Incorporating Environmental Law into First-Year Research and Writing

By Royal C. Gardner

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“Are you crazy?”

That was a colleague’s good-natured response to the news that I had decided to volunteer to add a new course to my teaching package: Research and Writing II, Stetson’s first-year, second-semester written and oral advocacy course. The move, to be sure, was a bit unorthodox. A professor whose traditional teaching interests are in environmental law, I typically teach upper-level courses, including a Wetland Law and Policy Seminar. But I had not descended into madness; this was a calculated decision. I wanted to have the experience of working closely with first-year students and to reinvigorate my teaching by engaging with my Legal Skills colleagues who highly value learning, assessment, and pedagogy. Ultimately, I found teaching Research and Writing II to be a richly rewarding experience for me and (I hope) for my students.

Why teach advocacy in an environmental law context?

In March 2010, I proposed to the Director of Legal Research and Writing and the Associate Dean for Academics that I offer a section of Research and Writing II, with a slight twist: I would cover the same writing and oral advocacy skills as other sections, but with an environmental law focus. The point was not to try to teach a mini environmental law course; rather, I intended to incorporate environmental issues into the traditional trial memorandum, appellate brief, and oral argument assignments while staying focused on the same learning outcomes that had been set for all other sections of the Research and Writing II course.

The benefits of such a specialized course, in my view, were many. First, I have long advocated (groused?) at faculty meetings that first-year students need greater exposure to regulations. With a focus on environmental law, the course would naturally require students to delve into the intricacies of a regulatory regime and force students to grapple with administrative law concepts more than they might otherwise. Second, I thought that such a course could bolster the reputation of our environmental law program by increasing our environmental-related offerings in the first-year curriculum. I assumed that students would probably appreciate the opportunity to have some say in their course assignments in the first year, thereby increasing their motivation to learn. Interested students would be assigned to the course via lottery (if demand exceeded space). Moreover, by getting a taste of environmental law, the students would be in a better position to decide whether they should focus on environmental law electives later in their law school career. In addition, I would have the opportunity to get to know and advise students interested in environmental law during their first year.

Finally, I expected that such a course would benefit my teaching. I am not a stranger to teaching advocacy; I have coached many moot court teams and, along with Darby Dickerson, cofounded

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1 Our regular legal research and writing curriculum introduces students to regulations and administrative law concepts, but I intended to provide a greater focus in my course.
the Stetson International Environmental Moot Court Competition. Since 1996, I have written the problem and typically prepared the bench memorial for that moot, which now has regional rounds throughout the world. Nevertheless, I knew that I would certainly learn a lot about teaching writing and advocacy skills through collaborating with my Legal Skills colleagues, and this experience would help me when I teach my upper-level Wetland Law and Policy Seminar. Although I was slightly nervous about a new course preparation, I had the support of our very experienced Legal Skills faculty. Their insight and guidance proved invaluable throughout the semester.

**Pitching the course to students**

In Fall 2010, the Registrar announced to full-time, first-year students that we would be offering “Research and Writing II—Environmental Law” in the spring. The course description stated:

> This section of Research and Writing II covers the same oral and written persuasion competencies as all other sections of R&W II, but the doctrine used to teach those competencies will be intentionally focused on environmental law. Although this is not an environmental law course, students who are interested in learning persuasive oral and written analysis and communication skills in the context of environmental law and who have an interest in pursuing future courses in environmental law are encouraged to apply for the lottery selection process.

Thirty-four students bid for the course, and the Registrar selected 16 students via a lottery.

**Structuring the course**

I relied heavily on (and consulted frequently with) my Legal Skills colleagues in developing course content. For example, to demonstrate the use and differences between ethos, pathos, and logos, one of my colleagues opens his Research and Writing II course by asking his students to read Martin Luther King Jr's letter from the Birmingham Jail. I decided to assign my students Al Gore’s Nobel Laureate speech and a Sarah Palin op-ed on climate change for the same purpose. While the Gore and Palin pieces had different messages, both employed ethos, pathos, and logos in an attempt to persuade their audiences.

Because much of my research is on wetland law and policy, the problems I developed for the standard trial memorandum and appellate brief involved swamps and marshes. For the summary judgment memo, the students had to argue about whether an environmental restoration company had standing to contest the U.S. Army Corps of Engineers’ issuance of a Clean Water Act permit to allow wetlands to be filled to construct low-income housing. The exercise called on the students to dig into recently issued regulations on compensatory mitigation (projects that offset impacts to aquatic resources). For the appellate brief, the students had to wrestle with a procedural statute (the National Environmental Policy Act), agency regulations, agency guidance documents, and court cases in the context of a proposed highway project.

