

JOINING HANDS AND SMARTS: TEACHING MANUAL LEGAL RESEARCH THROUGH COLLABORATIVE LEARNING GROUPS*

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IN an early experiment, a teacher of medicine hypothesized that a small group of students who together analyzed an X-ray would reach more accurate results than students who individually analyzed one.¹ Not only was the hypothesis proved correct, but the students who in small groups analyzed X-rays demonstrated sounder medical judgment on the final examination than the students who worked by themselves.²

The group method of learning - Collaborative learning - can be used to teach virtually any subject.³ Through several years of experimentation, I have found that collaborative learning is particularly helpful in teaching manual legal research. This innovative yet simple technique can both spark student interest and enable students to develop strong legal research skills. My experiments also suggest the value of integrating legal research with another skills course such as interviewing and counseling. With such an integration, collaborative learning exercise can reach their full potential.

As in medical study, my hypothesis was that a group of law students who research a problem together will learn legal research better than students who work individually. I further hypothesized that if the group research could be undertaken during class time under the direct supervision of the instructor and the teaching assistant, the students would be less intimidated by manual research tools and would be better prepared to work on their own.

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1. M.L. Abercrombie. *The Anatomy of Judgment* 16-17 (London, 1960).

2. *Id.* at 125-28.

3. For examples of the use of the group learning method in legal education, see Roark M. Reed, Group Learning in Law School, 34 *J. Legal Ed.* 674 (1984) ; Jay Feinman & Marc Feldman, "Pedagogy and Politics", 73 *Geo. L.J.* 875, 907-09 (1985).

The following three-step method was employed : (1) the students read about the tool; (2) the instructor discussed the tool in class; and (3) immediately following the discussion, students went to the library to work in groups in the presence of the instructor. The third step, which departs from standard practice, has been the focus of the experiment and is likewise the focus of the article.

Learning Theory and Legal Research

When I first taught legal research, I used the lecture method and assigned problems from one of the legal research texts. I prepared detailed sets of photocopied materials to illustrate each tool. But the lecture method – even with illustrations – frustrated and sometimes bored both me and my students. Teaching legal research through the lecture method suffers from the same disadvantages as would teaching tennis by lecturing. To learn how to conduct legal research or to learn how to play tennis, one must practice the skill. If the instructor points out strengths and weakness while students practice, students learn faster and better. Learning theory supports the proposition that at some point students must be taken out of the lecture hall and onto the playing court.⁴ John Dewey asserted that students must be actively involved in their learning rather than merely receive “teaching by pouring in, by passive absorption.”⁵ By observing a model carefully, one can attempt to transfer its attributes to one’s own behaviour. But reading, listening, observing a model, and discussing the skill in class are only intermediate steps toward learning the skill. “At some point, the student who has studied and observed the skilled model performer must ... [try to] imitate the response of the model.”⁶

4. John Dewey, *Human Nature and Conduct : An Introduction to Social Psychology* 160-62 (New York 1922), construed in Joseph D. Harbaugh, *Simulation and Gaming: A Teaching/Learning Strategy for Clinical Legal Education*, 191, 192 (AALS ABA, 1980). Psychologist Jean Piaget developed a learning theory that stresses active discovery rather than passive learning. Jean Piaget, *Science of Education and the Psychology of the Child* (New York, 1970), and *The Psychology of Intelligence* (New York, 1950).

5. John Dewey, *Democracy and Education : An Introduction to the Philosophy of Education* 227-28 (New York, 1928), quoted in Harbaugh, *supra* note 4 at 192. See also Ronald I. Sutliff, *Effect of Adjunct Postquestions on Achievement*, 23 *J. Indus. Tchr. Educ* 45 (1986) (“An important precept of pedagogy is that students learn by doing, which means that instruction is more effective when students are actively, rather than passively involved in the learning process. Learning is more than exposing students to the instructional material. Students must become actively involved in the learning process. Too often this basic principle is ignored.” *Id.* at 45).

6. Harbaugh, *supra* note 4, at 208 quoting Ernest : R. Hilgard & Gordon H. Bower, *Theories of Learning* 600, (4th ed. Englewood Cliffs. N.J., 1975).

