

## Homer Simpson Meets the Rule Against Perpetuities: The Controversial Use of Pop Culture in Legal Writing Pedagogy

By Louis N. Schulze Jr.<sup>1</sup>

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Imagine that you have returned to your first year of law school. In your legal writing course, you are required to finish the year with an extensive brief analyzing a legal problem. After months in your doctrinal courses dealing with mind-bending legal issues such as liquidated damages, substantive due process, felony murder, personal jurisdiction, and shifting executory interests, you are ready to sink your teeth into a challenging legal writing assignment. You want to show your stuff and prove that your writing is law review caliber. Your assignment starts as follows:

Greenacre is a parcel of land bounded on three of its sides by Redacre. James Green, your client, owns Greenacre. Steve Red owns Redacre. Red and Green have been disputing the rights of Green to maintain a dirt road leading from Greenacre through Redacre, which leads to Highway 109. ...

Fascinating stuff, no? This problem, while possibly viable as a device for inculcating legal writing skills, could nonetheless use some zest. One way to improve its readability and interest level might be to use familiar or humorous character names from pop culture.

The claim has been made, however, that the use of such names in legal research and writing (LRW)

pedagogy is inappropriate. The argument is that students should take these assignments seriously, and populating one's writing problem with characters from pop culture makes it less likely that they will do so.

But is this position truly defensible? Do students really take these assignments less seriously if a challenging legal issue happens to be in an amusing context? On the other hand, are there any justifications for the use of pop-culture references in legal writing pedagogy? If so, does the upside outweigh the downside? This article analyzes the issue whether teachers of legal research and writing should dare to go where our sisters and brothers of the doctrinal faculty have gone for years—into the realm of designing writing assignments using pop-culture references as characters as a means by which to balance doctrinal learning with heightened interest. Put quite simply: does a little sugar indeed help the medicine go down?

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<sup>1</sup> My sincere thanks to Professors Kathleen Elliott Vinson, Philip Kaplan, Ann McGonigle Santos, and Samantha Moppett for their valuable suggestions for this article.

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*Perspectives: Teaching Legal Research and Writing* is published in the fall, winter, and spring of each year by West.

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### A. The Upside: The Arguments in Favor of the Use of Pop Culture in Legal Writing Pedagogy

The first justification for the use of a well-known or humorous context for LRW problems is the infusion of interest, thus avoiding the Greenacre/Redacre problem. The learning opportunity is obvious in that subjects otherwise possibly too bland, but nonetheless frequently encountered in practice, can be explored in legal writing exercises in a manner more engaging to students. This prepares students for practice, while at the same time adding a component of interest otherwise potentially unattainable. Additionally, if students feel like they are solving real-world legal problems that could actually arise, they feel a connection to their work.

For instance, a problem I designed included an alleged breach of contract by “Ronald Crump,” host of the reality television show *The Intern*. The legal issue arose when, seemingly in contravention of a contractual warranty to the contrary, Crump fired a contestant despite the fact that she had “immunity.” Another contractual clause giving Crump full discretion to fire anyone at any time implicated the more specific issue of the covenant of good faith and fair dealing. Additionally, students had to confront a personal jurisdiction issue because the plaintiff sued Crump International, Inc. (a New York-based business, incorporated in Delaware), in a federal court in Florida. The substance of these two issues might have been a bit boring for students, but with the use of the obvious pop-culture references I was able to reinforce two of the trickier concepts my students faced on their mid-year exams.

The second justification for using pop-culture references in legal writing problems is the humanization of the relationship between faculty and students. The dominant mode of legal education posits the professor as the authority figure and the student as the subordinate.<sup>2</sup> This

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<sup>2</sup> Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students*, 45 S. Tex. L. Rev. 753, 759–60 (2004) (examining the relationship between law professors and students and concluding that the hierarchical structure of the status quo undermines learning and mentoring opportunities).

relationship stifles the potential of mentoring relationships that would provide students with even better learning opportunities. Consciously eschewing the use of humor in legal education, for the sake of appearing “serious,” reinforces the hierarchical structure of student as subordinate and professor as superior, and thus undermines learning opportunities.<sup>3</sup>

Open-mindedness to alternative teaching methods, on the other hand, both fosters learning opportunities and challenges the often destructive hierarchical norms of legal education.<sup>4</sup> One of the greatest assets of most law schools is the more personal connection between LRW faculty and their students. Legal writing faculty often have more personal contact with law students due to the smaller size of LRW classes. This inherently cultivates a more mentor-like relationship.<sup>5</sup> Using pop culture in LRW assignments further challenges the norm that law professors must present stuffy, lifeless problems as a means to display the loftiness of their intellect. In other words, pop-culture-based writing problems simply make law professors more human.<sup>6</sup>

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<sup>3</sup> By this, I do not mean to imply that those who choose not to use humor in legal writing pedagogy are guilty of any failure. For some, this methodology just does not work. I do mean to suggest, however, that conscious rejection of nontraditional methodologies on a systemic or normative level, for the sake of “seriousness,” ultimately adds to the protection and proliferation of the hierarchical status quo.

<sup>4</sup> See Angela Olivia Burton, *Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences Paradigm into the Clinical Setting*, 11 Clinical L. Rev. 15, 15 (2004) (extolling nontraditional pedagogy focusing on narrative, interpersonal, and intrapersonal skills); Chris K. Iijima, *Separating Support from Betrayal: Examining the Intersections of Racialized Legal Pedagogy, Academic Support, and Subordination*, 33 Ind. L. Rev. 737, 750 (2000) (criticizing traditional legal education’s hierarchical structure as exacerbating “frustration, or alienation, or both, because of law schools’ failure to engage and develop the full range of intellectual capacities necessary to successful and responsible practice”).

<sup>5</sup> Lawrence S. Krieger, *Psychological Insights: Why Our Students and Graduates Suffer, and What We Might Do About It*, 1 J. Ass’n Legal Writing Directors 259, 262–263 (2002).

<sup>6</sup> See generally Gerald F. Hess, *Seven Principles for Good Practice in Legal Education*, 49 J. Legal Educ. 367, 367 (1999) (asserting that meaningful student-faculty contact is an essential element of effective law teaching).

“ [P]op-culture-based writing problems simply make law professors more human. ”

“Life as a first-year law student traditionally has included fierce competition, unflinching expectations, and a few hours each day subjected to the Socratic method in front of one’s peers.”

A third justification for infusing pop culture, somewhat related to the second, is the humanization of the law school environment for students. Life as a first-year law student traditionally has included fierce competition, unflinching expectations, and a few hours each day subjected to the Socratic method in front of one’s peers. A large portion of a law student’s existence is spent fretting about the consequences of examinations, the likelihood of obtaining post-graduate employment, and paying off dauntingly large educational loans.<sup>7</sup> While many of the difficult aspects of legal education are unavoidable and even justifiable (such as competition and expectations), other aspects of legal education are not so immutable. Solving those negative yet changeable aspects, by means of simply including a less drastically formal context, could go a long way to improving law students’ mental health, forestalling the seemingly inevitable disenchantment with life as a lawyer, and generally improving the law school environment.

In this respect, the use of pop culture in legal writing exercises, far from being detrimental, can create learning experiences in unexpected ways. For instance, one student reported that he and other members of my class were dining late one Friday night with their non-law student significant others. The conversation turned to the assigned trial brief, and the students shared with their significant others the facts of the case, all of which were set in the context of *The Simpsons*. Intrigued (or at least, so I am told) that a law professor would set a problem within *The Simpsons*, the significant others asked follow-up questions regarding the facts, the analysis, and the students’ predictions on the likely outcome of the case. The students, some of whom represented the plaintiff and some who represented the defendant, then entered into an

extensive debate (which included the significant others) about the legal analysis of the problem. All of this occurred late one Friday night, and the problem included perhaps some of the most mundane legal issues conceivable: a claim of intentional interference with contractual relations based upon the filing of a dubiously motivated *lis pendens* to prevent the sale of commercial real property. Whether this discussion, which no doubt enhanced the students’ understanding of the law and their arguments, would have happened but for the pop-culture context of the problem is doubtful. Thus, the inclusion of pop culture made the students’ law school environment a bit more entertaining and humane and created a learning experience from which they otherwise would not have benefited.

The fourth justification for using pop-culture references in legal writing problems focuses not on students, but on faculty. Specifically, the use of pop culture has multiple effects on the problem-creation process. First, using popular character names creates an easy source for party and nonparty names in the legal writing problem. Rather than struggling to think of yet another hypothetical name or place, the use of characters from television, movies, or literature offers an ample source for prefabricated names. Additionally, this provides a source for faculty to infuse a surrounding context into the facts of the problem as well: the use of these characters, and the nonlegally dispositive fictional environments they inhabit, gives life and a surrounding medium to the problem.

On a related note, this ready-made source for names and places in the legal writing problem also makes their creation more interesting. Decades into teaching legal writing and forced to create new problems each year, one might get tired of the process. With the ever-evolving source of pop culture, however, writing such a problem becomes at least a bit more palatable.

The fifth and final justification is that the use of pop-culture references in creating a legal writing problem creates a heightened focus upon the names used. This focus lessens the likelihood that the writer will unintentionally rely on racial, ethnic, sexual

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<sup>7</sup> Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. Legal Educ. 112, 113 (2002) (reporting the law school phenomenon of “the walking wounded”: demoralized, dispirited, and profoundly disengaged from the law school experience”).

orientation, or class stereotypes in populating the legal writing problem.

An anecdote best elucidates this assertion. A former colleague of mine related a rather extreme story from her first year of law school. Her legal writing professor handed out the course's spring problem, which was in the context of criminal law. The students read the problem in class and discovered that there were three main characters. Two were police officers: Officer McFadden and Officer O'Sullivan. The third main character, the defendant who was accused of burglary, bore the surname "Rodriguez." For obvious reasons, the students in the class were offended; and rightfully so. The problem blatantly relied on invidious stereotypes that have no place in the legal academy. Obviously, the problem should have been written with closer attention paid to the writer's subjective, and hopefully unintentional, ethnic biases.<sup>8</sup>

The use of pop culture in problem creation can prevent this situation. Because character names are purposefully considered and are not a mere afterthought, as they might be with the use of mere hypothetical names, greater focus ensures attention to these issues, thus avoiding problems. In other words, if one gives serious consideration to the names used, the chances are better that this consideration will foster a wider consciousness of the propriety of the characters' names.

## **B. The Downsides: The Arguments Against the Use of Pop Culture in Legal Writing Pedagogy and the Solutions Thereto**

While justifications exist for the use of pop culture in legal writing problems, there are problems involved as well. However, these problems are not without solutions, or adjustments. Although I conclude in this article that the positives outweigh

the negatives, those considering employing this methodology should independently analyze these downsides (and the climate of their own institution) to ensure that they reach the same conclusion.

First, and seemingly foremost, some argue that the use of pop-culture references in legal writing problems undermines the seriousness with which students approach the problem.<sup>9</sup> Thus, the argument continues, if students take the problem less seriously, they will not learn the subject matter of the course.

This conclusion is inaccurate. My experience has been that students do not take the problem less seriously due to its humorous context. Having taught legal writing both with problems using hypothetical names and with pop-culture-based names, I have noticed no difference in terms of the seriousness with which students approach the problem. To the contrary, my students have expressed (both personally and by means of anonymous course evaluations) that they appreciate the effort and creativity I have put into the problems. If anything, students have seen that I take the creation of the problem seriously, and they react in kind.

A related objection asserts that students will take the class less seriously as well. The proponents of this argument assert that LRW courses already face perceived hierarchical issues in the curriculum. Why exacerbate this struggle with seemingly self-denigrating methodologies? This argument, however, ignores several important points. First,

“While justifications exist for the use of pop culture in legal writing problems, there are problems involved as well.”

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<sup>8</sup> This is not an isolated incident, and certainly not one constrained to teachers of legal writing. See Sandra J. Polin, *The Alchemy of Race and Rights: Diary of a Law Professor* by Patricia Williams, Book Review, 22 N.C. Cent. L.J. 83, 92 n.36 (1996) (relating a story about a white criminal law professor who gave the two criminals on her criminal law exam the same first names of the only two black males in her class).

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<sup>9</sup> See Jan Levine, *Designing Assignments for Teaching Legal Analysis, Research and Writing*, 3 Perspectives: Teaching Legal Res. & Writing 58, 59 (1995) (stating that “[a]lthough many legal writing teachers go through a period of creating assignments with puns and ridiculous names, more experienced teachers generally abandon this approach”). I disagree with the conclusion that dispensing with this methodology is a mere matter of experience. I am aware of a number of senior LRW professors who employ this technique with great success. However, I appreciate the substance of his argument, analyzed herein, asserting that the use of references is deleterious to the learning process.

“Humorous characters should not be used in conjunction with difficult subject matters, but such references can nonetheless serve as an effective tool in problems that are less controversial.”

teachers of doctrinal courses also use pop culture in their pedagogy, mostly in exam hypotheticals.<sup>10</sup> Thus, the use of this methodology brings us into conformity with our doctrinal colleagues.<sup>11</sup> Second, as noted above, students actually take the class more seriously when they realize that their professor puts effort into her or his problem creation. Thus, this objection also carries little weight.

A second objection to the proposed methodology is that infusing humorous pop-culture references in controversial or touchy subject matters is inappropriate and insensitive. For instance, if an LRW professor constructed a writing project addressing issues of domestic violence, having the Brady Bunch as the central characters of such a hypothetical could easily be construed as trivializing the serious subject matter. I agree with this assertion, but I disagree with drawing the conclusion that pop-culture references are inappropriate in all contexts. Humorous characters should not be used in conjunction with difficult subject matters, but such references can nonetheless serve as an effective tool in problems that are less controversial. Rejecting the use of pop-culture references in legal writing problems based on this objection, therefore, seems akin to throwing the baby out with the bathwater.

The third consideration that leads many to reject the use of humorous names in LRW problems centers on the fact that students often use the finished product as a writing sample when seeking legal employment. Many LRW professors fear

that potential employers will glean a negative impression from the writing sample and will impart this negative impression onto the student/applicant. To prevent this, LRW professors construct problems with strictly hypothetical names, to appear more “serious.”

Simple solutions to this problem exist, however. On the occasions in which I have used a pop-culture background for an LRW problem, I have told the students on multiple occasions that, prior to submitting their briefs as writing samples, they should change the names of the characters to hypothetical ones. This generally eliminates the problem, as most of this generation’s law students are well aware of the find/replace function of most word-processing software. As an additional mechanism to undermine the likelihood of “offending” potential employers, I also omit from the problems the most blatant or absurd names. Thus, one might omit Homer Simpson from a hypothetical, but instead use the somewhat lesser-known Montgomery Burns.<sup>12</sup>

The fourth argument represents the inverse of one of the arguments in favor of inclusion of pop culture. Some posit that the use of references might actually create problems if the writer unintentionally uses characters whose race, ethnicity, sexual orientation, or class identification can connote an inappropriate stereotype.

This criticism is well-taken, and actually should be a significant consideration for any legal writing

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<sup>10</sup> See Thomas D. Crandall & Douglas J. Whaley, *Cases, Problems, and Materials on Contracts* (4th ed. 2004) (using hypothetical examples with references to: *Psycho*; *The Three Little Pigs*; *Paul Bunyan*; *Lord of the Rings*; *Romeo & Juliet*; *West Side Story*; *Sherlock Holmes*; *King Arthur*; and *Gone with the Wind*). In fact, the use of pop culture in LRW assignments is even more justifiable than in doctrinal course examinations because in a time-limited exam setting, students do not want to be distracted by humor. In LRW courses, where the assignments are spread over time, however, this is not so.

<sup>11</sup> In fact, disavowing the use of pop culture in legal writing problems actually exacerbates the hierarchical inequities between LRW and doctrinal faculties. In other words, if they can do it, why shouldn’t we? In this respect, therefore, the use of pop culture in the LRW classroom serves to level the playing field in that it shows LRW faculties’ confidence in their place in academia and their right to use controversial methodologies if they prove effective.

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<sup>12</sup> A related objection concerns the use of pop-culture sources that require legal analysis of factual scenarios that are not possible in the real world. For instance, what if an LRW problem required students to analyze whether George Jetson was negligent when piloting his flying car? In my opinion, LRW professors should reject this sort of pop-culture usage. First, students should learn legal analysis in the context of problems they might actually face in practice. Analysis of other-worldly scenarios fails to accomplish this goal. Second, unlike redacting pop-culture names for purposes of submitting writing samples, students would be unable to redact these scenarios for this purpose because the facts pervade the writing. Accordingly, using this method would harm students’ chances with employers because hiring attorneys could glean that the student has never had the experience of analyzing real-world legal problems. However, rejection of this extreme example does not require rejection of more subtle usage of pop culture. The two methodologies are vastly different.

professor considering the use of pop-culture references for pedagogical purposes. However, the rebuttal to this argument, if it is posed as a means by which to eliminate the use of pop culture from LRW pedagogy altogether, is that these sorts of mistakes can be made even when one is not using pop-culture references. For instance, I came across an LRW problem in which the author repeatedly referred to the police vehicle used to transport the defendant as a “paddy wagon.” Even though this reference was included in a problem using hypothetical (non-pop culture) names, it nonetheless relied (although clearly unintentionally) on a term whose origin was pejorative.<sup>13</sup> Thus, even those not using pop-culture references face the problem of unintentional inappropriate usages. Simple conscientious scrutiny of one’s LRW hypothetical obviates this problem both for those who use pop culture in their problems and for those who do not.

Finally, the last argument against pop characters is the assertion that this approach alienates those not “in the know.” In other words, students unfamiliar with the context of the problem will feel left out and that they might be missing something. The solution to this problem, however, is to recognize that these students are no worse off than they would have been if the hypothetical was not in the pop-culture context. Although their experience is not augmented as other students’ experience may be, they lose nothing. Furthermore, several countermeasures can negate this alienation problem. First, I rarely discuss the pop-culture issues of the problem in class—the entertainment effect, therefore, is really only for students while reading the problem. Therefore, students not in the know do not experience this alienation effect

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<sup>13</sup> See <[en.wikipedia.org/wiki/Paddywagon](http://en.wikipedia.org/wiki/Paddywagon)> (discussing the pejorative origins of the term “paddy-wagon”).

