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# From the Horse's Mouth: What Research and Other Lawyering Competencies Do New Law Graduates Need to Be Successful?

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# From the Horse's Mouth

## What Research and Other Lawyering Skills Do New Lawyers Need to Be Successful?

By Virginia C. Thomas

Don't wish for less problems, wish for more skills.<sup>1</sup>

**W**e just welcomed our 2019 1L class at Wayne State University Law School. As you might imagine, the school is abuzz with anticipation, curiosity, and promise. The students are tuned in to myriad wayfinding tips and advice on how to succeed in law school. In the coming months, they also should be thinking about what law school can teach them about becoming first-rate legal professionals.

The rubric “thinking like a lawyer” is multidimensional and takes a while to unpack. Both the *MacCrate Report* and the *Carnegie Report*<sup>2</sup> highlighted the imperative for law schools to narrow the gap between classroom learning and preparation for professional practice. In response to these studies, most law schools have incorporated experiential learning programs such as clinics and externships as integral components of their curricula.

So, what does this look like today? What are the research and other lawyering skills that new lawyers need to be successful in the profession? What competencies are expected of them in different areas of practice?

For the past two academic years, we invited a diverse group of accomplished legal professionals to address these questions before two practice-oriented classes.<sup>3</sup> The panelists included a judge, a former law clerk, law firm and academic librarians, a doctrinal law professor, a legal research and writing instructor, clinical faculty, and a transactional attorney and litigator.<sup>4</sup> The panelists spoke briefly about their early learning experiences in the profession and their respective career paths. Then each shared his or

her insights on research and related skills essential to the practice of law.

Across the panel, there was solid consensus on a number of dos and don'ts. The following items represent a collage of their comments and thoughts.

### Dos and don'ts

- Do your homework. Prepare, prepare, and then prepare some more.
- Even so, plan for what you should do when you make a mistake. Mistakes are inevitable. How do you plan to respond to a court or a client when you are in error?
- Pay attention to detail. Always.
- Don't guess at the expense of your client. Ever.
- Be concise. It takes longer to write shorter. Write shorter anyway.
- Sharpen your grammar and composition skills. Keep a current copy of *Strunk & White*<sup>5</sup> handy. Memorize it.<sup>6</sup> Seriously.
- Do “read the case.” Avoid composing legal documents by the cut-and-paste method. Your client is paying you for your original thinking.
- Make sure you understand the precedential caselaw in your area of practice. Be wary of citing unpublished opinions as legal authority.<sup>7</sup> The fact that you can access an unpublished opinion doesn't make it precedential; that is a determination for the court to make.
- Do consider starting your research by consulting secondary sources. They can cut the time it takes to analyze a legal issue.
- Do stay current in your area(s) of practice. Develop and maintain a network of professional contacts, join listservs, and subscribe to online practice resources or partnerships.
- Do keep pace with cultural technologies so you can create a common platform with clients, colleagues, and the legal community.<sup>8</sup> Tools such as virtual conferencing, social networking, and e-filing do more than facilitate communication—they also shape our expectations and influence our perspectives.
- Know your court/judge/magistrate/mediator/arbitrator. Provide them with the information they need to inform their decisions.
- Don't leave the room until you understand your assignment. In a similar vein, don't be afraid to ask for clarification after the fact.

Beyond these dos and don'ts, the panelists drew upon their experiences to provide the class with some additional context for legal practice.

### Contextual comments

- What new attorneys do: Expect legal research assignments to take up a good deal of your time.<sup>9</sup> According to one recent study, 80 percent of the work new law firm associates do is research (45 percent) and writing (35 percent).<sup>10</sup> Another study shows that attorneys with 0–4 years of experience reported spending 50–75 percent of their time doing research. This is significantly greater than their more seasoned colleagues.<sup>11</sup> Consult

with a librarian or research expert when you have questions.

- Sometimes the most important research you can do is not legal research: One panelist shared his experience with tracking down the (then) U.S. Post Office service standards for mail from Selma to Mobile.<sup>12</sup> At issue in his case was the timeliness of the plaintiff's appeal. The service standards reflected overnight delivery for this route. They were printed on a single laminated sheet, which resided in a drawer in the Jackson, MS Post Office. Having this information, the 5th Circuit found that the notice of appeal, which took not one but three days to be delivered, had been filed timely.<sup>13</sup>
- Law firm librarians also noted that they are routinely asked for professional industry standards from the American National Standards Institute, American Society for Testing Materials, Institute of Electrical and Electronics Engineers, and other organizations that provide oversight for technical industry standards.
- Free online research services: These resources provide access to legal texts, but do have major limitations when compared to those produced by commercial vendors. For example, there are no headnotes, indexing schemes, or annotations for expanding your research in Google Scholar.<sup>14</sup>
- Research technologies: It is essential to keep current with new legal research products and the changing technologies that deliver legal information. Ten years from now, the interfaces and navigation tools may be very different—even if basic principles of researching legal literature remain the same. Remember, human beings research in words, but we think in concepts.<sup>15</sup>
- Legal research is more than retrieving documents: The legal research process is dynamic—not simply a linear checklist of items. It involves researching a legal issue, analyzing the law with respect to the set of facts at hand, and communicating that analysis or conclusion to the appropriate audience. A panelist described the process this way: Find—Package—Deliver.<sup>16</sup>

A law librarian colleague described it this way: Research—Analysis—Communication.<sup>19</sup> There is objectivity in consensus.