Besides practicing the skill, students need feedback and reinforcement to learn most effectively"⁷ By rewarding desirable responses as students practice, the instructor considerably advances the learning process.⁸ Research shows that positive reinforcement increases student learning more than does negative reinforcement.⁹ Research also demonstrates that students learn best if they receive feedback and reinforcement immediately after they study and practice the task.¹⁰

Because the lecture method of teaching legal research requires little student involvement, the method violates the principles of learning theory. Presenting model approaches to legal research and to the various tools represents just an "intermediate step" in the learning process. To maximize learning, students should actively participate in class. The teaching method must enable students to progress from passive observers to competent actors.

Procedure

The experimental method retains the lecture approach but adds a collaborative exercise to sharpen student interest and to help students build stronger research skills. Using collaborative learning groups enables students to practice conducting legal research in a structured setting that provides interaction, feedback, and reinforcement.

A typical class¹¹ ran as follows. At least a week before meeting, the students were assigned readings on a particular research tool. During the first twenty-five minutes of class, the instructor discussed the tool with the students, illustrating among other things, precise research paths.¹² Each student was assigned to a group of three students; each group was assigned its own problem. The groups then went to the library for the

7. Hilgard & Bower, *supra* note 6, at 561-66, 608-09; Peter W. Gurney, "Enhancing Self-Esteem by the Use of Behaviour Modification Techniques", 12 *Contemp. Educ. Psychology* 30 (1987).

8. Hilgard & Bower, *supra* note 6, at 58.

9. *Id.* at 40.

10. H. Jones, "Experimental Studies of College Teaching: The Effect of Examination as Performance of Learning", 68 *Archives of Psychology* (1923), cited in Gary A. Negin, "The Effect of Test Frequency in a First-Year Torts Course", 31 *J. Legal Educ.* 673, (1981); John P. De Cecco, *The Psychology of Learning and Instruction* 256-58 (Englewood Cliffs. N.J. 1968).

11. The experiment was conducted in the context of a two-credit legal research and writing course, taken in the first semester of the first Year. The course covered research, principles of clear writing, and legal analysis.

12. Research paths are the typical means of entering the source, such as (1) the index path; (2) the topical path (by which the researcher directly consults the spines of the textual volumes for a specific topic); (3) the table of cases path; and (4) the table of statutes path. Aside from using the typical research paths, students are encouraged to use cross-references from other sources to find relevant entries.

remaining 20-25 minutes to research the problem. The instructor and teaching assistant stationed themselves next to the assigned tool in the library. They were available for questions while the students were using the tool. Before the period ended, one member from each group was required to check in with the instructor or teaching assistant, who briefly reviewed the group's progress. The problems were drawn from legal research exercise books, principally from Jacobstein and Mersky's and Bitner, Bysiewicz, and Matthews's texts.¹³ During the collaborative learning session, the students were given access to the answer key to determine whether their answers were correct.

Observed Results

Personal observation and discussion with several students suggest the following conclusions about educational benefits:

1. The guided "hands on" approach to legal research tools helps demystify the imposing mass of law books. Students who first use the tool under the supervision of the instructor feel more comfortable in the library once they are on their own.¹⁴ If, during the group exercise, students experience difficulty in using the tool, they can ask the instructor for assistance. I found that students often have problems with basic matters such as differentiating between students on the right path.¹⁵
2. Because the students know from the beginning of class that within minutes they will be working on a concrete problem with the tool in question, they tend to pay more attention in the lecture-discussion portion of the class.¹⁶ Students who work in

13. J. Myron Jacobstein & Roy M. Mersky, *Fundamentals of Legal Research* (3d ed.) and *Legal Research Illustrated* (3d ed., Assignments, Mineola, N.Y., 1985) (hereinafter Assignments), and *Fundamentals of Legal Research* (Mineola, N.Y., 1987); Harry Bitner, Shirley R. Bysiewicz & William C. Matthews, Jr., *Problems for Effective Legal Research*, (5th ed. Boston, 1979).