<sup>14</sup> Another countermeasure I employ makes sure that students do not use the pop-culture references as substantive evidence. For instance, if one used a Seinfeld scenario a student might argue that knowledge of Kremer’s general idiocy makes it more likely that Jerry Seinfeld was negligent in loaning his car to Kremer. In the problem packet, however, I explicitly tell students they may not employ this approach and tell them they may only use facts stated in the problem.

in the classroom. Second, I also make it clear to all students that if they are not familiar with the context of the problem, their grades will not suffer. This is a seemingly obvious statement, but many students report that they nonetheless appreciate the assurance. Thus, this argument should not stand in the way of implementing pop culture into LRW problems.<sup>14</sup>

### C. Conclusion

Using pop-culture references as the context of one’s legal writing problems may not be a viable approach for everyone. This article is not normative; it does not argue that all LRW professors *should* use this approach. To the contrary, it merely posits that the wholesale rejection of this methodology is unwarranted. Some LRW professors may simply feel uncomfortable using this method; others might benefit greatly. Accordingly, because there are many arguments in support of this approach and few compelling arguments against it, faculty members should consider employing these ideas.

I am particularly compelled by the argument that refusal to use pop culture in LRW evidences a capitulation to the traditional subordination of LRW faculty and to the status quo. If we want to be taken seriously, we need to take our subject—and not ourselves—seriously. The best way to accomplish this is by pursuing successful methodologies and defending our right to use them. Failure to do so, for the sake of being perceived as “serious” and thus competent and successful, demonstrates a collective low self-esteem in the LRW community that can only be overcome by means of doing what the individual professor feels to be right. We should take the opportunity, both to further the cause of legal writing in the academy and to further the learning experience of our students, to develop and defend effective, energizing, and even controversial pedagogies.

In other words—“carpe diem”—seize the “D’oh!”

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“We should take the opportunity, both to further the cause of legal writing in the academy and to further the learning experience of our students, to develop and defend effective, energizing, and even controversial pedagogies.”

# Using DVD Covers to Teach Weight of Authority

By Michael J. Higdon

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As a teacher, I have noticed that there are certain words (such as “assignment,” “test,” or “grades”) that I can mention that will undoubtedly get my students’ attention. However, the attention that comes from those words is rarely conducive to introducing a new concept. What I am more interested in are those things I can reference that will get my students to perk up just a bit and *in a positive way* so as to facilitate learning. One thing that seems to work quite well in that regard is any and all references to pop culture: movies, television shows, music, Paris Hilton, etc. As a result, I am constantly looking for opportunities where I can use pop culture as a means of introducing some of the more difficult legal concepts.

Not only do students enjoy hearing about and discussing pop culture, but utilizing pop culture in the classroom has other benefits as well. Most importantly, under shared knowledge theory, it is much easier to convey a new idea to someone if you can first relate it to something with which the listener is already familiar (e.g., “What do frog legs taste like?” The answer, “Chicken.”). In searching for something with which students are likely well-acquainted, pop culture is probably one of the safest bets as being something with which most of your class will already be intimately familiar. Additionally, I find that students take some degree of comfort in knowing that all they knew before law school, and that which they enjoy outside of school, is not entirely irrelevant to their new course of study. Finally, on a more practical level, I think using pop culture reminds students that you too are human—my students seem genuinely surprised that I even know who Paris Hilton is—and, thus,

helps the students relate to you more, which in turn makes it easier for you to reach your students.

One of the ways in which I have integrated pop culture into my first-year class is by using DVD covers to help remedy some of the problems students have in learning weight of authority. I find that students basically understand the need for citation; however, they struggle to understand what it is exactly that makes one source stronger than another. Furthermore, I am particularly troubled that many students, instead of seeing the logic behind weight of authority, tend to think that these principles are merely arbitrary rules that they must now memorize. To help overcome these obstacles, I analogize weight of authority to the glowing quotes that movie studios, in an effort to convince consumers to buy or rent a movie, emblazon on the covers of their DVDs. These quotes are generally taken from favorable reviews by movie critics and tend to vary widely in terms of persuasiveness, given the various forms of movie critic that exist today. As a result, I have found DVD covers to be an excellent tool for helping students grasp the complexity of weight of authority.

What follows are some specific examples that I use in my class, organized by various aspects of weight of authority. Following the examples are some exercises you can use in class to build upon this discussion and even relate those ideas back to whatever writing assignment your students may be working on.

## Specific Examples of Using DVD Covers

### Example 1: Strength of a Particular Source

One of the most basic lessons to teach using DVD covers is that certain sources are intrinsically stronger than others. For example, I first show the students three different DVD covers. First, there is the DVD *Secondhand Lions*, which has a quote from CNN: “A movie the whole family can enjoy.” Next, I show

“I find that students basically understand the need for citation; however, they struggle to understand what it is exactly that makes one source stronger than another.”

them the cover to *Good Boy!*, which includes a quote from *Access Hollywood*: “One of the year’s best family films.” Finally, there is *Christmas with the Kranks*, which has a quote from Steve Chupnick of WBFF-TV, Baltimore: “A movie for the whole family.” I then ask students to tell me which citation they believe is the strongest. Even though all three quotes essentially say the same thing, students nonetheless tend to have strong opinions about which quote is more powerful. For example, most agree that the *Christmas with the Kranks* quote is the weakest simply because most have never heard of Chupnick, and the television station that he works for does not have national coverage like CNN. Between *Secondhand Lions* and *Good Boy!*, the students are split as to which has the stronger quote. Some choose the former simply because they feel that CNN is more respected than *Access Hollywood*. However, those who prefer the *Good Boy!* quote generally point out that *Access Hollywood* is a source more associated with films, and thus more of an expert on the subject, than CNN.

Although I use examples later on to build upon and explain how the students’ justifications contribute to persuasive weight, the point of this first example is simply to illustrate how any borrowed proposition, regardless of what it says, has some degree of weight based entirely on the source of that proposition. Furthermore, as demonstrated by the above example, that weight can immediately be measured against other sources.

I then use this point as my introduction to legal weight of authority. I tell the students that legal readers will be concerned initially, at least, not so much with what a case or statute says but the jurisdiction from which that case or statute arises. Thus, there is persuasive power merely in the citation sentence itself. I then move on to the following examples to illustrate more specifically what makes for a stronger legal source.

#### **Example 2: The Number of Sources in Accord**

One of the problems we have all encountered with first-year students is their belief that they need only find one source to justify the claim they are making.

Students have trouble understanding that having only one citation creates doubt as to whether the legal proposition is well established or whether the writer simply stumbled upon a maverick case.

Again, DVD covers can help illustrate this problem to students. For example, I first show my students the DVD cover for *March of the Penguins*, which contains glowing quotes from *Newsweek*, *The New York Times*, and *Ebert and Roeper*. I then show them the VHS cover (as it is not even available in DVD) to *Ishtar*, which has only one quote from the *Washington Post*: “A Sand Blast!” When asked which is likely to be the better movie, assuming you only had the cover of the DVD to go by, students almost always select *March of the Penguins*. The students justify their selection by pointing out that the larger number of positive quotes on *March of the Penguins* makes them feel more confident that the movie is one that they would enjoy.

Furthermore, once the students see that even a movie like *Ishtar*, which is generally regarded as one of the worst movies ever,<sup>1</sup> can find a favorable quote somewhere, they see how merely relying on one legal citation can create doubt in the legal reader’s mind.

#### **Example 3: Geographical Scope/Jurisdiction**

Although movie reviewers do not have “jurisdictions” as we may define that concept in legal writing, DVD covers can nonetheless teach students the basic principles underlying jurisdiction and how jurisdiction influences weight of authority.

For example, the DVD cover to *Dude, Where’s My Car?* has only one quote (i.e., “Wildly Hilarious!”), and the source of that quote is from the *Arizona Daily Star*, a newspaper that serves the Tucson, Arizona, community. After showing the DVD cover to students, I ask them to pretend that they live in Tucson and, based upon that fact, whether they would be persuaded by the “Wildly Hilarious!” quote. Responses are mixed as students say that

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<sup>1</sup> I make an effort to choose “bad” films as they tend to make for a more fun discussion. Thus, you will see several such films referenced in my examples.

“Students have trouble understanding that having only one citation creates doubt as to whether the legal proposition is well established or whether the writer simply stumbled upon a maverick case.”

“I then use this point to show how a non-mandatory source can be extremely persuasive if the author of that source is somehow viewed as an expert in the matter under discussion.”

it would depend on how well they respected the newspaper (i.e., good review of Example 1). Also, some students are skeptical based on the fact that the DVD cover only has one source (good review of Example 2). However, when I then ask students to pretend that they live in South Carolina, they all respond that they would be even less persuaded by the quote from the *Arizona Daily Star*. When asked to explain their answer, the students respond that Tucson is so far removed from South Carolina as to have little relevance. When then asked what kind of sources might tempt a South Carolinian, they suggest South Carolina newspapers and national sources.

With this discussion as a backdrop, it is then but a small leap to lead students through the principles of state and federal jurisdiction. Just as a citizen of South Carolina may not be that interested in what a Tucson newspaper thinks of a particular movie, a South Carolina court is not going to be motivated to rule a certain way solely because an Arizona court found it necessary to do so. This analogy then sets the stage for a discussion of persuasive versus mandatory authority.

**Example 4: What Makes Nonbinding Authority Persuasive**

One of the rules we try to instill in our students when writing any document is to know your reader. Although citation is all about knowing your reader and what will motivate that person, students have difficulty gauging when and how to use persuasive authority in a legal document. The following two examples may be of help.

In the first example, I show the students the DVD cover to *The General's Daughter*, which has a quote from *Wireless Magazine*: “A Top-Notch, Edge-of-Your-Seat, Suspense Thriller.” Students immediately respond that they are not impressed as most have never heard of *Wireless Magazine*. However, I ask them to pretend that they are buying a movie as a gift for a friend, and that friend is a huge fan of suspense thrillers. Now when asked if they would be persuaded by the quote, they respond a bit more favorably. This example is entirely analogous to a non-mandatory case that is

nonetheless persuasive because it is so closely related to the subject matter (i.e., the cause of action, an unusual factual situation, a peculiarly situated party, etc.) for which I may be looking.

As a second example, I show my class the DVD cover to *The Butterfly Effect*, which is graced with a quote from Kurt Loder of MTV News: “A complex and witheringly powerful film.” When asked what they think, the class is generally divided. Some do not know who Loder is, and others, who do know who he is, could not care less what he thinks. However, some students point out that *The Butterfly Effect* was a movie intended for young adults and, given Loder’s association with MTV, which is also geared toward younger adults, those students seem to value his opinion a bit more in regard to this movie. I then use this point to show how a non-mandatory source can be extremely persuasive if the author of that source is somehow viewed as an expert in the matter under discussion. Legal examples would include citing to Delaware cases involving the law of corporations or citing to a nationally recognized expert like Arthur L. Corbin of *Corbin on Contracts*.

**Example 5: Questionable Authority**

One of the final lessons that DVD covers can teach students about weight of authority is one of the most important. Specifically, students must learn that the best sources to use are those that can withstand scrutiny. Thus, cases that have been called into question, overruled, deal with completely different issues, etc., are to be avoided. Not only are these sources not persuasive, but they can undermine your entire argument and/or your reputation as a trustworthy lawyer.

One of the ways I introduce students to this danger is with the DVD cover to *White Chicks*. Now, first of all, the DVD has no quotes anywhere on the cover. (I always enjoy asking students what they can infer from that omission.) However, on the back is a quote by Shawn Edwards, who describes *White Chicks* as “The Funniest Comedy of the Year!” Other than the fact that many students have seen this movie and vehemently disagree with Edwards’

assessment, most do not see a problem with the quote. However, I then point out some of Edwards' other reviews. For example, Edwards, whom PopCult Magazine describes as "possibly the most enthusiastic man in the entire world,"<sup>2</sup> said this about *The Chronicles of Riddick*: "One of the best sci-fi films ever! Extraordinary! A true classic not to be missed! Vin Diesel is ecstatically superb." Furthermore, Edwards had the following to say about Britney Spears' 2001 foray into acting: "*Crossroads* is a perfect teen dream. It has everything that makes a movie totally cool: laughs, adventure, spirit, hot music, drama and of course BRITNEY! Britney rocks! She is like a comet. A talent of her magnitude only comes around once in a lifetime and you can't take your eyes off her when she is on screen in this totally cool and delightfully hip movie."

Additionally, as *Variety* pointed out,<sup>3</sup> Edwards dubbed the movie *Barbershop 2* as "The best comedy of the year!" on February 6, 2004 (i.e., barely a month into the year). His naming of *White Chicks* as "The funniest comedy of the year!" came on July 9, 2004. Less than a month later, he declared *Little Black Book* to be "The best romantic comedy of the year!"

I then ask students, based on what I just told them, whether they would want to use a favorable quote from Edwards on a DVD cover. The response: "No!"

### Exercises

After going through the above examples, there are a number of exercises you can do to build upon these principles. For example, you can show the students some additional DVD covers and ask them to put them in order of persuasiveness based solely on "weight of authority." Of, if you are

feeling a bit more creative, you can select a movie that only recently opened, find a number of critical reviews of that film from a variety of sources, and then ask students to design a DVD cover. To make the exercise even more challenging, you can select a film that is getting panned by the critics. Finally, if you are feeling extremely creative, you can take your memo/brief problem and ask the students to create a "DVD cover" in which they have to find the best quotes from cases to showcase on the cover.

### Conclusion

In my experience, using DVD covers to teach the weight of authority has been a successful teaching technique. Students tend to enjoy the exercises and each exercise anchors a number of important concepts. First, relating the concept of citation to something so well-known in their everyday lives helps the students grasp these principles more quickly and see the logic behind weight of authority. Second, examining these DVD illustrations and looking at the possible motives for including certain sources help students improve their critical thinking and reading skills. Finally, what makes me the biggest fan of this approach is that these exercises create a really fun class!

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“ [E]xamining these DVD illustrations and looking at the possible motives for including certain sources help students improve their critical thinking and reading skills. ”

<sup>2</sup> <[www.popcultmag.com/passingfancies/bottomfive/moviecritics/moviecritics1.html](http://www.popcultmag.com/passingfancies/bottomfive/moviecritics/moviecritics1.html)> (last visited June 27, 2006).

<sup>3</sup> <[www.variety.com/article/VR1117917018?categoryid=4&cs=1](http://www.variety.com/article/VR1117917018?categoryid=4&cs=1)> (last visited June 27, 2006).

## A Silk Purse from a Sow's Ear? Or, the Hidden Value of Being Short-Staffed

“A decision to ‘replace’ faculty with student TAs may strike many readers of *Perspectives* as a very bad idea.”

*Brutal Choices in Curricular Design ... is a regular feature of Perspectives, designed to explore the difficult curricular decisions that teachers of legal research and writing courses are often forced to make in light of the realities of limited budgets, time, personnel, and other resources. Readers are invited to comment on the opinions expressed in this column and to suggest other “brutal choices” that should be considered in future issues. Please submit material to Helene Shapo, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611, phone: (312) 503-8454, fax: (312) 503-2035.*

**By Kate O’Neill**

*Kate O’Neill is Associate Professor and Director of the Basic Legal Skills Program at the University of Washington School of Law in Seattle.*

In spring 2003, as director of our Basic Legal Skills Program (BLS), I had a choice. By autumn, two of our four faculty would be gone—one to a well-deserved sabbatical and one to a tenure-track position elsewhere. The options were to fill the two vacant positions, one permanently and one only temporarily—or to do something else.

I chose something else. I asked the dean to use the salary dollars to employ for one year an expert in designing professional writing programs and to employ student teaching assistants to alleviate the impact of the 50 percent reduction in our teaching faculty! The dean agreed and my dedicated, wonderful longtime colleague, Kathleen McGinnis, agreed to work with me in my madness.<sup>1</sup>

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<sup>1</sup> Kathy deserves an award for her willingness to participate in this adventure, upending her work life for a year. She contributed wisdom drawn from more than a decade of experience teaching BLS, intelligence, insight into law and people, terrific efficiency, and the ability to avert my worst schemes with good-humored wit. I could not have undertaken this effort without her.

### **A Little Background on the Method in My Madness**

A decision to “replace” faculty with student teaching assistants (TAs) may strike many readers of *Perspectives* as a very bad idea. Practically, an upper-level law student lacks enough knowledge, experience, and time to teach well, and politically, employing TAs in lieu of faculty might jeopardize the decades-long effort to ensure that legal research and writing (LRW) courses, including the one at our school, are taught by full-time faculty with appropriate compensation, job security, and status.<sup>2</sup> I recognized the risk that today’s supportive deans could be followed by tomorrow’s penny-pinchers. The latter might see in a successful use of TAs evidence that BLS could be taught on the cheap with one or two faculty. And, I knew that many incoming students were likely to assume that interaction with TAs was an inferior substitute for the prior year’s course in which students were taught exclusively by faculty.

On the other hand, this hiatus in staffing-as-usual gave me a golden opportunity to test two related hypotheses: one that we might be burning through more faculty time in the first-year program than we added value for our students,

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<sup>2</sup> In fact, part of my reluctance to hire was concern for the uncertain futures of any new faculty: one person’s appointment was unlikely to endure beyond the term of my colleague’s sabbatical; the other person might accept a contract position and find that, no matter how meritorious her teaching and scholarship became, that initial status might render her ineligible for promotion to a tenure-track position. Because the appropriate initial status or eligibility for promotion of contract faculty was a live, but unresolved, issue at our school, I hesitated to recruit new teachers at this juncture, knowing how aspiring academics were likely to perceive uncertainty as grounds for optimism. Standing alone, however, concerns about the futures of new faculty would not justify shorting our students of qualified faculty or my one remaining colleague and me of sufficient support.

and the other that we could improve our graduates' effectiveness as researchers and professional writers if we directed relatively more of the time of experienced "writing teachers" to "advanced" writing courses. My intuition was that through careful redesign of our instructional model, we could decrease faculty hours devoted exclusively to the first-year program with no detriment to student learning. In an ideal world with big budgets, the easier course might be simply to add the upper-level courses later, but big budgets were not on the horizon. Moreover, I have learned that a status quo in personnel tends to result in a status quo in curriculum. I wanted to test a new methodology and staffing model for the "typical" first-year legal writing course whether it would ultimately free up faculty time or not; in an odd way, our impending shortage of faculty made that easier.

A few years ago, I began to perceive a paradox about our first-year program—the more my senior colleagues and I improved the course design, materials, and classroom teaching, the fewer students needed quasi-tutorial instruction and feedback from us. That made me wonder about the theoretical or empirical support for the widespread assumption that the best instructional model for LRW was faculty-intensive: small sections, individual conferences, and individual comments on student writing—all provided by faculty, the more senior the better. While there was an extensive body of literature about how to provide better instruction within that model, there was nothing that really supported the underlying premise that that was the appropriate model in the first place. In contrast, the literature on learning and composition theory from other disciplines cast doubt on the assumption that this individual expert/student, quasi-tutorial instructional model was ideal or even particularly effective.

