a few examples:

- Sports franchises and stadiums

- Economic development takings and eminent domain reform
- “Renting is the new owning”
- Non-zoning in Houston, Texas
- Light rail, high-speed rail, and transit-oriented development
- The power of homeowners’ associations
- Conservation easements
- Public beach access easements
- Parking regulations
- The mortgage crisis
- Community planning in India
- Energy consumption in China
- Hydraulic fracturing
- National parks
- Historic preservation
- Smart growth and new urbanism

There were many other interesting topics as well. There was very little overlap between students. Some students wrote in the same general area as each other, but because they could read each others’ thesis statements, they were able to ensure that each of them turned in an original paper.

Thesis development proved somewhat more challenging than topic selection. The concept of a paper as an original contribution to the literature was difficult to inculcate. Understandably, the majority of law students came into the class with writing experience that was mostly of a descriptive, synthetic nature (such as an undergraduate term paper), that had a clear legal task assigned (such as a legal writing memorandum or brief, or an exam essay question). While some of the papers never quite got all the way there, I believe that many students learned something about the importance of a clear, identifiable thesis as the keystone element of a good paper.²⁵

25. One helpful idea to supplement a lecture on thesis development is to also assign reading material from one of the available books on academic writing for law students, *see e.g.*, ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS (2005); EUGENE VOLOKH, ACADEMIC LEGAL WRITING (2005). Thanks to Andrea McArdle for the suggestion. *See also* Ruthann Robson, *Law*

C. Research

One positive teaching outcome from requiring law students to undertake a research project is their exposure to materials and sources that they hadn't used before. Much of law school work requires reading cases and codes; for this assignment I insisted that they use secondary sources as well. In particular, I required that each student find and use at least five "scholarly" sources—academic books or journal articles. I especially encouraged the search for and use of interdisciplinary literature from fields related to their topics, such as planning, public administration, or environmental science. Grounding an original thesis in, and demonstrating familiarity with, the existing literature is of course important to a successful research paper. We also discussed how to construct and refine searches for academic research.

We spent some class time on familiarization with various academic databases—not only the journal and law review databases in Westlaw and LEXIS, but interdisciplinary scholarly databases such as Worldcat and JSTOR. We also discussed several library resources that most of them hadn't used, particularly Inter-Library Loan. The students also got some basic familiarity with the concept of legal scholarship with a special assignment on the U.S. Supreme Court case *Kelo v. City of New London*.²⁶ In addition to reading the case, the students were required to go to the Social Science Research Network (SSRN),²⁷ choose one article about *Kelo* (there are many from which to choose), and state the author's thesis and summary in a TWEN post. This helped the students get a sense of what legal scholarship is and where to find it.

The students were required to submit a preliminary bibliography midway through the semester. In the final papers, the students' use of true academic sources was something of a mixed bag—many relied heavily on short bar journal or magazine articles, while others did a great job grounding their papers in the

Students as Legal Scholars: An Essay/Review of Scholarly Writing for Law Students and Academic Legal Writing, 2004 N.Y. CITY L. REV. 195 (2004) (reviewing the Fajans & Falk and Volokh books).

26. 545 U.S. 45 (2005).

27. Available at <http://www.ssrn.com>.

academic literature. Considering that the majority of students had not previously used secondary sources, the research component increased their awareness of and ability to utilize a wider variety of authorities.

D. Writing

As discussed above, giving students the opportunity to get more writing experience and to improve their writing skills was one of my primary motivators for including an academic research and writing component in the doctrinal land use class. But the writing process, and the ability to write well, is primarily an individual endeavor, so in that sense it was perhaps the part of the assignment that I had the least amount of direct involvement with as a teacher. Though I have not taught a writing class, I consulted several books on writing, both academic legal writing books,²⁸ and books designed for an undergraduate student or teaching audience.²⁹ In my lectures on writing I emphasized traditional points such as organization, structure, “roadmaps,” “signposts,” and transitions. We discussed how the research and writing phases might not be strictly separated, and that the interplay of writing, revision, and research is a continuous process.