14. Teaching computer-assisted legal research virtually requires that the instructors and the students, after brief discussion, leave the classroom for the computer room. The method I have experimented with requires the instructors and the students to make a similar shift in teaching and learning manual research tools.

15. The group system enables the instructor to give useful feedback and reinforcement in the brief time available. Using groups also reduces the number of problems and sets of books needed.

16. In addition to the group exercise, students completed a detailed research report on the tool within a week after the class discussion. Each student had her own problem and was required to write a short office memorandum based on a single relevant case that she found using the assigned research tool. (Students have also responded favourably to a modification in which they use two research tools at a time for each research report.)

groups ask more questions before the group session than students who do not work in groups.

3. Students learn from each other. As noted earlier, research shows that students who work in group tend to make better judgments than students acting alone.¹⁷ I found that students working in the group often answer each other's questions about the tool.
4. In general, students enjoy working together. Group learning tends to personalize the process of legal education.
5. After using the tools with the instructor, students are better prepared to handle research problems by themselves. They report far fewer problems in conducting their research than students who do not use the collaborative learning exercise. The experiment bears out Abercrombie's finding that group experience improves students' judgment when they act on their own.¹⁸

Suggestions for Designing and Carrying Out the Exercise

Experimentation with the group learning method indicates that the research problems must be carefully designed and the groups carefully instructed and managed for the exercise to be successful. The following steps are recommended:

1. Sufficient time must be allocated to give the group a fair opportunity to solve the problem and to present their report to the instructor. (I have found that groups need at least twenty minutes.¹⁹) Travelling from the classroom to the library consumes additional time. The instructor can save travel time by conducting the class in the library or by bringing sets of research tools to the classroom when feasible. *Shepard's* and *Restatements*, for example, can easily be taken to the

17. Abercrombie, *supra* note 1, at 142; see also Kenneth A. Brufee, *The Art of Collaborative Learning*, 19 *Change* 42 (1987) ("Collaborative learning calls on levels of ingenuity and inventiveness that many students never knew they had. And it teaches effective interdependence in an increasingly collaborative world that today requires greater flexibility and adaptability to change than ever before." *Id.* at 47); Elaine Morton Bohlmeier & Joy Patricia Burke, "Selecting Cooperative Learning Techniques: A Consultative Strategy Guide", 16 *Sch. Psychology Rev.* 36 (1987) (classifications, explanations, and recommendations for cooperative learning techniques); Richard L. Weaver & Howard W. Cotrell, *Using Interactive Images in the Lecture Hall*, 1986 *Educ. Horizons* 180, 185 (1985) (advantages of using small group in lecture settings).

18. Abercrombie, *supra* note 1, at 18, 128.

19. Another way to resolve the time problem is to have a 75-minute class or to require that the students view a research videotape before class and then spend the entire class conducting collaborative research in the library.

classroom. To make the most of class time, the instructor can illustrate research paths on previously prepared flip charts or transparencies. The instructor can also provide handouts setting forth different research paths.

2. The problems should be designed (or selected) so that every group does not attempt to handle the same volume at the same time. This may be difficult to do. The index path is usually the recommended starting point. If seven or eight groups are striving to use one set of index volumes, frustration and chaos will reign.²⁰ If the library has extra sets of the tool in a different location, the index volumes can be brought to the area in which the first set is kept. Or the instructor can bring several different sets of index volumes to class and have students use them first in class before setting out for the library. Or the instructor can require certain groups to start with the topical path or the table of cases path before resorting to the index path. The instructor also should ensure that the solutions to the research problems appear in different volumes.

3. Group size should be limited to three students, a manageable number.

4. The group task should be clearly defined. If the problem consists of a fact pattern (whether brief or lengthy), include a specific interrogatory or interrogatories at the end. The problems in legal research problem texts easily satisfy this requirement.

5. The exercise should be designed to challenge the students but not to overpower them. Learning theory tells us that students learn best when they perceive they are succeeding in learning the skill.²¹ The research problem, therefore, should not be tricky or complicated but straight forward and reasonably solvable.