I now think that the staffing model our discipline inherited and which is thought to characterize "better" legal writing programs—a teacher/student ratio around 1 to 45 and classroom instruction delivered to "small" sections of about 23 students—is mostly a function of how many memos an individual teacher can read and comment upon in a reasonable amount of time. That staffing model was adopted at a time when most people—certainly most law faculty—assumed that individual feedback from a teacher dedicated to the mission was the most effective way to teach students to "write." If, however, research into adult learning is correct that expert-to-novice editorial feedback may not be particularly effective in teaching beginners to communicate effectively in a new discipline, some law schools (like ours) may be making inefficient use of resources by devoting almost all experienced writing faculty's time to a first-year LRW program. Instead, it might be better to use that expertise to design course materials, lesson plans, and exercises and to delegate ministerial supervision and basic feedback to TAs. This would release some skilled faculty to work individually with first-year students who have idiosyncratic needs and to teach upper-level courses where I believe students are more likely to understand and use expert feedback to enhance their ability to analyze complex legal issues, organize multiple, related issues, write to varied audiences effectively, develop a professional and perhaps even individual authorial "voice," and perhaps even make novel, creative contributions to legal discourse. Given a relatively steady budget for legal research and writing courses, I believe that this division of labor would be a more efficient use of academic resources and would help law graduates participate in the discipline and the practice of law more effectively and with greater personal satisfaction.

“I wanted to test a new methodology and staffing model for the 'typical' first-year legal writing course whether it would ultimately free up faculty time or not. ...”

“We hired learning theory expert Carolyn Plumb, who helped us think systematically about the most efficient structure for students to attain course objectives.”

### What Did We Change?

We hired learning theory expert Carolyn Plumb,<sup>3</sup> who helped us think systematically about the most efficient structure for students to attain course objectives. During the summer of 2003, she began by insisting that I specify the course learning objectives in detail. Not a lawyer, Carolyn did not share my vocabulary or assumptions. If I said one course objective was to teach “common law synthesis,” she responded, “What’s that?” The dialogue was very educational—mostly for me—and the result was four single-spaced pages of learning objectives.<sup>4</sup>

After we made explicit our existing, implicit objectives—and eliminated quite a few as unrealistically ambitious—Carolyn helped us think about how to teach those objectives most efficiently—a key goal since we only had two teachers for 180 students—and how to assess whether we and our students were meeting

objectives.<sup>5</sup> We thought carefully about the best sequence and we considered what teaching vehicle was most appropriate. Rather than thinking about how to teach students to produce various standard assignments (a memo on a common law issue; a brief on a statutory interpretation problem), we thought about what information and skills we wanted students to have by June, what classes, exercises, and assignments would give students good opportunities to learn those things, and then separately, what types of work product would enable us to assess student achievement.<sup>6</sup>

We made six key course design decisions. First, we decided that didactic readings and faculty lectures

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<sup>3</sup> At the time Carolyn Plumb was a senior lecturer in the university’s Technical Communications Department, held a master’s in English and a Ph.D. in Educational Psychology, and was the director of the writing program at our University’s Engineering School. I had earlier sought her advice on how to undertake a sophisticated review and reform of our program and also solicited references from her for technical communications Ph.D.s whom we might hire as writing specialists. Planning to move to another state and institution in 2004–05, Carolyn was eager for a new challenge during her final year in Seattle. We were able to negotiate a perfect solution to our goals: she would join Kathy and me as a senior lecturer for one year to help us review and redesign the program. In addition to providing the theory and experience for our reforms and our assessment tools, Carolyn also took over all of the administrative work in the program. She produced course materials, set up and monitored the Web site, trained and supervised our teaching fellows, and kept track of due dates, grade recordation, etc. Supremely organized, unflappable, creative, and an experienced mentor to graduate teaching assistants, she was invaluable and she enabled us to see how we might design the course and employ student assistants in a way that would not just be a stopgap but an improvement over our previous pedagogy.

<sup>4</sup> If nothing else, we saw vividly what we had known intuitively—that there were too many, disparate learning objectives. In particular, our list of objectives documented what I had long argued—that the course had over time accumulated objectives from introducing students to the structure of U.S. legal institutions, to techniques of reasoning, to textual interpretation, to problem solving for clients, to research techniques, to basic organization techniques through relatively sophisticated, discipline-specific rhetorical strategies for communicating credibly and effectively to some hypothetical legal audiences.

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<sup>5</sup> Objective assessment of students’ achievement is important and, equally, is objective assessment of what outcomes various teaching methodologies produce. See Greg Munro, *Outcomes Assessment for Law Schools* (2000). Designing good internal and external, longitudinal assessment techniques was a major focus of Carolyn’s work. A detailed discussion of our assessment techniques must await another article.

<sup>6</sup> Our work was informed by social science research on how adults learn, composition theory, and recent scholarship on law school curricula. We have an article in draft with comprehensive footnotes. Please contact me if you would like to read a copy in advance of publication. Some key sources on learning and composition include: John D. Bransford, Nancy Vye, and Helen Bateman, *Creating High-Quality Learning Environments: Guidelines from Research on How People Learn*, in *The Knowledge Economy and Postsecondary Education: Report of a Workshop* (2002); Committee on Learning Research and Educational Practice, National Research Council, *How People Learn: Bridging Research and Practice* (M. Suzanne Donovan, John D. Bransford & James W. Pellegrino eds., 1999); John D. Bransford, with the Cognition and Technology Group at Vanderbilt, *Designing Environments to Reveal, Support, and Expand Our Children’s Potentials*, in *Perspectives on Fundamental Processes in Intellectual Functioning* (S.A. Soraci & W. McIlvane eds., 1998); Kenneth A. Bruffee, *Social Construction, Language, and the Authority of Knowledge: A Bibliographic Essay*, 48 *College English* 8, 773 (1986); Kenneth A. Bruffee, *Collaborative Learning and the “Conversation of Mankind,”* 46 *College English* 7, 635 (1984); Jean Lave and Etienne Wenger, *Situated Learning: Legitimate Peripheral Participation* (1991); Lev Vygotsky, *Thought and Language* (Alex Kozulin trans., 1986).

Sources specific to legal education include: Karen Gross, *Process Reengineering and Legal Education: An Essay on Daring to Think Differently*, 49 *N.Y.L. Sch. L. Rev.* 435 (2004–2005); Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 *J. Legal Educ.* 75 (2002); Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 *N.Y.L. Sch. L. Rev.* 465 (2004–2005); Greg Munro, *Outcomes Assessment for Law Schools* (2000); Judith Welch Wegner, *The Curriculum: Patterns and Possibilities*, 51 *J. Legal Educ.* 431 (2001); D. Don Welch, “What’s Going On?” in *the Law School Curriculum*, 41 *Houston L. Rev.* 1607 (2005).

were the best methods for meeting course objectives that required students to learn facts and that there was no pedagogical reason for delivering this information in small classes; second, that we would test knowledge of “information” by multiple-choice or short-answer tests, and not papers; third, that collaborative peer workshops were best for meeting objectives that required students to develop skills and apply information; fourth, that it would be better for students’ morale and more efficient for us to assign principal responsibility for guiding students in the research and drafting stages to the TAs and sole responsibility for grading student work to faculty; fifth, that faculty would not comment individually on student work until a draft had been through several iterations in workshop and had been reviewed at least once by a TA; and sixth, that the course would be exempted from the law school’s mandatory curve to eliminate any disincentive for peer collaboration.

The resulting changes were most visible in fall quarter, to which three of our six total credits are allocated. Instead of six faculty-taught small sections for three 50-minute periods per week, one faculty member delivered a 50-minute lecture to the entire first-year class each Tuesday. The following Friday, TAs facilitated and supervised six small section, 100-minute workshops in which students applied the lecture material, gradually working through the stages of analyzing, researching, and drafting an answer to a hypothetical issue or issues. The TAs followed carefully scripted protocols that we drafted, although TAs often offered really great suggestions. In the next Tuesday faculty lecture, one of us would debrief the previous workshop assignment after scanning student work very quickly and consulting with TAs. In the lectures we often provided general feedback—analyses, edited student samples, and the like, before moving on to the next lecture topic. TAs also maintained office hours, from a minimum of two hours per week to a high of about 10 hours at times of peak demand. Faculty scanned a random sample of student drafts of three different writing assignments, but we did not make any

comments on individual writings; we maintained four open office hours per week and met individually with students whom TAs identified as needing extra attention; we read, graded, and provided a general comment sheet only on the final writing of the quarter after it had been processed through several workshops and students had an opportunity to work with a TA on their drafts. Students were invited to rewrite that memo at the start of winter and earn extra points if they attached a detailed analysis of what changes they had made and why.

In winter quarter, BLS only has one credit and thus only one 50-minute period per week. (This makes the course too attenuated to hold students’ attention, and we plan to add a credit soon.) For the first half of the quarter, reference librarians lectured on research techniques and students did follow-up research exercises alone or in groups on their own time. TAs checked the research exercises. The second half of the quarter’s classes reverted to workshops in which TAs facilitated students’ work through a somewhat more complex hypothetical problem than they had encountered in fall. In spring, the course receives two credits so that we could reinstitute 100-minute classes, using some of the time for faculty lecture and some for TA-led workshops. In both quarters, faculty evaluation of individual work product was confined to the final assignment, in much the same manner as described for fall.

With 90 students each, Kathy and I had a very taxing workload that first year. The takeaway lesson, however, came from observing the workshops and assessing the end-of-the-year work product. The workshops were generally lively, fun affairs with students debating issues or, later, poring over each other’s prose. Collegiality ran high; many students continued to work outside of class with students they first encountered in the workshops. In fall in particular, it was very clear that the protocols and open discussions helped many students spot issues and develop alternative analyses much faster than if they had been working alone, or even producing drafts for the teachers. For many students, the workshops seemed to allay anxiety.

“The takeaway lesson, however, came from observing the workshops and assessing the end-of-the-year work product.”

“Students demonstrate self-awareness of their habits and learning styles and an appreciation for flexibility in approach and for the benefits of using drafting as a means of honing thought.”

Both from our own perspectives as longtime teachers, from some “external” evaluation by non-BLS faculty, and from the perspective of our colleague who returned to the “new” program after sabbatical, we believe the students’ final analysis and writing were as good as they were when the faculty role had been more directive and provided more individualized feedback. The chief virtue of the new model, however, is not in a stunning improvement in student work product. I don’t think most first-year students will write at a fully professional level no matter how well taught. The chief virtue of the new model is clearest in students’ end-of-year self-assessments in which they are invited to articulate how their approach to analyzing, researching, and drafting has evolved—and many do in amazing detail and with great eloquence.<sup>7</sup> Students demonstrate self-awareness of their habits and learning styles and an appreciation for flexibility in approach and for the benefits of using drafting as a means of honing thought. They are beginning to display “adaptive expertise”—the ability to recognize some familiar elements in a novel task and recall and apply doctrinal schema and skills they have learned in a different setting. Thus they leave the first-year writing program with lots of important information about the legal system and about legal analysis, some basic templates for structuring a written analysis, basic competence in matters of format and style, but most importantly an appreciation for the nuances of expert legal analysis and writing and a set of skills they can use to keep learning and improving. In my experience, our former, more teacher-directed course produced the same work product but not the same cognitive skills in our students and not the same collaborative community among students—and the former course required much more expert teacher time.

<sup>7</sup> These self-assessments are a joy to read. Among other virtues, they allow individual students to express themselves about issues that matter to them. They are almost always beautifully written, even by students whose legal writing style never surpassed pedestrian.

### What Works and What Doesn’t

After three years, the results are clear—student learning and achievement are just as good and, in some areas, better than they were under the old model. Many students appreciate the opportunities to work together, citing in their end-of-the-year self-assessments how much they have learned from listening to and reading each others’ work. They also express pleasure in discovering each other as people and in the collaborative, noncompetitive atmosphere of the workshops. Students express particular appreciation for their TAs. TAs, in turn, report great satisfaction in working with students and express how much they have learned from “taking BLS again,” and many report that the job has been a great credential with employers. Our writing faculty have more time to develop and teach other classes (and readers will be relieved to know that we are now back to four faculty teaching in the first-year program).<sup>8</sup>

The major downside has been relational or emotional for some students. Both the number and the intensity of student complaints about the program have escalated, faculty teaching evaluations have fallen, and some students and even some faculty express various levels of discomfort or alienation because the personal relationships that used to develop between many students and one teacher are less common. It may be that some of the student anxiety will abate as the program becomes “normal” and there are no longer any students with memories of the earlier model. Nevertheless, the fact that most entering students are keenly aware that other legal writing programs—including the excellent program of our neighbor law school at Seattle University—use a different, more traditional small-section model will require that we continue explaining our program to adjust our students’

<sup>8</sup> Beginning in fall 2006, I will teach upper-level writing courses and work on the development of an interdisciplinary writing program. Five faculty members, two with decades of experience, will teach in the first-year program. The experienced faculty will also teach upper-level courses.

expectations appropriately. Explaining our goals, methods, and expectations is just good practice anyway.

I think that some student discomfort may derive from the fact that the program now trains a spotlight on two attributes that were always true of our program but that are now front and center—that the course is more about legal analysis than writing, and that analysis and writing are codependent *processes* in which the student must engage actively and iteratively. Some students, like some of our non-LRW faculty, expect the course to be narrowly focused on writing particular documents with proper grammar, format, and citations. Some students cling to this expectation, probably because the learning goals seem more manageable, and for this kind of student, the course can be intensely frustrating. They perceive the workshops as wastes of time—the “blind leading the blind.” They long for a faculty member to “tell them what to do.” Unlike the learning theorists we follow, some students are convinced that a good education consists of “input” from the teacher to the student.

Finally, the course requires a lot of effort and energy from students. We try to engage the students’ intellects with contemporary, relatively sophisticated, and real problems. We rarely give them models to follow, requiring instead that they participate in a challenging intellectual activity whose endpoint is mysterious until they arrive at it. The course gives adult students a lot of control over their learning, but concomitantly, it places lots of responsibility on their shoulders. It requires intellectual and emotional maturity to share one’s own ideas and to listen to others. We think that’s good training for lawyers-to-be, but it does not come easily to every individual. Most of our students thrive, including most notably, most of the students who have had significant work experience, but a distinct minority has lots of trouble adapting.

In any event, we will make some changes in the coming year to address these downsides. The large lectures in the fall seem to generate considerable

hostility or alienation from a distinct subset of students. Their inattention, particularly surfing the Web and playing computer games during class, poses obstacles to learning for students who do find the lectures useful.

The reasons for the lectures’ unpopularity varies. One is simply a problem of setting student expectations. Some students expect a seminar in writing. Instead, we think of the fall quarter as primarily about legal method, and we begin the course by trying to “level the playing field” by lecturing about the legal system, about case and statute reading, and about legal reasoning techniques. For some students, the utility of this information to “writing” is not apparent. For others, it may already be familiar (or so they think). Even students who are reasonably well disposed to the large lectures have complained that the topics don’t correlate clearly enough with the workshop activities. We are working to make perfectly transparent how the information delivered in the large lecture either anticipates or reflects upon the work that they will do in the immediate succeeding or preceding workshops.

The biggest problem seems to have nothing to do with the content of the lectures. It is the room—the only one large enough to seat the whole class. It is dark, the lecturer is positioned in a pit at the front and center, there is a screen and one small whiteboard, and there are no microphones on the desktops. Students who speak in class may not be heard—or even always seen—by their classmates. Students who are disinclined to pay attention are assured of anonymity as they play video games. Although it is inefficient to do so, we will divide the class into smaller groups and repeat the lecture to avoid using this overwhelmingly large room.

Finally, it seems clear that we must adopt some strategies to “attach” a particular teacher to each student more clearly at the beginning of the course so that students feel confident that they know who will be evaluating their work and who they can approach with questions or problems that they don’t feel a TA can address. We hope to do this by having each faculty member participate more

“The course gives adult students a lot of control over their learning, but concomitantly, it places lots of responsibility on their shoulders.”

“ [U]pper-class student TAs can be particularly good mentors for others undergoing this indoctrination because they remember their confusions and what strategies helped them succeed when they were novices. ”

visibly in small section workshops with the students they will be evaluating later. We anticipate, however, that faculty will gradually cede most of the workshop facilitation to TAs in order to avoid turning those back into de facto teacher-led discussions.

### Conclusion

In the first year, all law students at our school are supposed to learn the same information and acquire the same basic analytic, research, and writing skills. Sadly, and perhaps unwisely, the traditional first-year curriculum at our school (and many others) was not designed to develop original thought, individual perspectives, or distinctive authorial voices. Instead, the primary agenda is to train individual brains and voices to think and speak and write in pretty much the same way. Carefully selected not only for academic accomplishment but for interpersonal skills and good time management, upper-class student TAs can be particularly good mentors for others undergoing this indoctrination because they remember their confusions and what strategies helped them succeed when they were novices.

In addition, I believe that good upper-class students can reliably determine whether a simple piece of writing conforms to these standardized expectations, and with some careful training can learn some basic techniques for helping novices without simply rewriting the paper themselves. Because TAs are closer to the first-year student's level, they are less intimidating than faculty to many students, and they may actually be as or more effective than an expert in explaining why a change needs to be made and how to do it. Finally, separating the coaches from the graders can eliminate a perennial source of emotional distress and frustration for some students and teachers because it diminishes students' expectations that the teacher will tell them what to do and, if she doesn't, that she is needlessly hiding a ball. In other words, that separating the mentors from the graders helps distinguish the necessary process from the quality of the final product. Participation in a designed workshop with other learners and more advanced student helpers at the front of the room

illustrates that the process is complex and takes a lot of individual effort by the novice even if the resulting products might look largely the same.

I hope that, in the next generation of law school curricula, expert analysts and teachers of legal rhetoric can redirect some of their energies and time. The plethora of great texts indicates that we have pretty thoroughly deconstructed the structure and content of basic, formal legal rhetoric, and we have identified a number of effective strategies for helping novices learn to participate in that discourse. Now that we understand so well what we are teaching, I think day-to-day guidance through those lessons can be delegated in part to others with less experience.

Even without additional resources, that delegation would free legal writing teachers' greater expertise for two other needs now unmet at our school: the nontypical student for whom the conventional lessons don't work; and the upper-level student who needs support in doing original research and analysis, who needs to develop a much more nuanced appreciation of professional audiences' expectations in multiple contexts, and who would benefit from additional practice and feedback on relatively nuanced issues of law, organization, style, voice, and purpose.