One unique assignment introduced students to rulemaking advocacy by requiring them to write

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2 The 2011-2012 problem involves liability related to a nuclear accident and a default on sovereign debt. Teams from Africa, Asia, Australia, Europe, North America, and South America will come to Stetson for the International Finals in March 2012. See www.law.stetson.edu/international/iemcc/ for more details.

3 Stetson has 10 dedicated full-time faculty members who teach Legal Research and Writing.

4 To ensure balance among the other Research and Writing II classes, the Registrar selected up to two students from other sections.


8 For example, I recently wrote *Lawyers, Swamps, and Money: U.S. Wetland Law, Policy, and Politics*, published by Island Press.
a public comment in response to a proposed regulation. In early January 2011, the U.S. Forest Service published a notice in the Federal Register to solicit public comments for a proposed rule that implements the Community Forest and Open Space Conservation Program (CFP) authorized by the Food, Conservation, and Energy Act of 2008. The CFP is a grant program that provides funds for local and tribal governments and nonprofit organizations to purchase fee-simple titles to land to be used as community forests.

After reading a brief article on how to write effective comments in a notice-and-comment rulemaking, the students drafted comment letters for the Forest Service. Some students focused on enforcement of grant conditions; they discussed whether spot checks by the Forest Service were sufficient to verify that property acquired under the CFP had not been sold or converted to non-forest uses and whether inspections could be done by volunteer groups. Other students provided comments on the type of entities eligible for the CFP (advocating that the final rule allow low-profit limited liability corporations to participate), and the type of forests that should be covered (advocating that the agency should clarify that coastal mangroves should be part of the program).

Several students raised the question of carbon sequestration credits. The Forest Service is part of the Department of Agriculture, and other agencies within the Department of Agriculture have addressed the issue of whether government-funded conservation projects may produce marketable environmental credits for landowners. The students recommended that the Forest Service clarify this point with respect to the CFP as well.

The comment letters went through several stages of review. First, the students were divided into small groups and conducted peer edits in class. I then provided comments on a revised draft. Finally, I provided comments on their final draft (which was graded). I then encouraged the students to submit their comments electronically to the Forest Service, which several students did. The Forest Service completed its rulemaking in October 2011, publishing its final rule in the Federal Register. In the preamble accompanying the final rule, the agency explained how it considered the public comments it received. Even though the course had long since ended, the students eagerly scoured the Federal Register to see whether they were able to influence the Forest Service to modify its proposed regulation or provide at least some clarifications in the preamble.

Because I have found in other courses that students enjoy hearing from practicing attorneys, I arranged for one of my former students to speak with the class. He is a 12-year veteran of the U.S. Department of Justice’s Environmental and Natural Resources Division who represents the United States in environmental litigation. He visited with the students via Skype, and he emphasized the importance of research and writing in his job. He noted that effective advocates understand


11 E.g., 7 C.F.R. § 1410.63(c)(8) (2011) (addressing environmental credits in the Conservation Reserve Program); 7 C.F.R. § 1466.36 (2011) (addressing environmental credits in the Environmental Quality Incentives Program); 7 C.F.R. § 1467.20(b) (2011) (addressing environmental credits in the Wetlands Reserve Program).
the importance of clarity and the need to explain complex concepts in a straightforward manner.

Field trips are another tool I have incorporated into my other courses (partly for pedagogical purposes and partly for selfish reasons—I just need to get out of the office sometimes). Accordingly, I invited my Research and Writing students, along with other students interested in environmental law, to go on a weekend camping trip in Everglades National Park. A park ranger led us on a three-hour canoe and kayak trip where the students learned firsthand about the challenges of protecting fragile ecosystems. While the trip was fun, it also gave me the opportunity to interact with the students on a more personal basis.

Outcomes and lessons learned
Teaching a group of motivated students is always an invigorating experience—as is a new teaching prep. My Research and Writing students were particularly motivated because they were self-selecting; they had a choice about whether to take this particular section, unlike all of their other first-year courses. Furthermore, they were motivated because they were interested in the subject matter used to develop their analytical skills. As one student noted in the class evaluations, the best thing about the course was the "opportunity to gain experience with legal writing in the field I want to practice in.”