6. One further note : All group exercises are somewhat chaotic. The trick is to keep the chaos to a minimum. Assigning students to groups at the beginning of or before class, clearly defining the groups' task, and requiring each group's "recorder"²² to check in before the period ends cut down on much of the disorder inherent in group learning.

An Area for Improvement

The experiment with the group learning method also suggests an area for further experimentation. As previously mentioned, each group

20. Because the entire class concentrates on a single research tool in the library, collaborative research groups are not recommended for classes with more than twenty-five students.

21. See generally, Harbaugh, *supra* note 4; De Cecco, *supra* note 10.

22. One student from each group has the duty of taking down a record of the group's work. The group selects the "recorder", but the instructor should insist that a different member of the group take this role in succeeding exercises. By rotating the recorders, the instructor helps assure maximum student participation within the group.

was assigned a problem or problems drawn from legal problem texts. The problems were of different types but usually required the students to answer a question using a single research tool. The following is a typical example:

Use the A.L.R. Federal Quick Index [now the ALR Index Volumes] to locate the following point[s] of law appearing in A.L.R. Fed....Liability of the United States under Federal Tort Claims Act for damages caused by ingestion or administration of drugs and vaccines approved as safe for use by [a] government agency.²³

The advantages of using problems from the legal research texts are as follows : (1) the group task is sharply defined, making group work easier; (2) the problems are keyed to specific research tools; and (3) instructors do not have to take the time to design their own problems or prepare an answer key for each tool. Using the text problems has certain disadvantages, however. Students usually see their problem for the first time right before going down to the library. Consequently, they do not have the time to plan their research. If students are compelled to rush through the in-class exercise problem, they may develop bad research

23. Assignment, *supra* note 13, at 106-07.

24. Much frustration and time wasted in conducting legal research stem from the researchers' failure to plan their research before using the research tools. I recommend the following three-step approach:

1. Brainstorm for preliminary issue statements on all possible issues and then rank the issue statements in order of importance. (For a good, brief discussion of brainstorming as applied to a related legal subject, see Roger Fisher & William Ury, *Getting to Yes* 62-68 (Boston, 1983)).

2. Brainstorm for a large number of "finder" words. All serious researchers should read William P. Statsky's description of his expanded word-association model, which he calls the cartwheel. William P. Statsky, *Legal Research and Writing: Some Starting Points* 98-101, (3d ed., St. Paul, Minn., 1986). This model is far more developed and considerably more useful than the standard TARP model - (T = Things, A = Actions and Defenses, R = Relief Requested, P = Persons or Parties).

3. Construct a research design; i.e., set forth the tools you plan to use and the order in which you plan to use them. Although the student should remain flexible and pursue leads as they arise in conducting legal research, the research design helps the student overcome frustration when meeting dead ends, helps the student avoid needless repetition of research steps, and helps assure that the student has covered all significant sources.

For detailed discussions of planning and coordinating legal research, see Morris Cohen & Robert C. Berring, *How to Find the Law* 375-86 (8th ed., St. Paul, Minn., 1983); Peter W. Gross, *Legal Skills Notebook*, Tab J (San Diego, 1984) (privately published materials available at California Western Library); J Myron Jacobstein & Roy M. Mersky, *Fundamentals of Legal Research* 15-21, (5th ed., Westbury, N.Y., 1990). Miles O. Price, Harry Bitner & Shirley Raissi Byseiwicz, *Effective Legal Research* 438-58 (4th ed., Boston, 1979); Mary Bernard Ray & Jill J. Ramsfield, *Legal*

habits, such as forgetting the crucial step of planning.²⁴ In addition, the narrow scope of the problems – detached questions from a text — makes the exercise abstract. Learning theory demonstrates that students learn at an optimum level when, among other things, they are motivated and have incentives to learn.²⁵ These detached questions do not entirely satisfy the requirements of enhancing motivation and providing incentives. The following section suggests a way to modify and thus improve the exercise.