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# Putting Yourself in the Shoes of a Law Student with Dyslexia

By Karen Markus

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If you have ever lamented, “I taught him<sup>1</sup> but he didn’t learn,” dyslexia, a “hidden” disability that affects one out of five individuals,<sup>2</sup> may have been the cause. Dyslexia, which is rooted in the basic brain systems that allow us to understand and express language, affects not only how we read, but how we spell, retrieve, articulate, and synthesize words. It also impairs rote memory.<sup>3</sup> Legal writing faculty charged with instilling language skills essential to the practice of law should understand the etiology of dyslexia and recognize its manifestations. We also need to have a working knowledge of common comorbid (coexisting) conditions such as attention deficit disorder.

## Understanding Dyslexia

The term “congenital word blindness” was first coined in the late 19th century to describe otherwise normal, intelligent individuals who struggle to read despite ample instruction and effort.<sup>4</sup> Based on the hypothesis that dyslexia is caused by impaired sight, it was initially treated by ophthalmologists.<sup>5</sup> We now know that dyslexia is a localized neurological problem whose primary manifestation is weakness in phonological

processing.<sup>6</sup> In fact, “the presence of a phonological deficit in the context of relatively intact overall language abilities is the *sine qua non* of dyslexia.”<sup>7</sup> This localized weakness does not, however, affect higher-order intellectual ability. Thus it is phonological weakness, not a lack of intelligence, that impairs the dyslexic’s ability to read. Indeed, a sharp intellect may mask a reading disability until an individual confronts more rigorous reading and writing assignments in law school.<sup>8</sup> At that point, poor phonological processing may interfere with the dyslexic’s ability to access complex new vocabulary, which in turn prevents application of the individual’s intellect.

If language is thought of as a hierarchy, with analytical application, syntax, and semantics comprising the higher levels, phonological processing is the most basic level.<sup>9</sup> Dyslexics have trouble processing phonemes, language’s smallest discernable unit of sound. For example, the words *she* and *go* each have two phonemes.<sup>10</sup> Like DNA, the 44 phonemes are the basic building blocks of the English language. Also like DNA, phonemes retain their individual identity when they are combined. This means that phonemes, like genetic material, can be combined in a vast number of different combinations.<sup>11</sup>

“Dyslexics have trouble processing phonemes, language’s smallest discernable unit of sound.”

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<sup>6</sup> *Id.* at 40.

<sup>7</sup> *Id.* at 137.

<sup>8</sup> Kevin H. Smith, *Disabilities, Law Schools, and Law Students: A Proactive and Holistic Approach*, 32 Akron L. Rev. 1, 19 (1999).

<sup>9</sup> G. Reid Lyon, *Toward a Definition of Dyslexia*, *Annals of Dyslexia*, Vol. 45, Reprint 139 at 10 (1995).

<sup>10</sup> *Teaching Children to Read: An Evidence-Based Assessment of the Scientific Research Literature on Reading and Its Implications for Reading Instruction*, Report of the National Reading Panel, National Institute of Child Health and Human Development 7 (2000) [hereinafter Reading Panel].

<sup>11</sup> Shaywitz, *supra* note 1, at 47.

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<sup>1</sup> Dyslexia affects slightly more males than females. Sally Shaywitz, *Overcoming Dyslexia: A New and Complete Science-Based Program for Reading Problems at Any Level* 32 (2004).

<sup>2</sup> *Id.* at 30.

<sup>3</sup> *Id.* at 5.

<sup>4</sup> *Id.* at 13.

<sup>5</sup> *Id.* at 23.

“Reading is a neurologically complex process that starts with phonemes in symbolic form arranged on a page.”

In order for a word to be identified, understood, retained, or retrieved from memory, it must first be broken down into phonemes by the brain.<sup>12</sup> On an oscilloscope, the word *she* appears as an undifferentiated blip. Specialized circuits in the human brain, however, break this word into its two phonemes: sh-ē. By the age of six, most normal readers can readily separate and articulate these two phonemes, but without explicit instruction, to dyslexics *she* remains one undifferentiated sound.<sup>13</sup> They simply cannot pull it apart into its component phonemes. These differences do not significantly impact spoken language, which we are biologically hardwired to process seamlessly.<sup>14</sup>

However, written language is an artificial construct that appeared only 5,000 years ago.<sup>15</sup> Reading is a neurologically complex process that starts with phonemes in symbolic form arranged on a page. Because of their difficulty distinguishing phonemes, dyslexics have trouble understanding that words are synthesized from them.<sup>16</sup> Moreover, they cannot readily learn the alphabetic principle: the correspondence between the symbols on the page and the phonemes they represent.<sup>17</sup> Thus dyslexics may interchange letters (commonly *b*, *d*, *p*, and *q*) and words (e.g., *was* and *saw*) because of difficulty distinguishing symbols and words that look similar. Therefore, dyslexics need explicit, specialized, systematic instruction to break the phonetic code in order for the symbols on the page to accurately represent the sounds of speech.

### Current Scientific Findings

Dyslexia is a hereditary trait. Between one-quarter and one-half of all children born to a dyslexic parent will be dyslexic.<sup>18</sup> Furthermore, there is

no cure for dyslexia. The phonological deficit that causes dyslexia persists into adulthood even in the brightest individuals.

Thanks to technological advances, however, dyslexia is no longer a hidden disability. Functional magnetic resonance imaging shows that the manner in which dyslexics use their brains while reading differs drastically from that of normal readers. The primary reading area of the brain is the left mid to posterior portion.<sup>19</sup> The more skilled a reader is, the more the reader activates the left posterior part of the brain, which almost instantaneously reacts to word models that have already been mastered, without pausing to decode their phonemes.<sup>20</sup> In contrast, dyslexics' neural wiring interferes with using this part of the brain to store and access words. Instead, they compensate by using the right and frontal areas of the brain to slowly analyze words, resulting in much less efficient processing of written language.<sup>21</sup>

### Manifestations of Dyslexic Neuroanatomy

Nonsense words, which is what legal terminology may initially resemble, are particularly difficult for dyslexics.<sup>22</sup> Acquiring each new vocabulary word involves parsing its arrangement of phonemes, rather than merely noticing its shape or the letter it starts with, as dyslexics tend to do. A normal “reader must have four or more successful encounters with a new word to be able to read it fluently,”<sup>23</sup> i.e., to store it accurately in the left posterior brain. Dyslexics, on the other hand, need many more exposures to a word over a longer period of time.<sup>24</sup> Once acquisition occurs, the reader no longer has to process the word phoneme by phoneme, which greatly increases reading speed, or fluency. Thus, fluency is acquired one word at a time, as each word is analyzed and mastered. However, word acquisition

<sup>12</sup> *Id.* at 41–42.

<sup>13</sup> *Id.* at 55.

<sup>14</sup> *Id.* at 46.

<sup>15</sup> *Id.* at 50.

<sup>16</sup> *Id.* at 43.

<sup>17</sup> *Id.* at 44.

<sup>18</sup> *Id.* at 99.

<sup>19</sup> *Id.* at 81.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 82.

<sup>22</sup> *Id.* at 37–39.

<sup>23</sup> *Id.* at 105.

<sup>24</sup> *Id.* at 111.

“Spelling is intimately linked with reading because skilled readers have huge internal dictionaries of stored word models.”

in dyslexics may be faulty because they do not match all the symbols in a word with their corresponding phonemes.<sup>25</sup> Because of these faulty stored word models, dyslexics often must infer meaning from context,<sup>26</sup> which is particularly difficult when working with complex new vocabulary. This is exacerbated by the fact that poor readers have relatively small internal lexicons.

The hallmark of dyslexia in adults is slow, laborious reading and writing, rather than lack of accuracy.<sup>27</sup> Dyslexics can learn to read fairly accurately but their reading is usually slow<sup>28</sup> and this lack of rapid, automatic word recognition impairs both comprehension and word retrieval. Slow readers, who have difficulty decoding new words and retain a paucity of accurate word models, cannot devote their energy to comprehending the material. Their lack of fluency prevents them from engaging with the text. If they are required to read too much too quickly, they simply will not comprehend the material. Reading is also very fatiguing for them.

Word retrieval in both speech and writing may be particularly difficult for dyslexics.<sup>29</sup> This is called *dysnomia*, “from *dys* meaning poor or having trouble with, and *nomen*, to name.”<sup>30</sup> Difficulty replicating and combining phonemes leads to incorrect substitution of words that sound and look somewhat similar, e.g., *suburb* for *superb*, especially when rapid word retrieval is required.<sup>31</sup> This is because dyslexics tend to look at the shape and size of a word rather than comprehending its internal details. Thus, they may write *horse* instead of *house*.

Consequently, a dyslexic student who is intellectually capable of complex understanding may be unable to produce the words to express it, a phenomenon that is extremely frustrating to both student and teacher. To avoid this frustration, dyslexics tend to circumlocute to get around a vocabulary gap, to express indirectly the concepts in words they cannot come up with.<sup>32</sup> Nevertheless, with effort, dyslexics can master vocabulary, particularly specialized terminology that tends to be repeated.<sup>33</sup>

Spelling is intimately linked with reading because skilled readers have huge internal dictionaries of stored word models.<sup>34</sup> They also store groups of letters that commonly go together, such as *ight* and *ough*.<sup>35</sup> To spell correctly, we rely on these word models stored in our brains. The imperfectly stored word models of dyslexics are thus reflected in poor spelling. In fact, atrocious spelling, not difficulty reading, is the most common complaint of undiagnosed adult dyslexics.

Rote memorization, which requires strong phonological ability, is very difficult for dyslexics.<sup>36</sup> Rather, they must fully understand a concept in order to remember it. This is why visual displays such as synthesis or flow charts that help students draw connections between ideas or categories are a great help to dyslexics. Furthermore, knowledge gained in this manner is more enduring than that obtained through rote memorization.<sup>37</sup>

### Attention Deficit Disorder

Attention deficit disorder (ADD), which includes the subset of attention deficit hyperactivity disorder (ADHD), is present in 12 to 24 percent

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 163.

<sup>28</sup> *Id.* at 111.

<sup>29</sup> Susan L. Hall & Louisa C. Moats, *Straight Talk About Reading* 136 (1999).

<sup>30</sup> Priscilla L. Vail, *Smart Kids with School Problems* 123 (1987).

<sup>31</sup> Shaywitz, *supra* note 1, at 58.

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<sup>32</sup> *Id.* at 97.

<sup>33</sup> *Id.* at 118.

<sup>34</sup> *Id.* at 114.

<sup>35</sup> *Id.* at 104.

<sup>36</sup> *Id.* at 332.

<sup>37</sup> *Id.* at 285.

“ADD may be confused with dyslexia because some of their manifestations, such as distractibility, are similar.”

of dyslexics.<sup>38</sup> The condition was formerly called “hyperkinesis” because of its hyperactivity component.<sup>39</sup> Like dyslexia, ADD is genetically determined.<sup>40</sup> It is caused by deficiency of a neurotransmitter called norepinephrine in the frontal lobes of the brain.<sup>41</sup>

ADD may be confused with dyslexia because some of their manifestations, such as distractibility, are similar. However, distractibility in dyslexics is caused by the difficulty of the task, while ADD involves chronic problems with modulating attention.<sup>42</sup> Thus the hallmarks of ADD are distractibility, hyperactivity, and impulsivity.<sup>43</sup> Distractibility, which results both from external stimuli and from irrelevant thoughts, manifests itself as a short attention span. In adults, hyperactivity is most often demonstrated by foot tapping and other repetitive leg movements. The student who chronically blurts the answer in class may be displaying impulsivity.<sup>44</sup> ADD is a learning disability because these behaviors render the individual mentally unavailable for learning.<sup>45</sup>

Difficulty modulating anxiety, anger, or mood is also associated with ADD.<sup>46</sup> Individuals with ADD may sustain a generally high level of anxiety that can spill over into panic in severe cases. Those with anger have a short fuse. The associated mood disorder is usually depression.<sup>47</sup> Thus,

it is important to recognize that ADD affects more than academic performance. It is a life problem. Furthermore, most individuals do not “outgrow” ADD,<sup>48</sup> although they may learn to manage it. Psychopharmacology offers effective assistance by supplementing deficient neurotransmitters. About 80 percent of individuals with ADD show improvement on medication.<sup>49</sup> In fact, improvement with medication is diagnostic of ADD.

### Remediation of Dyslexia

It is not uncommon for dyslexia to go unrecognized until adulthood. Although reading disabilities diagnosed after the third grade are much more difficult to remediate,<sup>50</sup> dyslexic adults can substantially improve their reading accuracy and even fluency with proper instruction. In the 1930s, Dr. Samuel Orton, a neurologist, and Anna Gillingham, a teacher, developed a systematic multisensory teaching method that today is still the gold standard of reading instruction for dyslexics.<sup>51</sup> Orton-Gillingham reading programs are widely available for both children and adults.

The manner in which a person reads out loud is a critical measure of fluency. Dyslexic individuals tend to stumble or hesitate over words and mispronounce, omit, or add words.<sup>52</sup> In 2000, the federally funded National Reading Panel released its evidence-based assessment of the scientific literature on reading. The panel concluded that a key feature of reading instruction is oral reading with feedback and correction.<sup>53</sup> Because a mispronounced word is less likely to be stored in the brain, requiring an individual to accurately read aloud enhances storage

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<sup>38</sup> *Id.* at 141.

<sup>39</sup> Larry B. Silver, *The Misunderstood Child* 20 (3d ed. 1998).

<sup>40</sup> Erik G. Willcutt & Rebecca Gaffney-Brown, *Etiology of Dyslexia, ADHD, and Related Difficulties: Using Genetic Methods to Understand Comorbidity*, *Perspectives* 14 (2004).

<sup>41</sup> Silver, *supra* note 39, at 251.

<sup>42</sup> Shaywitz, *supra* note 1, at 336.

<sup>43</sup> Silver, *supra* note 39, at 76.

<sup>44</sup> *Id.* at 74–76.

<sup>45</sup> For more information on teaching law students with ADD, see Robin A. Boyle, *Law Students with Attention Deficit Disorder: How to Reach Them, How to Teach Them*, 39 *J. Marshall L. Rev.* 349 (2006).

<sup>46</sup> Silver, *supra* note 39, at 7.

<sup>47</sup> *Id.* at 7–8.

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<sup>48</sup> *Id.* at 333.

<sup>49</sup> *Id.* at 259.

<sup>50</sup> Shaywitz, *supra* note 1, at 30.

<sup>51</sup> Judy Duchan, *Getting Here: A Short History of Speech Pathology in America*, <[www.acsu.buffalo.edu/~duchan/history\\_subpages/samuelorton.html](http://www.acsu.buffalo.edu/~duchan/history_subpages/samuelorton.html)>.

<sup>52</sup> Shaywitz, *supra* note 1, at 335.

<sup>53</sup> Reading Panel, *supra* note 10, at 12.

of correct word models.<sup>54</sup> Research shows that such fluency practice need be only five to 10 minutes per day.<sup>55</sup> The reading material used to develop fluency should be enjoyable or interesting and the reader should be able to easily decode 95 percent of the words.<sup>56</sup> Rereading words from specialized materials until they are pronounced correctly is also useful in mastering new terminology and helps with word retrieval.<sup>57</sup>

With hard work and commitment, dyslexics can succeed in the field of law. Given appropriate accommodations, they can generate the same work product as normal readers. However, rather than becoming generalists, they may wish to specialize in a particular area of the law so as to become familiar with its terminology. They should also consider fields in which billable hours and strict deadlines are not overarching concerns.<sup>58</sup>

### What Should Legal Writing Faculty Do?

To increase comprehension, *all* students should be explicitly instructed in and given ample opportunity to practice active reading. There are a number of approaches to this but they all involve an initial overview of the material, use of headings and subheadings for context, active engagement with the material via highlighting and margin notes, and guided questions to enhance understanding.

Dyslexic law students should be encouraged to take full advantage of available technology, including mind mapping software such as *Inspiration*, and voice recognition software such as *Naturally Speaking*. These types of visual and auditory learning tools help students process and organize

new information. Simply enlarging font size to 14 or 16 points can help dyslexics to read more accurately as well as to detect errors in their own writing.<sup>59</sup> Finally, since taking notes causes dyslexics to miss large chunks of information, tape recording lectures is very helpful.

Small group work allows dyslexics to talk through concepts with their peers. This type of discussion is important because dyslexics tend to remember what they hear better than what they read. Similarly, during conferences, asking students to explain orally what they are trying to convey in their written work will help them express their thoughts in writing.

Dyslexics admitted to law school have expended enormous energy to get there. They have already experienced the adverse impact of dyslexia on their self-image and are now in an environment where their self-esteem is more at risk than ever before.<sup>60</sup> Thus, to avoid stigma they may choose to forgo accommodations such as extra time on tests.<sup>61</sup> However, extra time has been described as physiologically necessary for dyslexics to access and express their knowledge.<sup>62</sup> Assuming that the goal of testing is to show what a student knows, extra time simply levels the playing field for dyslexics because of their slow processing of written language.<sup>63</sup> Furthermore, the excessive energy dyslexics expend on decoding and comprehending written words means that they are more vulnerable to distractions by outside stimuli, especially noise.<sup>64</sup> Thus, for some students a quiet exam room is essential.

“To increase comprehension, *all* students should be explicitly instructed in and given ample opportunity to practice active reading.”

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<sup>54</sup> Shaywitz, *supra* note 1, at 12.

<sup>55</sup> *Id.* at 272.

<sup>56</sup> For teenagers, the author uses short books such as *Oh, the Places You'll Go!* by Dr. Seuss, which should be read several times until the reading is automatic and fluent.

<sup>57</sup> Shaywitz, *supra* note 1, at 233.

<sup>58</sup> Pamela Coyle, *What Sylvia Law, Jonathan Pazer and David Glass Confront When They Read or Write*, 82 A.B.A. J. 64, 67 (Sept. 1996).

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<sup>59</sup> Jennifer Jolly-Ryan, *Disabilities to Exceptional Abilities: Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner*, 6 Nev. L.J. 116, 154 (2005).

<sup>60</sup> Andrew Weis, Book Review, *Jumping to Conclusions in "Jumping the Queue"*, 51 Stan. L. Rev. 183, 199–200 (1998).

<sup>61</sup> Coyle, *supra* note 58, at 66.

<sup>62</sup> Shaywitz, *supra* note 1, at 314.

<sup>63</sup> Lisa Eichhorn, *Reasonable Accommodations and Awkward Compromises: Issues Concerning Learning Disabled Students and Professional Schools in the Law School Context*, 26 J.L. & Educ. 31, 57 (1997).

<sup>64</sup> Shaywitz, *supra* note 1, at 116.