The course also accomplished my objective of introducing more administrative law to first-year students. To the uninitiated, administrative legal concepts can seem boring. But one way to make them relevant, and even exciting, to students is to have the students engage with the agencies. One student evaluation observed that the best part of the course was the "way the things we were doing seemed like 'real' lawyering. We could actually send in our comment letters to the agency." The students enthusiastically embraced the opportunity to work on a project that was not a hypothetical. The rulemaking advocacy portion of the course permitted them to attempt to influence policy.

As a result of this course, I was able to help and advise students at an earlier stage of their law school career, with tangible results. For example, I served as a reference for students applying for internships with agencies working on environmental issues, such as the Southwest Florida Water Management District and the New York Attorney General’s office, and could speak in great detail about the students’ analytical and writing strengths. (Both students were selected.) Another student was chosen to be a Biodiversity Fellow for Stetson’s Institute for Biodiversity Law and Policy. Five students applied for and were selected to serve as student editors of the *Journal of International Wildlife Law and Policy.* My experience with teaching Research and Writing has also caused me to modify how I structure my Wetland Law and Policy Seminar. For example, rather than focus exclusively on doctrine, I have incorporated writing exercises into the class, including peer review—in small groups and by the entire class—of the introductory sections of the students’ papers. I will also be using a more specific grading rubric for the seminar papers and providing it to the students early in the writing process. This sets clear expectations about the finished product and is routinely done in the Research and Writing classes. Providing discrete learning outcomes to the students—telling them

14 Of course, I enjoyed the good fortune of the Forest Service issuing a relatively accessible proposed rule that coincided with my planned syllabus. I had been fervently reviewing the Federal Register at www.federalregister.gov each day looking for such a notice, and I was prepared to go forward with a hypothetical based on an already completed rulemaking had the Forest Service not been so accommodating.

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what they should be learning—can allow them to better understand where they are succeeding and struggling, and where to focus their efforts.

Finally, an added benefit was the greater appreciation I developed for the Legal Research and Writing program. Providing detailed, individualized feedback in a timely manner can be time-consuming, but it is critical to the students’ advancement. Graded assignments during the course of the semester can similarly be challenging, and some students who earn low grades may become discouraged. Some students naturally focus on the immediate (the grade), rather than the long term (the comments designed to improve one’s analysis and writing). Yet having multiple graded assignments is much fairer to the students than the typical one-shot, end-of-the-semester exam in most doctrinal courses. I also saw firsthand the advantages of a coordinated program, which includes a framework for the sharing of information and teaching techniques in a collegial manner. Other subject areas would do well to emulate this model.

Based on student feedback, we decided to offer Research and Writing II with an environmental law focus again this spring, as well as expanding our curriculum to include sections with a focus on international law and elder law. First-year students enthusiastically bid for the opportunity to learn advocacy skills in their area of interest. Experienced members of our Legal Research and Writing faculty will teach all three sections and I look forward to comparing notes with them.

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In summer 2011, I accepted the position of interim dean (thus prompting the “are you crazy” question again). While I am delighted to assist Stetson in this transition, the downside is that my schedule will not permit me to teach this year. I do look forward, however, to returning to the classroom soon—and I especially look forward to teaching Research and Writing again.

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Another Perspective

“At the end of orientation one August, an anxious first-year student pulled me aside and admitted, “I don’t know anything about doing legal research.” I had to smile as I assured him that legal research was one of the skills he would learn in my class. A few years later that student was offered a prestigious clerkship with the Florida Supreme Court.

When I began law school, I was no better off than this student. I thought my goal was to master — and memorize — every case, statute, and rule I would need to practice law. I would put all this knowledge into a magic briefcase. Then when a client came to see me with a problem, I would reach into my magic briefcase and pull out the obvious answer! I was wrong. First, no one could ever memorize enough law to make my magic briefcase work; one visit to the library shows how naive I was. Second, most legal questions do not have obvious answers. If the answers were obvious, clients would not be willing to pay much for a lawyer’s services. Instead of memorizing cases that would solve easy problems, I learned that researching, analyzing, and writing about the law occurs as a complex, interwoven process. That process — not magic — is the practice of law. In all your law school classes you will learn analysis. In classes devoted to legal research and writing, you will get to weave analysis into research and writing and learn to practice law.”