The Full Case Simulation

In a related context, Joseph Harbaugh discussed the needs of second and third-year law students:

At a time when they have isolated “reasons” to reject the dominant teaching methodology, most law students also have developed an overwhelming need to be recognized by self and others as “professionally competent.” Based upon an increased awareness of the legal process and upon intervening law-related job experiences, most students equate professional competence with the ability to perform lawyer tasks. The tasks students perceive lawyers as performing include interviewing, counseling, negotiating, drafting, and advocating.²⁶

Introducing practical skills to students in the first year would lay a foundation for developing a mastery of skills in the second and third years. Such an introduction in the first year would also impress upon students the importance of skills. By designing a simulation that requires the students to perform another lawyering task in conjunction with researching the underlying problem, the instructor would create a realistic context for carrying out legal research. By having students play the role of attorney representing a fictitious client, a simulation increases students’ motivation, provides incentives, and can thus more fully develop students’ legal research skills.

Students learn better by practicing the entire task than by practicing its component parts.²⁷ A simulation can be more readily designed for the

Writing : Getting It Right and Getting It Written 179-83 (St. Paul, Minn., 1987); Marjorie Dick Rombauer, *Legal Problem Solving* 134-45, (4th ed. St. Paul, 1983); Statsky, *supra*, at 103-57; Christopher G. Wren & Jill Robinson Wren, *The Legal Research Manual* 29-78, (2d ed., Madison, 1986).

25. Harbaugh, *supra* note 4, at 199, and De Cecco, *supra* note 10, at 147-52. But see Kenneth Dunn & Rita Dunn, “Dispelling Outmoded Beliefs About Student Learning”, 44 *Educ. Leadership* 55, 58 (March 1987) (the converse is not equally true, i.e., that most students could do well academically if only they were self-motivated).

26. Harbaugh, *supra* note 4, at 203.

27. De Cecco, *supra* note 10, at 284-86.

whole task practice than can isolated questions from a problem text. Thus, to make the collaborative learning research exercise more effective, the instructor can assign case simulations rather than abstract questions from problem texts. I have experimented with assigning a simulated case to each group of three students. Each simulated case consists of a short fact pattern concerning two disputing parties.²⁸ Using one or two research tools each week, the groups research their client's legal problem and analyze relevant cases discovered through the research tools. Before going to the library, the group brainstorms for preliminary issue statements and for "finder" words.²⁹ All group research is conducted during class time.³⁰ After working in groups in class, students work on individual research reports outside of class, using the same tools.

Closure for each simulation can take various forms depending on the curriculum and on the available time and resources. To conclude the simulation, the group can do one or more of the following: (1) discuss the results of their research with the instructor; (2) counsel their client concerning her rights and options (a student from another group would play role of the group's client); (3) negotiate on behalf on their client with a rival group; (4) write an opinion letter to the client or, assuming the client is the plaintiff, write a demand letter on her behalf; (5) prepare an inter-office memorandum on the client's problem.

The collaborative learning simulation requires the instructor to take the time to design the fact pattern and the answer keys.³¹ To conduct the collaborative learning simulation, the instructor must also first introduce the students to the second skill, i.e., interviewing, counseling, negotiating, opinion letter writing, or memo writing.³² If time is extremely limited, the group can simply discuss the results of their research with the instructor. If time is not so limited, various permutations are possible. A single class can be devoted to the other skill, and the group's closing simulation, e.g., a client counseling session, can be made a nongraded

28. Refer to Appendix A for two sample problems.

29. See *supra* note 24, items 1 and 2.

30. Refer to the sample group assignment sheet in Appendix B.

31. Fact patterns may be drawn from trial and appellate advocacy texts and past memorandum problems. Instructors can use problems from previous years without worrying about test security, because the assignments are not graded.

32. The legal research instructor should consider team teaching with a skills instructor. The two skills can be taught jointly or separately: if jointly, then both instructors attend each class and contribute to each other's teaching; if separately, the instructors collaborate ahead of time of the simulations and meet frequently to coordinate their classes but do not necessarily attend each other's classes and mold them together. Legal research could be integrated with any number of skills courses. Given the growing role of negotiation and alternative dispute resolution in legal practice, making such a course a requirement and integrating it with legal research would be a logical means of improving research instruction and of helping students appreciate critical legal skills.

course requirement. Or equal time and resources could be devoted to teaching both legal research and the other skill. For example, the interviewing and counseling course could be fully integrated with the legal research course.³³ For such an integration, the group could first interview the client to ascertain the facts, could conduct research on the client's legal problem using several research tools, and could then counsel the client about her rights and options. Each stage of the group simulation would be followed by an individual simulation; i.e., each student would interview and counsel his own client and would research the client's legal problem. Between the limited simulation model and the fully integrated simulation model lie several others, adaptable to the needs and resources of the school.