“Graphic representations and multisensory teaching tools such as PowerPoint help all students to master complex material.”

### Conclusion

Law schools have a legal duty to accommodate students with properly documented dyslexia.<sup>65</sup> However, the teaching techniques that enable dyslexics to succeed are beneficial to all students. Graphic representations and multisensory teaching tools such as PowerPoint help all students to master complex material. An interactive classroom and a collaborative learning environment enhance student comprehension of concepts, decreasing reliance on rote memory. Finally, all students benefit from detailed syllabi, sequenced assignments designed to achieve explicit goals, and prompt feedback.<sup>66</sup>

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### Another Perspective

“The education of lawyers should deal with the cognitive, behavioral and experiential, affective, and normative aspects of being and learning as a professional. ... I aim for a statement about legal education that recognizes all of these constituent elements of being a lawyer and a human being and acknowledges that they are intertwined and related to each other, not necessarily in any particular linear or hierarchical order.”

—Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 Wash. L. Rev. 593, 596 (1994).

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<sup>65</sup> 42 U.S.C.A. § 12132 (2000) (public law schools); 42 U.S.C.A. § 12182 (2000) (private law schools).

<sup>66</sup> Jolly-Ryan, *supra* note 59, at 146–147.

## CALI Lessons in Legal Research Courses: Alternatives to Reading About Research

*Technology for Teaching ... is a periodic feature of Perspectives, designed to introduce and describe the ways in which teachers of legal research and writing are using technology to enhance their teaching. Through Volume 9, this column was edited by Christopher Simoni, Associate Dean for Library and Information Services and Professor of Law, Northwestern University School of Law. Readers are invited to submit their own "technological solutions" to Mary A. Hotchkiss, Perspectives Editor, University of Washington School of Law, William H. Gates Hall, Box 353020, Seattle, WA 98195-3020, phone: (206) 616-9333; e-mail: hotchma@u.washington.edu.*

**By Elizabeth G. Adelman<sup>1</sup>**

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There are many high quality legal research textbooks on the market. But let's face it—they aren't exactly the type of book that law students devour. Flashback to your legal research instruction during law school. Did you actually read all of the assigned legal research material? Did you light the bonfire at your graduation party with your least stimulating law school books? If so, was the legal research text among the tinder? Flash forward to the present. Now you teach legal research and/or legal writing to law students. What can you do to spice up the learning experience for your students?

This article is a case study of integrating CALI lessons into the legal research curriculum at

Georgia State University College of Law (GSU). In this study, I present student feedback in the form of survey data<sup>2</sup> and instructor feedback in the form of anecdotes.

### What Is CALI and What Are CALI Lessons?

CALI, located online at <www.cali.org>, is the Center for Computer-Assisted Legal Instruction. This nonprofit consortium of law schools "advances global legal education through computer technology, employs research, collaboration, and leadership to assist a diverse audience in the effective use of this technology in legal education, and promotes access to justice through the use of computer technology."<sup>3</sup>

In 1999, a group of five librarians known initially as the "Gang of Five"<sup>4</sup> began to develop a comprehensive set of Web-based teaching materials covering a broad range of research topics. They developed a list of CALI lessons that represented this broad range and grouped them

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<sup>2</sup> GSU legal bibliography students were surveyed during the fall of 2004 and the fall of 2005. The 2004 and 2005 surveys were drafted and the data were analyzed under the supervision of a credentialed specialist in research methods. The surveys were submitted to, and approved by, the university's Institutional Review Board (GSU IRB Protocols H05556 and H06061). The data from the 2005 survey form the basis of what is reported in this article. Data from fall 2004 are reported for comparison purposes only if the same questions were asked in the fall 2005 survey. Student participation in the survey was voluntary and anonymous. The fall 2004 survey was administered as a TWEN® quiz and the fall 2005 survey was administered to students on the last day of class by a volunteer from the second-year class. The survey data were compiled and entered into SPSS for statistical analysis. In this article, the results from both surveys are, for the most part, expressed as percentages.

<sup>3</sup> CALI's mission statement is located at <www2.cali.org/index.php?fuseaction=static.mission> (last visited June 6, 2006).

<sup>4</sup> Nancy Johnson, Kit Kreilick, Victoria Trotta, Gretchen Van Dam, and Sally Wise.

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<sup>1</sup> The author gratefully acknowledges the support of the Georgia State University College of Law legal research instructors during this project. In addition, the author wishes to thank Nancy Johnson for her support of this project and her contributions to this article and Kristina Niedringhaus for her editorial assistance.

“There are many high quality legal research textbooks on the market. But let's face it—they aren't exactly the type of book that law students devour.”

thematically into a grid. The current grid<sup>5</sup> has been developed by the Gang of Five's progeny, the Legal Research Community Authoring Project Advisory Panel. To date, there are about 53 CALI lessons in the legal research category and this number is growing fast. Lessons actually used in GSU's first-year legal research program varied by professor. See Table 1 for a list of topics that are typically taught in first-year legal research courses and the CALI lessons that could be used to supplement the assigned reading for these substantive units.

### Description of the Legal Research Program

The legal research course at GSU is a one-credit, pass/fail course required for each law student in the 1L curriculum. During the fall 2004 and 2005 semesters, there were four sections of the course and each section was taught by a different law librarian. The evening section of the legal research course consisted of mostly part-time students. The other three sections were filled predominantly by full-time students.

The textbook policy for the legal research program changed for the incoming fall 2004 students and remained the policy for fall 2005. Collectively, four legal bibliography instructors drafted short chapters on each topic taught in the program. The chapters were used in lieu of a traditional textbook. The chapters were supplemented by relevant CALI lessons, which were to be completed outside of the classroom.

We sought classroom management software to help us organize the various components of our courses. Classroom management software enables the instructor to organize and make available documents, Web sites, chat rooms, links to CALI lessons, and other resources in one central Web-based location. Blackboard (LexisNexis®), The West Education Network® or TWEN (West),

and WebCT are some of the classroom management software available on campuses. Blackboard and TWEN are the two classroom management packages typically used in law schools. During fall 2004, three instructors in the legal bibliography program used TWEN and one instructor designed a Web-based classroom management system that served the same purpose. During fall 2005, two instructors remained with TWEN, one switched to Blackboard, and the other remained with the in-house classroom management system.

### Descriptive Statistics of Fall 2005 Students Surveyed

(Warning: Reading this section may cause your eyes to glaze over.)

Before the student perspective can be described, it is important to know some information about the students who were surveyed. There were 216 first-year law students enrolled in the fall 2005 legal bibliography program.<sup>6</sup> Of those 216 first-year law students, 178 took the survey (about 82 percent). Of those that responded to the survey, 78 percent were age 30 or younger. To be more specific, the range in age of all respondents was between 20 and 62 years of age. The average age of respondents was 28 and the most common age of respondents was 22. There was a 46-54 percent ratio of females to males and a 70-30 percent ratio of full-time to part-time students surveyed. Seventy-six percent identified as White or European American; 10 percent as Black or African-American; 8 percent Asian or Asian-American; 1 percent as other and 5 percent did not respond to the question about race and ethnicity. In the computing ability arena, 59 percent identified as either expert or intermediate computer users; 41 percent identified as average or below average computer users.

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<sup>5</sup> The legal research grid is available at: <[www2.cali.org/index.php?fuseaction=lessons.gridlist&categoryid=24&categoryname=Legal%20Writing%20&%20Research](http://www2.cali.org/index.php?fuseaction=lessons.gridlist&categoryid=24&categoryname=Legal%20Writing%20&%20Research)> (last visited June 6, 2006).

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<sup>6</sup> The data from the 2005 survey form the basis of what is reported in this article. Data from fall 2004 are reported only for comparison purposes where relevant.

**Table 1. CALI Lessons That May Fit into Legal Research Curricula**

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|---|--|
| <b>Introduction to Legal Research</b>                 | <ul style="list-style-type: none"><li>• Cost of Legal Research by Lauren Collins</li><li>• Decision Point: State or Federal? by Yolanda Jones</li><li>• Evaluating Web Sites by Susan Llano &amp; Erin Murphy</li><li>• Hold 'em, Fold 'em, Walk Away or Run: When to Stop the Search by Yolanda Jones</li><li>• Internet Legal Resources—Free Resources by Resa Kerns &amp; Cindy Shearrer</li><li>• Legal Research 101: The Tools of the Trade by Sheri Lewis &amp; Donald Arndt Jr.</li><li>• Legal Research Methodology by Wendy Scott &amp; Kennard Strutin</li></ul> |
| <b>Statutes</b>                                       | <ul style="list-style-type: none"><li>• Codification by Bill Taylor</li><li>• Finding Statutes by Kit Kreilick</li><li>• Forms of Federal Statutory Publication by Elizabeth Adelman &amp; Kristina Niedringhaus</li><li>• Introduction to State and Federal Statutes by Mary Rumsey &amp; Suzanne Thorpe</li><li>• Researching Uniform and Model Laws by Beth DiFelice</li><li>• Updating Federal and State Statutes by Rebecca Trammell</li></ul>  |
| <b>Legislative History</b>                            | <ul style="list-style-type: none"><li>• Federal Legislative History Research—Compiled Legislative History by Lee Peoples</li><li>• Researching Federal Legislative History by Nancy Johnson</li></ul>  |
| <b>Cases</b>  | <ul style="list-style-type: none"><li>• Anatomy of a Case by Brian Huddleston</li></ul>  |
| <b>Case Finding (Digests and ALR®)</b>                | <ul style="list-style-type: none"><li>• American Law Reports by Kimberli Morris</li><li>• How to Find Case Law Using the Digests by Brian Huddleston</li></ul>   |
| <b>Administrative Law Research</b>                    | <ul style="list-style-type: none"><li>• Attorney General Materials by Marcia Baker</li><li>• Internal Agency Materials by Al Dong &amp; Edwin Greenlee</li><li>• Introduction and Sources of Authority for Administrative Law by Deborah Paulus</li><li>• Researching Federal Administrative Regulations by Sheri Lewis &amp; Donald Arndt Jr.</li><li>• Researching Federal Executive Orders by Sara Kelley</li><li>• Rulemaking: Federal Register and CFR by Deborah Paulus</li></ul>  |
| <b>Secondary Sources</b>                              | <ul style="list-style-type: none"><li>• Introduction to Secondary Resources by Brian Huddleston</li><li>• Legal Encyclopedias by Brian Huddleston</li><li>• Mastering Looseleaf Publications by Kristina Niedringhaus &amp; Elizabeth Adelman</li><li>• Using the Restatements of the Law by Sara Kelley</li></ul>   |
| <b>State Legal Research</b>                           | <ul style="list-style-type: none"><li>• Arizona Legal Research—Primary Sources by Beth DiFelice &amp; Jennifer Murray</li><li>• Georgia Legal Research—Primary Source Material by Elizabeth Adelman, Nancy Johnson, Nancy Adams &amp; Terrance Manion</li><li>• Maryland Legal Research—Primary Authority by Sara Kelley &amp; Susan Herrick</li><li>• Pennsylvania Primary Legal Research by Brent Johnson, Ed Sonnenberg &amp; Patricia Fox</li></ul>  |
| <b>Online Public Access Catalogue (OPAC) Training</b> | <ul style="list-style-type: none"><li>• Periodicals Indexes and Library Catalogs by C. Andrew Larrick</li></ul>  |
| <b>Citators</b>                                       | <ul style="list-style-type: none"><li>• Updating/Validating Case Law Using Citators by Rebecca Trammell</li></ul>  |

“Students reported that CALI lessons are an excellent way to explain concepts not covered in depth or not understood after completing the reading and listening to the lecture.”

**Effectiveness of CALI as a Teaching Tool: The Student Perspective**

To answer the question of whether CALI lessons are an effective teaching tool we asked a series of survey questions. We decided to assess how students feel about CALI lessons and if the lessons give students a deeper understanding of the material. In addition, we asked these open-ended questions: “Tell us what you like about CALI lessons”; “Tell us what you dislike about CALI lessons.”

One question read, “Below are some ways to describe how you might feel about CALI lessons. Please check all [choices] that apply.” One choice was “CALI lessons are an effective teaching tool.” Seventy-six percent of all respondents chose the effective teaching tool option. In written comment form, students also reported that they like the interactive nature of CALI lessons; the review questions are the most sought-after aspect of CALI lessons because they provide the immediate feedback that first-year law students typically crave.

To further assess how students feel about CALI lessons we asked if students think CALI lessons are interesting or boring. (See Table 2 for a complete description of the results.) Fifty-one percent of all respondents chose “interesting.” Of those respondents, the part-time contingent finds CALI

lessons more interesting. Sixty-four percent of part-time students compared with 46 percent of full-time students chose interesting as their answer. In the gender category, 48 percent of male respondents compared to 38 percent of female respondents found CALI lessons interesting. While some students reported that there is educational and entertainment value in using CALI lessons, a substantial number of other students reported that the lessons were too long. This may explain the near 50-50 interesting-boring split.

To probe further into the effectiveness of CALI lessons, students were asked a true or false question: “CALI lessons gave me a deeper understanding of the topic and/or reading material.” (See Table 3 for the results.) Ninety-four percent of respondents agree with this statement and, therefore, chose the “true” response. There were no differences among full-time and part-time students in 2005 and there was only a 3 percent difference along gender lines. While the 2004 survey did not request gender or other information, there was a high degree of satisfaction with the CALI lessons.

Students reported that CALI lessons are an excellent way to explain concepts not covered in depth or not understood after completing the reading and listening to the lecture. In addition, the respondents consider CALI lessons an excellent review tool.

**Table 2. Are CALI Lessons Interesting or Boring?: Percent of Respondents Answering Interesting**

|           | All Respondents | Full-Time Respondents | Part-Time Respondents | Male Respondents | Female     |
|-----------|-----------------|-----------------------|-----------------------|------------------|------------|
| Fall 2005 | 51 percent      | 46 percent            | 64 percent            | 48 percent       | 38 percent |
| Fall 2004 | 83 percent      | n/a                   | n/a                   | n/a              | n/a        |

**Table 3. CALI Lessons Gave Me a Deeper Understanding of the Topic and/or Reading Material: Percent of Respondents Answering True**

|           | All Respondents | Full-Time Respondents | Part-Time Respondents | Male Respondents | Female     |
|-----------|-----------------|-----------------------|-----------------------|------------------|------------|
| Fall 2005 | 94 percent      | 94 percent            | 94 percent            | 96 percent       | 93 percent |
| Fall 2004 | 83 percent      | n/a                   | n/a                   | n/a              | n/a        |

### Student Preferences Regarding Format of Learning Tools for Legal Bibliography

When asked if students would prefer to do CALI lessons or read a legal research textbook, 83 percent of the fall 2005 respondents and 74 percent of the fall 2004 respondents would prefer a CALI lesson over reading the text. Slightly more full-time students and male students prefer CALI lessons over reading the text than their part-time or female counterparts. (See Table 4 for more details.) In written comments, students emphasized the interactive nature of the lessons, the quizzes and their instant feedback, and the entertainment value of the alternative format. CALI lessons also obtained rave reviews from those who identified themselves as visual learners. On the other hand, a few students did not appreciate the format of CALI lessons, citing eye strain, technical difficulties with the Web site, and the inability to print CALI lessons.<sup>7</sup>

In sum, 76 percent of students feel CALI lessons are effective, 51 percent of students feel CALI lessons are interesting, and 94 percent feel that CALI lessons give them a deeper understanding of the material. In addition, there is a student preference for the interactive format of CALI lessons over the printed text. Do the instructors rate the effectiveness of CALI lessons as high as their students?

### Effectiveness of CALI Lessons as a Teaching Tool: The Instructor Perspective

All four instructors agree that CALI lessons are an effective teaching tool and they plan to assign them in future legal research classes. Technology glitches aside,<sup>8</sup> instructors agree that students who did the CALI lessons as a supplement to the reading excelled in obvious ways over their classmates who did not do the CALI lessons. For example, one instructor explained that the completion of an assigned CALI lesson as preparation for class provided students an additional opportunity to have the material presented a second time during the lecture. This instructor noted that these students asked excellent questions, providing evidence that they had an understanding or were on the cusp of understanding difficult concepts such as how to navigate a print digest.

In sections where some exam questions were taken directly from the CALI lessons, instructors observed that students who completed the CALI lessons tended to score higher on exams. Also, instructors noted a significant increase in final exam scores during the fall 2005 semester. They attribute the increase in scores, in part, to making more CALI lessons available in fall 2005 as compared to the previous year.

“In written comments, students emphasized the interactive nature of the lessons, the quizzes and their instant feedback, and the entertainment value of the alternative format.”

**Table 4. I Would Rather Do CALI Lessons Than Read a Legal Research Textbook: Percent of Respondents Answering True**

|           | All Respondents | Full-Time Respondents | Part-Time Respondents | Male Respondents | Female     |
|-----------|-----------------|-----------------------|-----------------------|------------------|------------|
| Fall 2005 | 83 percent      | 85 percent            | 77 percent            | 83 percent       | 78 percent |
| Fall 2004 | 74 percent      | n/a                   | n/a                   | n/a              | n/a        |

<sup>7</sup> Despite student expectations, CALI lessons cannot be printed in the graphical format viewed by students when completing a lesson.

<sup>8</sup> Common technology glitches encountered by GSU students were quiz scoring issues for lessons with clickable images or “hot spots,” uploading scores to LessonLink, and problems registering on the CALI Web site. Concerns about these issues have been conveyed to CALI’s staff and they continue to take steps to improve in these areas.

“ [T]he lesson for us is that our students are willing to embrace, and actually prefer, alternative approaches and formats to learning legal research and writing skills. ”

There are many different approaches to teaching legal research. One instructor noted how most students embraced the different approach using CALI lessons. This instructor recognized how students appreciated the instructor’s efforts to vary the way they could learn the material.

#### **Future Use of CALI Lessons by Law Students**

It is clear that the majority of students like CALI lessons as a supplement to their legal bibliography class. Now, let’s explore whether they will use CALI lessons to supplement other law school courses. When asked if students will use CALI lessons in other subjects throughout law school, 78 percent of the fall 2005 respondents and 81 percent of the fall 2004 respondents answered “true.” In written comments, a large number of students stated that they plan to use the CALI lessons in their property class. Other students see CALI lessons as a review tool, a way to clarify concepts from readings and lectures, and a quiz resource for concepts they are trying to grasp in other courses. On the other hand, there were a few students that will not use CALI lessons again. Some simply disliked the lessons. Others simply don’t have the time.