The students were required to submit an outline and preliminary bibliography around the midway point of the semester. While I like to require submission of a rough draft in a pure writing seminar, I declined to do so in this class because of the large enrollment. I did offer, though, to review and provide feedback on any drafts that were submitted two weeks early. Perhaps I overestimated the procrastinatory proclivities of this group of students, but I was surprised when nearly thirty students turned in drafts. It proved to be quite a challenge to

28. *E.g.*, FAJANS & FALK, SCHOLARLY WRITING FOR LAW STUDENTS, *supra* note 24; VOLOKH, ACADEMIC LEGAL WRITING, *supra* note 24.

29. *E.g.*, KRESS & WINKLE, NEXT TEXT, *supra* note 20; SYLVAN BARNET & HUGO BEDAU, FROM CRITICAL THINKING TO ARGUMENT (2011); GERALD GRAFF & CATHY BIRKENSTEIN, THEY SAY, I SAY: THE MOVES THAT MATTER IN ACADEMIC WRITING (2006); KARYN CHARLES RYBACKI & DONALD JAY RYBACKI, ADVOCACY AND OPPOSITION: AN INTRODUCTION TO ARGUMENTATION (2008); BRIAN HUOT & PEGGY O’NEILL, ASSESSING WRITING: A CRITICAL SOURCEBOOK (2009).

read all of these papers and devote approximately an hour or more to each one in order to provide comments. While I will have to revisit how to structure this part of the course,³⁰ I also take it as evidence that these land use students were very interested in their papers and hungry for faculty feedback.

In the final papers, I found the writing to be good overall. The papers were very well written at the sentence and paragraph level. The main reason that some of the papers were a little weaker than others was organization and structure. The papers that lacked a clear thesis and did not adequately communicate their organization and structure were less comprehensible and less likely to be useful to readers, even if they were based on a good idea. This observation serves to underscore that good legal writing proceeds from critical thinking, organized reasoning, and logical analysis, and emphasizes the need for law students to spend more time working on their writing skills.

E. Student Takeaways

On the whole, I believe that the academic research and writing component was a positive experience for the students in the doctrinal land use class. It exposed them to a wider variety of subjects than could have been covered using a traditional approach; it exposed them to a form of legal research and writing with which most of them were previously unfamiliar; it gave them the opportunity to choose an original topic for independent study and sustained engagement; and, perhaps most importantly, it required the students work on and improve their professional writing skills.

As of this writing, at least one of the papers is almost certain to be published somewhere, and several other student authors are interested in publication. Other students have told me that they plan to use their papers as a writing sample, or that they are interested in pursuing career opportunities in the field that they researched (and developed modest expertise). Yet others have approached me about continuing their projects as a separate

30. One helpful idea, suggested to me by a practitioner participant at the “Practically Grounded” conference, might be to require earlier submission of the introductory sections only.

independent study (which can fulfill the graduation writing requirement). My anecdotal sense is that the majority of the students appreciated the opportunity to work independently and do something a little different from the traditional law school class. I also got the impression during the semester that the students were particularly well engaged in class discussions of disparate land use issues, perhaps due in part to the wide variety of research topics they were pursuing. Of course, if nothing else, I made them write.

F. Teacher Takeaways

Finally, I should note that there can be significant benefits for the instructor as well. I got to read fifty-eight papers on fifty-eight different topics, many of which the student authors knew more about than I did by the time they wrote them. I learned a great deal about substantive land use topics, which will in turn enhance my teaching and scholarship. Teaching a writing component also forced me to think a lot more about writing and the importance of legal writing as a component of best practices.

V. CONCLUSION

Communication by writing is perhaps the most important skill that a lawyer—particularly a new lawyer—uses to serve clients, the public, and the profession. Because of the centrality of writing to the profession, law professors who are interested in the goals of the best practices movement should consider including an academic research and writing component to doctrinal courses. Because land use is ideally suited for the application of best practices, an academic writing component can provide significant benefits in teaching even a large section of a doctrinal course in land use law.