Conclusion

My experiment with collaborative legal research suggests that law students can gain educational benefits by learning in groups. The collaborative learning exercise can help demystify complex arrays of law books and provides a practical vehicle for practicing legal research in the confines of the fifty-minute period. If the collaborative exercise can be raised to that of a complete case simulation, the exercise may even more greatly whet student interest, enliven legal research instruction, and develop students' skill in conducting legal research and in performing other lawyering tasks.

33. If integrated, the simulations for interviewing and counseling could form the basis of the group research and individual research assignments. (A second-semester persuasive writing course, which should also receive at least two credits, could also be integrated with another skills course.)

APPENDIX A

Below are two problems suitable for research groups. The same type of problem forms the basis for student's research reports.

Ortega v. Empire

Facts: David Ortega entered into a written contract with Empire Construction to add an addition onto his home. Empire was to excavate a basement, pour the foundation, and erect the skeletal structure. Ortega was to do all the finishing work. The contract price was \$4,750. After beginning work, Empire discovered that it would be necessary to dig and reinforce a water diversion trench as a temporary measure during construction. This was unexpected because water seepage is not generally a problem in the area. Empire has informed Ortega that the job will cost an additional \$800. Ortega insists that Empire proceed to do that work for the original contract price. Empire refuses.

Issue: In an action by Ortega to enforce the original contract, can Empire defend on the ground of mutual mistake?

Secretary of Labor v. Ramco

Facts: Steve Larkin worked as a foreman at Ramco, a copper-smelting plant. Jeo Thornton was a college student doing a term paper on the "Health Hazards That Industrial Workers Face." On April 25, 1985, Joe interviewed Steve as part of the research for the paper. Joe asked Steve whether the plant endangered the workers' health. Steve replied that copper smelters emit arsenic and that Ramco's arsenic emissions might exceed permissible levels slightly.

After finishing the paper, Joe wrote a letter to the editor of the local newspaper, asserting that, according to Steve, the plant was emitting arsenic in quantities that violated state and federal regulations. Shortly after the letter was published, the Ramco plant manager fired Steve, telling him "You shouldn't have talked to that nosy college kid."

Steve then filed a complaint with the Secretary of Labor, claiming that the discharge violated the Occupational Safety and Health Act. The Act prohibits an employer from firing an employee in retaliation for making a complaint about health and safety conditions.

Issue: In the Secretary's action against Ramco, can Ramco successfully defend on the ground that Steve's informing Jeo about possibly illegal emissions does not constitute a "complaint" within the meaning of the Act?

(The first problem was designed by Peter Gross, former director of legal writing program, University of California, Boalt Hall, Berkeley.)

APPENDIX B

A mentioned earlier, the group task must be clearly defined for the group to work efficiently. The following is a sample group assignment sheet.

Group Research

1. Using the assigned research tool, find and cite two cases that apply to your client's case. If a statute applies, cite it as well. (For the purpose of this assignment, you do not have to read the full text of the cases, just the summary that the assigned research tool provides.)

2. List the "Finder" words that led to the relevant entries.

3. List the volumes your group consulted and the order in which your group consulted them.

a. _____	e. _____
b. _____	f. _____
c. _____	g. _____
d. _____	h. _____

4. Did your group have any difficulties in using this tool?
Yes _____ No _____

If yes, note the difficulties.

5. If you were to use this tool again would you use the same approach:

Yes _____ No _____

Comments: _____

6. Rate the effectiveness of this tool in providing your group with relevant authorities on your client's problems.

Excellent Good Average Fair Poor

Comments: _____

7. Compare the effectiveness of this tool with the others you have studied so far.

Date : _____ Submitted by _____

Recorder for Group