#### **Conclusion**

Legal research and writing skills are essential to every attorney’s career. As educators it is a constant challenge to keep students engaged in learning these essential skills. The implementation of different teaching resources, such as CALI lessons, may provide an excellent alternative or supplement to the traditional reading/lecture combination. This case study shows that the use of CALI lessons in legal research courses is a preferred and effective approach from both the student and instructor perspective. If we imagine that the survey participants are a cross-section of the American law student population, the lesson for us is that our students are willing to embrace, and actually prefer, alternative approaches and formats to learning legal research and writing skills.

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#### **Another Perspective**

Please note that beginning with volume 1, all issues of *Perspectives* are available in the Perspectives database (PERSPEC) on Westlaw and in the LEGNEWSL, TP-ALL, and LAWPRAC databases. *Perspectives* is also available in PDF at [west.thomson.com/newsletters/perspectives](http://west.thomson.com/newsletters/perspectives).

## Just the Facts, Your Honor: Finding Judicial Statistics

*Teachable Moments for Students ... is designed to provide information that can be used for quick and accessible answers to the basic questions that are frequently asked of librarians and those involved in teaching legal research and writing. These questions present a “teachable moment,” a brief window of opportunity when—because he or she has a specific need to know right now—the student or lawyer asking the question may actually remember the answer you provide. The material presented in this column is not meant to be an in-depth review of the topic, but rather a summary of the main points that everyone should know. It is a companion to the Teachable Moments for Teachers column that gives teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. Readers are invited to submit their own “teachable moments for students” to the editor of the column: Barbara Bintliff, University of Colorado Law Library, Campus Box 402, Boulder, CO 80309, phone: (303) 492-1233, fax: (303) 492-2707.*

**By Julie Jones**

*Julie Jones is a Research Attorney and Lecturer in Law at Cornell Law Library in Ithaca, New York.*

*“For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics. ...”*

—Oliver Wendell Holmes (1897)<sup>1</sup>

Requests for judicial statistics are common at the reference desk. Indeed, with the renewed interest in the operation of the federal judiciary with a rule governing the citation of

unpublished opinions,<sup>2</sup> as well as the growing popularity of empirical legal scholarship,<sup>3</sup> it appears that statistical and fact-based questions will increase at the reference desk.

However, legal research courses in both law and library schools typically omit this topic from discussion, focusing instead on the product of courts, rather than the process of courts. Similarly, it is the rare law school class that discusses the administrative workings of our judicial system. While it is true that the primary output of our courts is opinions (and hopefully, justice), there exists a large and largely hidden bureaucracy behind the benches keeping track of just about everything passing through the courthouse doors.<sup>4</sup>

Most legal research textbooks don't mention the subject at all, and those that do, limit their

“ [With] the growing popularity of empirical legal scholarship, it appears that statistical and fact-based questions will increase at the reference desk. ”

<sup>2</sup> Fed. R. App. Proc. 32.1 provides:

(a) Citation Permitted. A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(i) designated as “unpublished,” “not for publication,” “non-precedential,” “not precedent,” or the like; and

(ii) issued on or after January 1, 2007.

For a recent discussion on the citation of unpublished opinions, the de facto dual litigation track now in operation, and the use of judicial clerks in this process, see Symposium, *Have We Ceased to Be a Common Law Country?*, 62 Wash. & Lee L. Rev. 1429 (2005).

<sup>3</sup> See Michael Heise, *The Past, Present, and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, 2002 U. Ill. L. Rev. 819 (2002); see also Symposium, *Empirical and Experimental Methods in Law*, 2002 U. Ill. L. Rev. 791 (2002).

<sup>4</sup> Of course, this data doesn't account for the recently reported secret dockets, or the decisions of increasingly popular private judges, both of which raise questions about the egalitarianism of our justice system. See Julie Kay, *Federal Judges Slammed for Secret Docketing*, Nat'l L.J., November 21, 2005, at 21; Jean Guccione, *System Offers Justice Outside the Spotlight, If You Can Pay*, L.A. Times, May 7, 2006, § California Metro, at 1.

<sup>1</sup> Oliver Wendell Holmes Jr., *The Path of the Law*, 10 Harv. L. Rev. 457, 468–69 (1987).

discussion to a few pages.<sup>5</sup> Students conducting research or cite checking the work of others will need assistance finding these sources. Questions of this nature present a ripe opportunity to teach the student both about the administration of our courts as well as alternate sources of information beyond Westlaw<sup>®</sup> and LexisNexis<sup>®</sup>.

### Federal Court Statistics

Congress created the Judicial Conference of the United States by statute in 1922, designed to be the federal courts' national policy-making entity and the public face of the entire judicial branch. Presided over by the Chief Justice of the United States, the Judicial Conference performs its duties through committees composed primarily of federal

judges, organized by subject matter to recommend national policies and legislation concerning judicial administration. Topics addressed by these committees include the judicial budget, rules of practice and procedure, criminal law, case management and court administration, judges' pay and benefits, computers and technology, security, and facilities.<sup>6</sup>

The conference supervises and directs the Administrative Office of the United States Courts (AO), created by Congress in 1939. Congress assigns many duties to the AO, including preparing and implementing the conference budget, managing the judiciary's payroll and human resources programs, and collecting and analyzing statistics to monitor the business of the courts, i.e., the adjudication of cases that come before it.<sup>7</sup>

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### Sources for Federal Judicial Statistics and Policy Studies

**Administrative Office of the United States Courts (AOUSC)** <[www.uscourts.gov/adminoff.html](http://www.uscourts.gov/adminoff.html)>

**Statistical Reports** <[www.uscourts.gov/library/statisticalreports.html](http://www.uscourts.gov/library/statisticalreports.html)>

Includes PDFs of the annual print publications available in most law libraries:

*Federal Judicial Caseload Statistics* (previously *Federal Judicial Workload Statistics*)

*Federal Court Management Statistics* (previously *Management Statistics for United States Courts*)

*Wiretap Reports*

*Bankruptcy Statistics*

**Judicial Facts and Figures** <[www.uscourts.gov/judicialfactsfigures/contents.html](http://www.uscourts.gov/judicialfactsfigures/contents.html)>

**U.S. Courts Library** <[www.uscourts.gov/library/publications.html](http://www.uscourts.gov/library/publications.html)>

**Judicial Business of the United States Courts** <[www.uscourts.gov/judbususc/judbus.html](http://www.uscourts.gov/judbususc/judbus.html)>

Includes PDFs of the *Annual Report of the Director*, available in most law libraries.

**Federal Court Management Statistics** <[www.uscourts.gov/fcmstat/index.html](http://www.uscourts.gov/fcmstat/index.html)>

**Federal Judicial Center** <[www.fjc.gov](http://www.fjc.gov)>

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<sup>5</sup> Kent Olson seems to be the exception to this rule. See, e.g., Kent C. Olson, *Legal Information: How to Find It, How to Use It*, 110, 184–85 (1999); Morris L. Cohen & Kent C. Olson, *Legal Research in a Nutshell*, 291–293 (7th ed. 2000).

<sup>6</sup> The biannual *Report of the Proceedings of the Judicial Conference of the United States* is available in print and online at <[www.uscourts.gov/judconfindex.html](http://www.uscourts.gov/judconfindex.html)> for those interested, but it includes no statistics.

<sup>7</sup> On a macro scale, these statistics quickly reveal the growing nature of the federal judiciary, both in terms of number of cases filed and number of judges needed to handle the caseload, which has caused considerable angst among some. See, e.g., Jon O. Newman, *1,000 Judges—The Limit for an Effective Federal Judiciary*, 76 *Judicature* 187 (1993). The same is true of some state judiciaries. See, e.g., *Crisis in the Courts*, Fresno Bee, June 3, 2006, § Local News, at B10.

The AO dutifully records these facts and figures and publishes them both online and in print on an annual basis. Typical statistics include number of civil and criminal cases at the district, appellate, and supreme court levels; types of cases; pro se cases; and judicial workloads. The AO is also charged with studying and reviewing judicial operations, which can provide some interesting information. Most of these statistics are available both in print (all available years) and online (mid 1990s–present) from the U.S. Courts Web site at <[www.uscourts.gov](http://www.uscourts.gov)>.

Congress established the Federal Judicial Center in 1967 to further improve the administration of the courts. It is responsible for researching the judiciary processes, court management, and other issues affecting the business of administering justice. This research is a rich source of information not commonly included in the routine statistics kept by the AO. The Federal Judicial Center can be found online at <[www.fjc.gov](http://www.fjc.gov)>.

The clerks of individual federal courts, charged as the primary administrative manager for their court, are often called upon to compile statistics for their courthouse as well. These may be available online or in a published report. Software applications implemented nationwide are facilitating the collection of federal judicial statistics and helping courts manage their caseloads. These may soon provide additional data not previously available.

Beyond these government reports, numerous other publications monitor the federal justice system, such as the annual Supreme Court issue by the *Harvard Law Review* each November (best viewed in print or PDF for the statistical tables), and monographs like *The Supreme Court Compendium*, currently in its third edition, edited by Lee Epstein, et al. These sources are great for statistical information specific to individual justices, as well as case types heard before the Court.

### State Court Statistics

Individual state court administrations are organized similarly to the federal model. For example, in New York the Office of Court

Administration functions under the state's chief administrative judge, who acts on behalf of the chief judge, to manage the New York state judicial system. In California, the Administrative Office of the Courts (you see the trend in department names) is the staff agency of the Judicial Council, which has policy-making authority over the state court system, as led by the state's chief justice.

These state court administrative branches perform comparable functions and keep statistics similar to their federal counterparts, which are typically found in the annual reports published by the state court's administrative office. Today, these reports may be available in print, online, or both, depending on the state. Additionally, state statistical yearbooks and abstracts uniformly include chapters on crime and the judiciary. Most states also have a Statistical Analysis Center (SAC) agency that collects, analyzes, and disseminates justice data.

There are a number of national judicial groups that provide excellent sources for compiled state-based statistics. Probably the most well known, the National Center for State Courts (NCSC) is a prodigious corporate author of which any academic law library will certainly hold a number of titles on a variety of subjects. Its online publishing includes the Court Statistics Project (available in print as an annual publication, *State Court Caseload Statistics*), CourtTopics database, and *Survey of Judicial Salaries* (also available in print), all of which are easily accessible at <[www.ncsconline.org](http://www.ncsconline.org)>. For those looking to do extensive data mining, try the Inter-University Consortium for Political and Social Research (ICPSR) at <[www.icpsr.umich.edu](http://www.icpsr.umich.edu)>. The Conference of State Court Administrators (COSCA), organized in 1953, is devoted to improving state court administrative systems and provides some informative white papers on its Web site at <[cosca.ncsc.dni.us](http://cosca.ncsc.dni.us)>. Other useful organizations include:

- American Judges Association (AJA)  
<[aja.ncsc.dni.us](http://aja.ncsc.dni.us)>
- Justice Research and Statistics Association  
<[www.jrsa.org](http://www.jrsa.org)>

- National Association for Court Management (NACM) <[www.nacmnet.org](http://www.nacmnet.org)>
- SEARCH: The National Consortium for Justice Information and Statistics <[www.search.org](http://www.search.org)>
- American Judicature Society <[www.ajs.org](http://www.ajs.org)>

### Subject-Based Statistics

Law review articles are often a good source of statistics on a wide range of topics, particularly from empirical legal scholars and journals such as the *Journal of Empirical Legal Studies* (JELS).<sup>8</sup> Fortunately for those interested in the cold, hard facts, this type of scholarship is gaining in popularity in our nation's law schools. Of course, social scientists have been conducting empirical research on our justice system for quite some time. Searching the primary academic sociological databases (such as Sociological Abstracts and Social Sciences Citation Index) can be fruitful and turn up information not produced by the government or legal scholars. Finally, not-for-profit organizations may collate litigation statistics based on their particular interests.

### Foreign and International Statistics

Like the United States, many foreign governments annually publish statistical abstracts (though their individual titles vary), which include criminal and judicial information. The depth of information found in these sources varies by country, and the researcher will need to wear her or his “thesaurus hat” at times in trying to discern how judicial statistics may be classified in another country's lexicon (remember, judges are public servants). Keep in mind, though, that not all countries publish this information.

International criminal statistics are easier to come by on the Internet, and there are a number of good Web sites that collate these. The American Society of International Law (ASIL) guide to international criminal law, available at <[www.asil.org/resource/crim1.htm#Statistical%20Sources](http://www.asil.org/resource/crim1.htm#Statistical%20Sources)>, includes a section on statistics that provides a number of valuable links. Additionally, the U.S. Department of Justice, Bureau of Justice Statistics, supplies numerous international justice statistics available both in print and online at <[www.ojp.usdoj.gov/bjs/ijs.htm](http://www.ojp.usdoj.gov/bjs/ijs.htm)>.

### A Final Note

Finding just the right statistics is not always easy, and sometimes the numbers simply haven't been recorded. This can be frustrating for students who think that all information is available and it's all online. While we are certainly moving toward more content being available on the Internet, the fact remains that government bureaucracy is recording this data. If it doesn't consider an element worthy of notation, it does not note it. Perhaps in the future, with the increasing use of online case management systems by the judiciary, the public will have unfiltered access to the wealth of information currently resting latent in a string of zeros and ones. Until then, to paraphrase words from a galaxy far, far away: Patience, my young apprentice.<sup>9</sup>

<sup>8</sup> Because empirical legal scholarship can be difficult to search for in the traditional legal journal databases and indices, JELS is in the process of developing for its Web site a searchable index of empirical legal articles.

<sup>9</sup> *Star Wars: Episode II—Attack of the Clones* (Lucasfilm Ltd. 2002).

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### Other Good Sources for Statistics

**Bureau of Justice Statistics** <[www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs)>

Various publications available in print and PDF.

**U.S. Department of Justice Office of Justice Programs** <[www.ojp.usdoj.gov](http://www.ojp.usdoj.gov)>

Various publications available in print and PDF.

**United States Sentencing Commission Annual Reports and Statistical Sourcebooks** <[www.ussc.gov/annrpts.htm](http://www.ussc.gov/annrpts.htm)>

Also available in print.

**National Center for Juvenile Justice** <[ncjj.servehttp.com/NCJJWebsite/main.htm](http://ncjj.servehttp.com/NCJJWebsite/main.htm)>

Various publications available in print and PDF.

**U.S. Census Bureau, Statistical Abstract of the United States** <[www.census.gov/compendia/statab](http://www.census.gov/compendia/statab)>

Also available in print.

**LexisNexis Statistical**

Subscription database.

**Transactional Records Access Clearinghouse** <[trac.syr.edu](http://trac.syr.edu)>

Statistics reports on federal agencies' enforcement actions.

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### Another Perspective

“The contours of any given case emerge through a prism of many decisions and decision-makers. If we want to explain the impact of culture on criminal case outcomes, then, we should look at the potential effect of cultural claims at all of these various decision points. Moreover, we should approach the question from multiple perspectives, using a variety of research methods and data sets, in order to create the fullest and most textured portrait of the relationship between culture and culpability.”

—Kay L. Levine, *The Law Is Not the Case: Incorporating Empirical Methods into the Culture of Case Analysis*, 17 U. Fla. J.L. & Pub. Pol’y 283, 287 (2006).

## Helping Students Understand That Effective Organization Is a Prerequisite to Effective Legal Writing

“The problem I am addressing has nothing to do with a student’s academic or intellectual ability to complete a given assignment.”

*Teachable Moments for Teachers ... is a regular feature of Perspectives designed to give teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. It is a companion to the Teachable Moments for Students column that provides quick and accessible answers to questions frequently asked by students and other researchers. Readers are invited to submit their own “teachable moments for teachers” to the editor of the column: Louis J. Sirico Jr., Villanova University School of Law, 299 N. Spring Mill Road, Villanova, PA 19085-1682, phone: (610) 519-7071, fax: (610) 519-6282, e-mail: sirico@law.vill.edu.*

**By Amy R. Stein**

*Amy R. Stein is Professor of Legal Research and Writing at Hofstra University School of Law in Hempstead, N.Y.*

Several years ago, a very bright student who had recently made law review came to my office to discuss her grade. She was unhappy that she had received “only” a B+ in my class. When she arrived, she looked very tired, and I asked her how she was feeling. She told me that she was a research assistant for a torts professor and had been up all night finishing an assignment for him. She said that she could not ask him for an extension, because he had already given her several. I asked her if she had run into these kinds of time management problems in preparing her assignments for legal writing, and she sheepishly admitted that she had. Rather than discussing her grade, we ended up speaking for over an hour about specific steps that she could take to organize herself and manage her time more effectively.

This meeting was an epiphany for me because it made me realize that many students are capable of

producing high quality work, but are hamstrung by their inability to figure out the process of managing both time and the material. I have subsequently made it a priority to integrate organizational tips into my class, along with the substantive material.

The problem I am addressing has nothing to do with a student’s academic or intellectual ability to complete a given assignment. Rather, I am focusing on the process that a student uses to tackle the assignment. I tell my students that I am not teaching them just for my class; I am giving them tools that they can use throughout their careers. Are they really helping a client if they first turn their attention to a problem mere hours before it is due? Obviously, the vicissitudes of law practice sometimes give an attorney no choice. But if there is any other alternative, it makes sense to schedule work so that it can be completed in a thoughtful and timely manner.

I started my career at a 350-attorney firm in New York City. There were many times when we worked through the night to complete complicated motions and briefs merely because the assigning partner forgot to assign the work to the associates any sooner. I am perfectly willing to admit that I do not do my best work at 3 a.m. Although I can offer little help to novices abused by a thoughtless partner, I can help students learn to deal with reasonable assignments. I encourage students to take a very logical, step-by-step approach to their assignments. I break the writing process into five separate organizational components:

I. Overall Scheduling: The Master Plan

II. Research: The Great Scavenger Hunt

III. Prewriting: Trying Not to Lose the Forest for the Trees

IV. Writing: The Journey of a Thousand Miles Must Begin with a Single Step

V. Post-Writing: Extreme Makeover, Legal Writing Edition

### I. Overall Scheduling: The Master Plan

When I ask students if they have made a schedule for completing their work, they often look at me as if I have asked them to split the atom. Taking a series of complicated tasks and breaking them into manageable pieces is the best way that I know of to deal with the panic that comes from feeling that I have too much to do in too little time. Preparing a calendar will provide a master plan for all tasks, both work and play.

Students can use a paper calendar or find one on a personal digital assistant (PDA), calendaring program, or the Web. For example, Groupwise, Outlook, Incompetech.com, or calendarsthatwork.com are all helpful with calendaring. Students can schedule everything from work sessions to exercise sessions, and by building in breaks, students legitimize them and are more likely to stay on schedule, because they know when the break is coming.