- The role of narrative:<sup>20</sup> Ninety percent of lawyering is telling a good story. A story helps make sense of a collection of facts. Write to grab the attention of the court (or other audience). Framing your argument is important as well—you want to help the reader assimilate information in a particular way. And every story has a particular kind of ending. You need to provide a roadmap that takes the reader to that destination. You'll also find a villain and victim in every story. Your goal is to tell it in a way that shows your client is the victim and your opponent's client is the villain.
- Use people—professionally: Lawyers are part of a professional community. If you reach a dead end on a legal strategy, reach out to someone in your firm or workgroup known for his or her unique perspective and ability to analogize. That person will not have your grasp of the specifics, but may be able to share strategic insights that help you move forward with your case.

There you have it. I hope I have represented the remarks of our panelists accurately. We greatly appreciate their willingness to share many of the things they have learned throughout their careers with our students. I believe these takeaways will resonate with new law graduates as they prepare to practice. ■



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## ENDNOTES

1. Jha, *50 Inspirational Quotes for Lawyers* (quoting Jim Rohn), Practice Alchemy (2015) <<https://www.practicealchemy.com/blog/50-inspirational-quotes-for-lawyers>> [https://perma.cc/2P74-LWKK].

All websites cited in this article were accessed September 7, 2019.

2. *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, Legal Education and Admissions to the Bar Section, ABA (1992) <[https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/2013\\_legal\\_education\\_and\\_professional\\_development\\_maccrate\\_report.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report.authcheckdam.pdf)> [https://perma.cc/W8KS-FVH3] and Sullivan, et al., *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey Bass, 2007).
3. The two Wayne State University Law School courses are Topics in Advanced Legal Research (taught by the author and law librarian Jan Bissett) and Appellate Advocacy (taught by Legal Research & Writing instructor Amy Neville).
4. Beth E. Applebaum, attorney and librarian, Arthur Neef Law Library, Wayne State University; David C. Barry, adjunct professor and director, Patent Procurement Clinic, Wayne State University, and an attorney with Brooks Kushman, Detroit; Kathleen A. Gamache, librarian, Clark Hill PLC, Detroit; Hon. Elizabeth Gleicher, Michigan Court of Appeals; Mark Heinrich, head librarian, Dickinson Wright PLLC, Detroit; Kerry Kornblatt, Legal Research and Writing instructor, Wayne State University; Patrick J. Meyer, associate professor of law and director, Kresge Law Library, University of Detroit Mercy; and Steven L. Winter, Walter S. Gibbs Distinguished Professor of Constitutional Law, Wayne State University.
5. Strunk & White, *The Elements of Style* (4th ed) (New York: Longman, 2000). Also available in e-book format from various publishers.
6. Remarks by Steven L. Winter, June 10, 2019.
7. Remarks by Judge Elizabeth Gleicher, June 12, 2018.
8. Remarks by Beth E. Applebaum, June 10, 2019.
9. Remarks by Patrick J. Meyer, June 12, 2018 and June 10, 2019.
10. *Research Skills for Lawyers and Law Students*, Thomson West (2007) <[https://nslaw.typepad.com/novallawcity/files/town\\_hall\\_legal\\_research\\_white\\_paper1\\_2.pdf](https://nslaw.typepad.com/novallawcity/files/town_hall_legal_research_white_paper1_2.pdf)> [https://perma.cc/FW4B-YMYT].
11. *A Study of Attorneys' Legal Research Practices and Opinions of New Associates' Research Skills*, ALL-SIS Task Force on Identifying Skills and Knowledge for Legal Practice (2013) <[https://www.aallnet.org/allsis/wp-content/uploads/sites/4/2018/01/final\\_report\\_07102013.pdf](https://www.aallnet.org/allsis/wp-content/uploads/sites/4/2018/01/final_report_07102013.pdf)> [https://perma.cc/5Y3B-Z6HA].
12. Remarks by Steven L. Winter, June 10, 2018.
13. *Gibbs v Town of Frisco City*, 626 F.2d 1218 (CA 5, 1980).
14. Google Scholar features some helpful filters such as date range and court <<https://scholar.google.com/>>.
15. Remarks by Steven L. Winter, June 12, 2018.
16. Remarks by David C. Barry, June 12, 2018.
17. Joseph A. Hodnicki, John F. Holcomb Butler County Law Library director and Butler County Law Library Resources Board chief administrator.
18. Remarks by Steven L. Winter, June 12, 2018.