Building a schedule requires a certain amount of honesty. Students must know their own strengths and weaknesses and be able to answer several questions. What strategies and techniques have worked for you in the past that you can use again now? Do you work best in short, intense bursts or longer sessions? Where do you work the best? Are you a procrastinator? Are you a morning person or a night person? A morning person should schedule research in the morning and 30 minutes on the elliptical bike at night.

I urge students to slot in every task and set specific goals for each session. They should be certain to schedule time for proofreading to ensure that they do it. I also implore them to schedule time for preparing their tables, a time-consuming and painstaking task.

Students should review and consult the schedule every night before going to sleep in order to avoid bad dreams. It is marvelously satisfying to cross

off what you have accomplished. The evening is also a good time to reschedule what has not been completed on that day's agenda, and look ahead to see what tomorrow holds.

### II. Research: The Great Scavenger Hunt

There are many different ways to approach research, and many different systems for keeping track of it. However, all methods share three common threads. First, students must start with some type of a research plan.<sup>1</sup> This is the scavenger map. Second, they must have some overall system to organize the material as they discover it. Third, they must read and synthesize the material throughout the research process, rather than accumulating an unmanageably huge pile at the end.

Formulating a research plan requires students to identify the type of problem they are confronting very early in the assignment, before they dive into the actual research. I ask them to keep a research journal to make sure that the students familiarize themselves with the problem very early in the process. The journal requires them to answer important threshold questions, such as, Whom do you represent? What does the assignment ask you to do? Do you have a question of state or federal law? Is it statutory or common law based? It is important for the students to try and figure out the answers for themselves, rather than having me tell them at the outset.

I grade their research journals to make sure that they are on the right track. After that, we also hold a strategy session where the students discuss their most important cases and other sources. In general, most of the students find most of the sources.

In the research journal that I use for appellate advocacy, I also require the students to prepare a fact chronology. This helps the students to start thinking early about the relationship between the

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<sup>1</sup> I use Amy Sloan's book, *Basic Legal Research* (3d ed. 2006) to teach research. Chapter 11 of that book deals with research plans.

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facts and the law. I tell the students that they will continue to refine this document throughout the semester, but that it will really help them down the line, both in terms of drafting their statement of facts and at oral argument. It is essential to lay the groundwork early on to ensure a stronger work product later.

There are any number of ways to organize the material. However, I stress to students that they must organize the material in some way. The act of properly organizing the material will require them to read and synthesize it.

Students can organize the material with a computer, or the old-fashioned way, by hand. On the computer, students can set up an Excel table organized with relevant fields. For example, if students are confronted with a three-element analysis, they can set up a chart in which they summarize the relevant portion of any given case as it relates to each element. They must create a field that allows them to indicate the entry to which a certain element refers. By setting up a table this way and then sorting the table entries by element, the student has automatically created an outline for purposes of writing.<sup>2</sup>

Students who choose not to organize their material on the computer can use color-coded index cards, a different color for each element, or highlight the material on the index cards in the relevant color. Students can staple multiple index cards to each case to indicate the elements for which they plan to use them.

Whichever method students use, employing *any* of them requires that they do more at the research stage than simply gather cases. Rather, they must think about how they are going to use the cases: Which case addresses which element or elements of a claim? Which cases are the leading cases? Which

discuss the issues in depth, which merely adopt or repeat the reasoning of other cases? An effective organizational structure will properly set the stage for the next step, prewriting.

### III. Prewriting: Trying Not to Lose the Forest for the Trees

Prewriting is absolutely the toughest part of the process. So many students have performance anxiety; they are sitting there with a huge stack of cases and an empty computer screen, and somehow the materials must morph into a (hopefully) coherent memorandum of law. However, if a student has used a good organizational system for research, this step becomes much easier.

I do not require students to turn in an outline for open memo assignments, but I encourage them to create a first draft of their point headings to serve as a *de facto* outline. At this point, I suggest that once they have drafted the point heads, they slot in the portions of the cases that they will use to support each element. I also urge them to list the relevant facts under each subhead.

In appellate advocacy, I require students to prepare a fact chronology with the research journal; here is where they see the payoff for a good fact chronology. This is almost a case of the paper writing itself! What they have before them is a real road map. When they start to lose the forest for the trees, all they have to do is glance at their outline and put themselves back on to the straight and narrow.

### IV. Writing: The Journey of a Thousand Miles Must Begin with a Single Step

Whatever technique they use, students must actually start writing at some point. Whether students use some version of IRAC (Issue, Rule, Application, Conclusion) or the paradigm,<sup>3</sup> students should find these constructs liberating because they free them to make their legal arguments in a way that the reader

<sup>2</sup> I prefer Microsoft® Word tables. I generally find them easier to use than Excel, but they do not necessarily have the same sorting capability. When using a Word table for purposes of organizing, I rely on color-coding within the text of the chart. For example, element 1 is green text, element 2 red, etc. This way when you shift to the next phase, prewriting, you have set yourself up for success.

<sup>3</sup> The paradigm is an organizational formula for proving a conclusion of law. An in-depth discussion of the paradigm can be found in chapters 10–13 of Richard K. Neumann Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* (5th ed. 2005).

can easily understand. Moreover, they ensure that the students will never have reason to say “I have nothing to write!”

To ensure that my students adhere to the paradigm, I encourage a color-coding system very loosely based on the one that Mary Beth Beazley suggests in her book, *A Practical Guide to Appellate Advocacy*.<sup>4</sup> I tell the students that once they have completed a given section or subsection, they must proofread specifically for the paradigm. They can either change the color of the font, or use highlighters or colored pencils, but they must identify each element of the paradigm to be certain that they have prepared their paper properly. I want to see the conclusion, the rule, the rule proof, and the rule application clearly delineated.

I encourage students that I know are having trouble to bring a marked-up copy to my office so we can look it over together. In appellate advocacy, I recently had a transfer student who was quite concerned about the paradigm. To solve his problem, he wrote the paper as he saw fit, changed the font color for conclusion, rule, rule proof, and rule application, and then literally cut up his draft and rearranged it. I thought his method was a great idea, and he ended up getting an A.

One of the most fascinating discoveries in my job is that almost without fail when I have my first conference with students, and I highlight what I perceive to be their biggest writing problem (wordiness, awkwardness, etc.), they almost inevitably agree with me and say, “My college professors used to say that, too.” If they have a more law-related problem, like difficulty understanding the paradigm, or too much case summary rather than synthesis, the students almost always say that they were aware of the problem while they were writing. As a result, I have started to give students writing prescriptions at their first conferences. A writing prescription is a

form that I made up to identify a student’s most compelling writing problem. I do not actually write the prescription until the conference, after I have engaged the student in the process and we have mutually agreed on the diagnosis. I then encourage the student to make it a priority to focus on improving that particular item in his or her writing.

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We can all admit it. Once we have put something down on paper, we are reluctant to tamper with the perfection that we have created. We need to teach our students to get over this hurdle and become effective self-editors. Self-editing is a critical skill for any lawyer and one that students cannot start to learn soon enough. I devote a significant amount of class time to teaching students this vital skill. It is one of the ironies of teaching legal writing that good teachers give their students significant feedback and guidance, yet that very feedback and guidance work against teaching students how to edit themselves effectively. When commenting on student work, I believe it is important to give students direction but not to actually rewrite their work so that they become completely dependent on teacher input to rewrite.

Every semester, I vary my proofreading suggestions somewhat, based on the strengths and weaknesses of a particular class. Many of the techniques that I use are from the Purdue University Online Writing Lab (OWL)<sup>5</sup>; others I have culled from my own experience, from colleagues, and from students themselves. I teach students to edit in stages, focusing first on the big picture: Does the large-scale structure and organization make sense? Is the writing easily understandable? Next, I ask them to look at their small-scale structure and organization—does their writing adhere to IRAC or to the paradigm? Are there flaws in the legal

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<sup>4</sup> Mary Beth Beazley discusses the self-graded draft at length in chapter 7 of her text, *A Practical Guide to Appellate Advocacy* (2d ed. 2006).

<sup>5</sup> The Purdue University Online Writing Lab may be found at <owl.english.purdue.edu> (last visited August 12, 2006).

“The moment I realized that strong students often write weak papers because of their poor material management was a pivotal one for me as a teacher.”

analysis or factual inaccuracies? Finally, I ask them to examine general style issues. Is the writing style clear and is it appropriate for the reader? Does the writing reflect proper grammar, punctuation, and syntax? Are there typos? Have they conformed with all class formatting requirements? This last item is an important one, because I stress in class that I am training them for the practice of law. I caution them that no court will accept a late brief or a brief over the page limit, and they should not expect their legal writing teacher to function any differently.

### Conclusion

The moment I realized that strong students often write weak papers because of their poor material management was a pivotal one for me as a teacher, one that inspired me to formalize the study skills portion of the course. By presenting students with a wide array of options to help organize themselves at different steps in the writing process, I am helping my students to function more effectively both as law students and ultimately as attorneys.

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### Another Perspective

“‘Legal writing’ is a misnomer. Every rhetorical problem that faces lawyers faces other professionals as well; only the particular combination of those rhetorical needs is special to the law. We continue to use the term ‘legal writing’ because we have not found a simple way of defining the combination, and because (as Justice Potter Stewart once said of hard-core pornography) we know it when we see it.”

—George D. Gopen, *Essay: The State of Legal Writing: Res Ipsa Loquitur*, 86 Mich. L. Rev. 333, 334 (1987).

## Teaching as Art Form— A Review of *The Elements of Teaching*

By James M. Banner Jr. and Harold C. Cannon  
Yale University Press, 1999

Reviewed by David I. C. Thomson

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The authors of this gem of a book—both retired college teachers who gave their professional lifetimes to teaching—write simply and passionately about what it takes to be an effective teacher, and manage to reduce the key aspects of a complex process down to nine primary elements. In so doing, they provide not only a road map of aspiration for the new teacher, but also signposts of inspiration for the experienced teacher.

In the very first sentence the authors state their thesis: “Most teachers forget that teaching is an art.”<sup>1</sup> Of course, they acknowledge—as they must—that no single person can be a great artist in the classroom every day. But they note that most teachers prepare to teach by merely learning the subject they will teach and the methods of teaching that subject, but rarely consider the qualities of personal character that great teaching also requires. It is these qualities that this book addresses, and it does so out of a belief that these dimensions of character and mind are at the core of what we do, which it defines as: “to help others acquire both the knowledge by which they can understand life in all its fullness and the dispositions by which they can live such a life.” This is not a teaching methods book, and because its focus is on the necessary personal qualities of a teacher, it is universal to any subject one might choose to teach, from first-grade penmanship to third-year administrative law.

The authors devote a chapter to each of the nine elements of teaching: learning, authority, ethics, order, imagination, compassion, patience, character, and pleasure. Each chapter defines and explains the characteristics of each element, and then provides either an inspirational or a cautionary example from a fictional (or perhaps not so fictional) teacher.

*Learning.* Of course, one cannot effectively teach a subject without knowing and mastering that subject. But if it ends there then this element of teaching will be missing or at least shortchanged. Because, as the authors point out, “learning embodies the act of learning.” In showing our students how to learn our subject, we have to be enthusiastic about the act of learning ourselves; and we must keep up with our subject, and be excited about doing so. We must convey the love of learning to others, even if the subject we teach is not captivating on its own. It is through complete mastery of our subject that we are best equipped to impart this excitement in the subject to our students.

If in legal writing we are not honestly enthusiastic about our subject, our students catch on to this quickly, and take our lead. We must, therefore, constantly guard against this, and if we are uninterested or burned out, consider another subject for our teaching focus.

*Authority.* The authors define this element as “legitimate influence over others,”<sup>2</sup> and distinguish it from mere power because, unlike power,

“ We must convey the love of learning to others, even if the subject we teach is not captivating on its own. ”

<sup>1</sup> James M. Banner and Harold C. Cannon, *The Elements of Teaching* 1 (1999).

<sup>2</sup> *Id.* at 21.

“When we get a note from a student at the end of the year saying that we were ‘demanding but fair,’ we know that we have done well in maintaining order.”

authority is reciprocal, and depends upon our students giving it to us, as well as in our earning it. Authority in the classroom comes from showing a seriousness of purpose, providing an edifying example, and maintaining a proper distance between teacher and student. While acknowledging that young teachers should not be expected to possess the authority of more seasoned colleagues, they can (and must) be able to make clear to their students that they know how to lead them, and to inspire them to believe that it will be rewarding and educational to follow them.

*Ethics.* The subject of this chapter is, at first blush, no stranger to a law teacher. But by ethics here the authors mean that teaching requires “student-centered” ethics at all times. “If the good of our students is not the focus of our attention, they cannot be taught, and are unlikely to learn.”<sup>3</sup> What is hard about this, for all of us, is that if students are the focus of our attention, then we are not, and this self-denial is difficult. But it is required. We must be always attentive to our students’ welfare, and be willing to repeatedly make considerable gifts of energy and time to meet their needs.

*Order.* The element of order requires both authority and leadership. We must have earned our authority over the classroom, and we must be good leaders of it. We are good leaders of a classroom when we are clear with our students about the purpose of each lesson, and when our teaching has direction and momentum. We also must maintain a tranquil and safe environment for learning, and if necessary, employ judicious discipline to do so. When we get a note from a student at the end of the year saying that we were “demanding but fair,” we know that we have done well in maintaining order.

In legal writing, our subject is made up of many components: legal research, citation, memo form, brief writing, and oral argument, among others. It is especially important, then, to be disciplined about maintaining order in the course, with a

detailed and dependable syllabus that clearly explains the many components of the course and how they interrelate.

*Imagination.* Effective teaching requires great imagination—not occasionally, but nearly continuously. Good teachers must be able to imagine themselves in their students’ place and to help their students to imagine being in a place of greater knowledge and understanding than they may be at the time. In describing the element of imagination, the authors quote the 19th-century Harvard psychology professor William James, from his *Talks to Teachers*: “In teaching you must simply work your pupil into such a state of interest in what you are going to teach him that every other subject of attention is banished from his mind; then reveal it to him so impressively that he will remember the occasion to his dying day; and finally fill him with devouring curiosity to know what the next steps in connection with the subject are.”<sup>4</sup> There are days, of course, when this seems unattainable. But if we can have the requisite imagination to anticipate the needs and reactions of our students, if we can imagine more engaging and effective ways of presenting our subject, if we can be creative and excited about our teaching, then we will go a long way toward achieving James’ lofty goal.

*Compassion.* The sort of “feeling” that is embodied in the element of compassion is generally frowned upon in teaching, certainly in law school teaching. But the authors point out that the original Latin components of the English word literally mean “suffer with,” and thus compassion is inherent in effective teaching, because we must share our students’ feelings of angst, difficulty, and distress in learning what we are teaching them. If we do not, we cannot reach them, and if we cannot reach them, we cannot effectively assess their particular learning requirements.

In one of the more striking paragraphs in the book, the authors underline the importance of this

<sup>3</sup> *Id.* at 35.

<sup>4</sup> *Id.* at 67.

element: “Anyone contemplating teaching as a profession should consider compassion as a measure of suitability. The physical and emotional toll exacted by teaching will be too much for those lacking it; better by far that they leave the care of the ignorant multitudes to those who find their difficulties and their hunger to learn innately compelling. Those who experience difficulty in accepting the place of compassion in the classroom . . . or who prefer their working lives to be exclusively intellectual should avoid teaching altogether and probably consider devoting themselves to less demanding occupations, such as politics or crime.”<sup>5</sup>

I am often guilty of saying in class: “C’mon folks, this is easy.” Of course what I mean is to encourage my students to put down their fear of the subject, and embrace it as eminently learnable. But a more compassionate teacher says instead: “Yes this is difficult; I had a hard time learning it too. But let me see if I can think of another way to teach it so it seems easier to understand.”

*Patience.* In the view of the authors, it is this element above all others that invites and supports learning the most. Patient teachers expect no more from their students than they are capable of, and they give them the time and space to learn, and make allowances for the folly of youth. Patient teachers are willing to “suffer fools gladly.”

Let’s face it, our charges are often young, and impetuous, and focused on many other things before learning what we are teaching them. They try our patience every day, and sometimes we are tempted to scold them. This chapter reminded me of a student I had in class last year who, at the beginning of the year, would just shout out in class when she felt like saying something. Often, it was not a constructive contribution to the class. Many times I was tempted to call this student out, and disabuse her of the notion that this was appropriate behavior. But I chose not to, dealt with her

comments respectfully, and felt I was still able to maintain order. I calculated that if I called her out, I might lose her for the semester, and that she would probably figure it out on her own. As the semester wore on, the comments subsided. At the mid-year, I gave her a grade she said she had never received before, and she was upset. By the end of the year, she came to see me, thanked me for “teaching her so much this year,” and gave me a very thoughtful present.

*Character.* If we are authentic in our character, willing to show our humanity, and admit errors, we will be more effective teachers. What we bring to the classroom from our own lives outside of class should not be kept from students if it supports our authenticity. We must be sociable and approachable, while still maintaining the appropriate distance.

I think the authors of this book would say that the “Kingsfield” style of law school teaching—if it ever truly existed—is counterproductive and ultimately ineffective. While it might, for a time, engender enough fear to encourage marginally better class preparation, the ultimate cost in lack of humanity would eventually turn off more students than it would turn on. As the authors point out, “After all, it was with music and the eccentric costume of a jester that the Pied Piper made all the children of Hamelin follow him.”<sup>6</sup>

*Pleasure.* The final element recognizes that many teachers teach because it gives them a particular kind of joy and satisfaction that is hard to find elsewhere. Indeed, the authors encourage this by stating that teaching should be work as well as play. “The classroom should be a place for light hearts as well as serious minds.”<sup>7</sup> Pleasure should also be felt by students, since effective teachers are able to create classes where students enjoy learning. While this is not always easy, if students can see that their work is leading to a greater understanding of the

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<sup>5</sup> *Id.* at 89.

<sup>6</sup> *Id.* at 107.

<sup>7</sup> *Id.* at 121.

“ [W]hat makes the art of excellent teaching so challenging is that all of the elements they have outlined must be employed not singly or in pairs, but all at once.”

world around them, then it can be quite pleasurable for them, as well as for us.

When teaching is pleasurable for us, we should not hesitate to tell our students this. Several times a year I find myself behind the podium about to start a class with this question virtually bursting out of my head: “How did I get so lucky as to be here with you today?” And so I ask the question out loud—not expecting an answer, of course, but they get the message. I really am glad to be there.

In the book’s afterward, the authors note that while they have separated these nine elements in the writing of this book, they acknowledge that indeed they overlap and interrelate. As they point out, what makes the art of excellent teaching so challenging is that all of the elements they have outlined must be employed not singly or in pairs, but all at once. They admonish teachers not to be indifferent to any one of the elements, any more than they can be indifferent to “the minds and characters of each student they teach.”<sup>8</sup>

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## Another Perspective

“I believe that the most critical skills that teachers need are related to what is referred to as ‘good teaching’—the ability to listen, to demonstrate respect for the student, to model professionalism in the level of preparation and treatment of the material, and to not take yourself so seriously. But most importantly, the teacher must be willing to engage in some risk taking to enhance and enrich the students’ learning experience.”

—Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability into Law School Teaching*, 32 *Willamette L. Rev.* 541, 543 (1996).

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<sup>8</sup> *Id.* at 137.

# Aristotle’s Tried and True Recipe for Argument Casserole

By Kristen Robbins Tiscione

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I thoroughly enjoyed John Schunk’s article—“What Can Legal Writing Students Learn from Watching *Emeril Live*?”—in the Winter 2006 issue.<sup>1</sup> We are big Emeril fans in our family, and we too have heard him distinguish the art of baking casseroles from the art of baking cakes. Baking a casserole is more art than science, because although there are basic ingredients, a creative cook can vary the recipe to please a variety of palettes. Baking a cake, on the other hand, is more science than art, because if the cook eliminates a necessary egg or adds too much baking powder, the cake could fail. That legal writing is a casserole and not cake is an apt metaphor. In his article, Professor Schunk has captured the palpable tension our first-year students feel between wanting to be creative, and at the same time, wanting to do it the “right” way. As Schunk notes, in their quest for concrete knowledge, first-year law students often latch onto the idea that legal writing is a cake, and all they need to do is memorize and follow the recipe.<sup>2</sup>

What makes the metaphor particularly delicious is that it turns Plato’s criticism of rhetoric on its head. Plato, who despised rhetoric for its ability to manipulate audiences and its inability to yield absolute truth, described rhetoric as the counterpart to cookery, the false art of medicine.<sup>3</sup>

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<sup>1</sup> John D. Schunk, *What Can Legal Writing Students Learn from Watching Emeril Live?*, 14 *Perspectives: Teaching Legal Res. & Writing* 81 (Winter 2006).

<sup>2</sup> As first-year students at Georgetown become increasingly more accomplished in terms of undergraduate performance and Law School Admission Test (LSAT) scores, their level of anxiety in trying to “get it right” seems to increase as well.

<sup>3</sup> Plato, *Complete Works, Gorgias*, 462b–466a (John M. Cooper ed., 1997).

Just as cookery appeals to earthly desire, rhetoric appeals to audience appetites. According to Plato, cookery was the false art of medicine, and rhetoric was the false art of dialectic (i.e., reason or logic).<sup>4</sup> However, instead of rejecting Plato’s idea that rhetoric is akin to cookery, Schunk embraces it. Just as people judge a cook’s skill by the taste of her cooking, an audience judges the persuasiveness of an argument by its ability to satisfy.

The idea that legal writing is a process of combining ingredients to achieve optimal taste can be traced back to Aristotle’s *Rhetoric* (c. 333 B.C.).<sup>5</sup> Aristotle defined rhetoric as the process of “discovering the means of persuasion for every case ... that is offered.”<sup>6</sup> Much as a cook shops for the freshest and finest ingredients, the legal writer must discover the best and most persuasive arguments and combine them in order to please her reader. There are basic recipes with which the legal writer is familiar, having used them time and time again. If internal memoranda are lasagna, briefs might be moussaka. Like lasagna, moussaka calls for ground beef and tomatoes, but adding eggplant and cinnamon makes it taste nothing like lasagna. As legal writers gain confidence, they become more adventurous in varying these recipes. Lasagna often contains ground beef, but an experienced cook might substitute lamb and add olives in order to accommodate a special taste.

The process that a cook engages in—shopping for and preparing the ingredients, assembling and baking the casserole, and then presenting it to a discriminating audience—is like the legal writing process. Aristotle first articulated the process of formulating arguments in *Rhetoric*, much of which

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<sup>4</sup> *See id.*

<sup>5</sup> *See, e.g.,* Lane Cooper, *The Rhetoric of Aristotle* (1932).

<sup>6</sup> *Id.* at 1355b.

“Aristotle defined rhetoric as the process of ‘discovering the means of persuasion for every case ... that is offered.’”

“By the first century B.C., teachers of rhetoric had divided the process into five canons: invention, arrangement, style, memory, and delivery.”

is devoted exclusively to forensic rhetoric, Aristotle’s term for legal argument.<sup>7</sup> By the first century B.C., teachers of rhetoric had divided the process into five canons: invention, arrangement, style, memory, and delivery.<sup>8</sup> Greek and Roman society revolved around the spoken word, but most of the process Aristotle envisioned then is still relevant. Because the vast majority of legal argument today is written, the canons of memory and delivery do not apply.

### Invention

Aristotle’s term for invention, the process of gathering and preparing arguments, was *heuresis*, meaning to invent or to discover.<sup>9</sup> Aristotle believed there were two types of arguments: artistic and non-artistic. Only artistic arguments are actually invented. Non-artistic arguments exist outside the creative process and are simply used.<sup>10</sup> A cook’s non-artistic arguments come from the utensils she uses. In order to prepare lasagna, for example, she must first select the items she needs, such as mixing bowls and wooden spoons, but she does not create them; they are already in her kitchen. So too, the legal writer must gather her utensils. The legal writer’s non-artistic arguments come from the law itself—constitutions, statutes, regulations, and case law. Like a cook who determines for each casserole which utensils she needs, a legal writer determines what law applies to a given dispute.

As for artistic arguments, Aristotle would say the legal writer must discover them. Much as a cook searches for the best ingredients, the legal writer must seek out the best arguments. Aristotle believed most speakers needed a storehouse of arguments—

he called them *topos* or topics—where they could go to get ideas. Although today we think of topics as subjects, to Aristotle, a topic was a place:

a place in which the hunter will hunt for game. If you wish to hunt rabbits, you go to a place where rabbits are; and so with deer or pheasants. . . . And similarly with arguments. They are of different kinds, and the different kinds are found in different places, from which they may be drawn.<sup>11</sup>

For ideas applicable to all kinds of argument, a speaker could go to the common topics.<sup>12</sup> For ideas relating to political, legal, and ceremonial argument, one went to the special topics. For lawyers, the special topics included motive, state of mind, the nature of wrongdoers as well as victims, and the magnitude of the alleged wrong.<sup>13</sup>

Like a cook, who shops for the tomatoes she thinks are best for her lasagna, the legal writer must choose the arguments she uses with care. Although she is bound by controlling authority and *stare decisis*, she often has great leeway in defining the issues, articulating the “rule” of law, and selecting the most persuasive interpretation of a statute or application of a rule of law. Both primary and secondary sources serve as the special topics for her ideas. The “topics” of the West Key Number System®, legal encyclopedias, and *American Law Reports*, for example, categorize areas of the law in much the same way Aristotle’s *Rhetoric* categorizes human behavior. The task then falls to the legal writer to select the best cases—in her opinion—to use for analogy and to anticipate those cases her opponent is

<sup>7</sup> See Cooper, *supra* note 5, at Book I, Chapters 10, 12–15.

<sup>8</sup> Edward P.J. Corbett, *Classical Rhetoric for the Modern Student* 22 (3d ed. 1990). See, e.g., Cicero in *Twenty-Eight Volumes*, Vol. 4 *De Oratore*, Book I, §§ 137–147 (E.W. Sutton trans., 1967) and Quintilian, *Institutio Oratoria Books 3–8* (Donald A. Russell trans. & ed., 2001).

<sup>9</sup> The past perfect form of *heuresis* is *eureka*, meaning “to have found it.” *The Oxford Dictionary and Thesaurus* 496 (Am. ed. 1996).

<sup>10</sup> See Corbett, *supra* note 8, at 22. Aristotle’s examples of non-artistic arguments were those derived from laws, witnesses, contracts, tortures, and oaths. See Cooper *supra* note 5, at 1375a.

<sup>11</sup> See *id.* at Introduction, xxiv.

<sup>12</sup> Aristotle articulated four types of argument applicable to all situations: (1) the possible and impossible (e.g., “if two things are alike, and one is possible, then so is the other”), *id.* at 1392a, (2) past facts (e.g., “If one thing (B) that naturally follows another (A) has occurred, then the antecedent (A) has occurred.”), *id.* at 1392b, (3) future fact (e.g., “If the clouds are gathering, it is likely to rain”), *id.* at 1393a, and (4) size or degree (e.g., in the context of legal argument, the lawyer tried to prove that the justice or injustice of the case is “great or small, whether absolutely or in comparison with other cases.”), *id.* at 1359a, 1393a.

<sup>13</sup> See *id.* at Book I, Chapters 10–14.

likely to rely on. In this way, the skilled legal writer prepares to predict or argue for a certain outcome. The first milestone for a beginning legal writer comes with the recognition that even at this stage in the process, she has a great deal of discretion.

Once a cook selects and buys her ingredients, she must prepare them: chop vegetables, sauté beef, make the tomato sauce, and pre-boil the pasta. Similarly, once the legal writer collects her ideas, she must begin to prepare her arguments. According to Aristotle, artistic arguments can be subdivided into three types: appeals to reason (*logos*), appeals to the character of the speaker (*ethos*), and appeals to emotion (*pathos*).<sup>14</sup> “[T]o master all three obviously calls for a man who can reason logically, can analyze the types of human character, along with the virtues, and, thirdly, can analyze the emotions—the nature and quality of each several emotion, with the means by which, and the manner in which, it is excited.”<sup>15</sup> The end of all types of argument is persuasion. Aristotle said that when appealing to reason, deduction and induction are the appropriate means to that end.<sup>16</sup> As in classical rhetoric, the basic model for legal reasoning is deduction: rule, application, and conclusion. Legal audiences expect this mode of reasoning regardless of the content of the arguments. It mirrors the syllogism in its attempt to prove the existence of a fact or the rectitude of a given position, but it differs in that it cannot prove these things with certainty.<sup>17</sup> The premises on which legal writers rely are rarely, if ever, absolutely true, and therefore, a legal writer’s conclusions are never more than probable.

Inductive reasoning appears most often in legal writing in the form of case analogies and distinctions. Just as a scientist accumulates evidence sufficient to induce the existence of a fact,<sup>18</sup> a legal

writer accumulates similarities—factual as well as situational—between cases to induce the conclusion that the outcome in both cases should be the same. In order for an analogy to be persuasive, the writer must compare similarities that really matter, and she must not ignore dissimilarities that tend to defeat the comparison.<sup>19</sup> When legal writers distinguish cases, they strive to articulate enough dissimilarities to induce the conclusion that the cases should be treated differently.

### Arrangement

Once the ingredients are prepared, the cook is ready to assemble the casserole. For lasagna, she will follow a generally accepted pattern for arranging the ingredients in the pan: first some sauce, then a layer of noodles, and finally, a layer of the cheeses. A creative cook may take some liberties with this traditional pattern, but if she strays too far from it, the dish will no longer be recognizable as lasagna, and she will disappoint the audience’s expectation. Similarly, the legal writer takes the arguments she has crafted and arranges them in a memo or brief. She too can take creative liberties with the traditional arrangement but, once again, not so many that the audience is no longer sure what has been presented.

Aristotle said that the essential parts of political, legal, and ceremonial argument are the statement (of the issue) and the argument itself (which includes counterarguments).<sup>20</sup> He said that in legal argument, the statement should also include the facts giving rise to the issue.<sup>21</sup> Although he thought that introductions and conclusions were not always necessary, he conceded that speakers often include them. Aristotle said that the function of the introduction is “to make clear the end and object of your work” and “to mak[e] your audience receptive” to your position.<sup>22</sup> The conclusion has

“As in classical rhetoric, the basic model for legal reasoning is deduction: rule, application, and conclusion.”

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<sup>14</sup> See *id.* at 1356a.

<sup>15</sup> See *id.*

<sup>16</sup> See *id.* at 1356b.

<sup>17</sup> See *id.* at 1357a; Corbett, *supra* note 8, at 60.

<sup>18</sup> See Corbett, *supra* note 8, at 68–69.

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<sup>19</sup> See *id.* at 105.

<sup>20</sup> See Cooper, *supra* note 5, at 1414a–b.

<sup>21</sup> See *id.*

<sup>22</sup> *Id.* at 1415a.

“Aristotle said ‘it is not enough to know *what* to say—one must also know *how* to say it.’”

the equally important function of summarizing the argument and making the audience inclined to decide in the speaker’s favor. As to the conclusion, Aristotle said:

(1) You must render the audience well-disposed to yourself, and ill-disposed to your opponent; (2) you must magnify and depreciate [make whatever favors your case seem more important and whatever favors his case seem less]; (3) you must put the audience into the right state of emotion; and (4) you must refresh their memories.<sup>23</sup>

As to refreshing the audience’s memory, Aristotle concluded, “[Y]ou begin by noting that you have done what you undertook to do. So then you must state what you have said, and why you have said it.”<sup>24</sup>

Roman rhetoricians made additions to this basic arrangement that we recognize today. For example, the *Rhetorica ad Herennium*, a well-known treatise on rhetoric whose Latin author remains unknown, divided argument into six parts: introduction, statement of the issue, outline of the argument, the argument itself, counterarguments, and conclusion.<sup>25</sup> The similarity to modern legal writing is striking. A typical memorandum or brief contains five parts: a question presented, summary of analysis or argument, statement of facts, discussion or argument (that includes counterarguments), and conclusion. Although this arrangement often strikes the novice legal writer as inflexible and dull, classical rhetoricians did not view it as a precise formula.<sup>26</sup> Cicero, for example,

said that a speaker must “manage and marshal his discoveries, not merely in orderly fashion, but with a discriminating eye for the exact weight of each argument.”<sup>27</sup> Thus several considerations can affect a speaker’s decisions in how to arrange an argument, including the type of speech, the nature of the subject, the speaker’s personality, and the nature of the audience.<sup>28</sup> So too with experienced legal writers, who deviate from the norm, based on their creativity as well as their knowledge of a particular audience’s tastes.

### Style

A cook’s individual style is most apparent in the way she flavors her food. Here she has the most leeway. For lasagna, she must decide, should I add sugar to the tomato sauce to make it less acidic? Should I add nutmeg or cinnamon to give it an exotic taste? Should I add wine to make the sauce richer or water to make it thinner? Just as a cook must decide how to flavor the casserole she is making, the legal writer must decide what words to use to convey the arguments she has invented. Aristotle said “it is not enough to know *what* to say—one must also know *how* to say it.”<sup>29</sup> He emphasized the need for a speaker to choose a clear style that is appropriate to the circumstances.<sup>30</sup> Because “[n]aturalness is persuasive, [and] artifice is just the reverse,” Aristotle advised speakers to speak naturally and use contemporary language.<sup>31</sup> Cicero expanded on the notion of style and said there are three types—plain, middle, and grand; the speaker’s choice of style depends on her goal. According to Cicero, a speaker should use a plain style for proof (e.g., to teach), a middle style for pleasure (e.g., to entertain), and a grand style for persuasion (e.g., to make a convincing legal argument).<sup>32</sup>

<sup>23</sup> *Id.* at 1419b.

<sup>24</sup> *Id.* Some 2,300 years later, Aristotle’s advice survives today in the form of “tell the audience what you are going to tell them, tell them, and then tell them what you have told them.”

<sup>25</sup> Corbett, *supra* note 8, at 25. See also Cicero, *supra* note 8, at Vol. 2, *De Inventione, Book I*, §§ 20–109 (H.M. Hubbell trans., 1968) and Vol. 4, *De Oratore, Book II*, §§ 307–33; Quintilian, *supra* note 8, at Book 7.10, §§ 10–13.

<sup>26</sup> Classical rhetoricians acknowledged that “on some occasions it was expedient to omit certain parts altogether ... or to re-arrange some of the parts.” Corbett, *supra* note 8, at 25.

<sup>27</sup> Cicero, *supra* note 8, at Vol. 4, *De Oratore, Book I*, § 142.

<sup>28</sup> Corbett, *supra* note 8, at 279.

<sup>29</sup> See Cooper, *supra* note 5, at 1403b.

<sup>30</sup> See *id.* at 1404b.

<sup>31</sup> See *id.*

<sup>32</sup> See, e.g., Cicero, *supra* note 8, at Vol. 5, *De Oratore*, § 69. See also Quintilian, *supra* note 8, at Book 12.10, §§ 58–65.

Novice legal writers struggle most with the concept of style. Although an experienced reader's comments may apply to the argument's substance, students often interpret these as a critique of their personal style and resist suggestions for improvement. The undergraduate writer is so accustomed to writing for the professor she knows, she is frustrated having to learn to write for the audience she does not know. It comes as almost a shock to learn that she must provide proof for her ideas in the form of legal citation. The expectations of the legal audience are thus both foreign and demanding. Not surprisingly, these demands initially hamper style and lead first-year students to believe that legal writing does not allow for creativity.

The legal writer quickly comes to learn that the palette of the modern legal reader is uncomplicated. The taste should be pure, strong, and unmistakable, not muddled by a collision of flavors. Judges, lawyers, and clients hunger for legal writing that is clear and to the point. Less is often more.<sup>33</sup> As Aristotle advised, the legal writer should keep the use of stylistic devices—the spice of writing—to a minimum in order to achieve maximum effect. He admonished speakers to use archaic language and poetic phrases “sparingly and seldom” because they “diverge too far from custom toward the extreme of excess.”<sup>34</sup> As long as the art of the writing “can escape notice” and “the style is clear,” Aristotle would say the legal writer can create “good . . . prose.”<sup>35</sup> In contrast to the grand style of Cicero, the preeminent lawyer and rhetorician of Rome, the plain and unadorned style of Aristotle is the one we teach. We encourage students to use pithy phrases and short sentences to get their point across without being misunderstood. For the most

part, we advise them to avoid elegant variation and passive voice not because it is interesting, but because it leads to confusion. The writer's words, sentence construction, and combinations of sentences can and should be colorful and evocative. Although a writer surely communicates a sense of her style through the selection and arrangement of her arguments, this is where her individual style is most obvious to the reader. These are the spices that add the finishing touch to her creation.

Thus, as Schunk suggests, cookery does resemble the legal writing process. Just as a cook selects the utensils, ingredients, and spices she needs to prepare a casserole, so does the legal writer select the law, arguments, and words she needs to analyze a given issue. Most often, the ingredients a cook uses are hardly unusual; they are readily available on the shelves of her kitchen or grocery store. The casserole she invents, however, can be truly unique and delicious as long as she is willing to treat the process as more art than science. Similarly, legal writers' ideas come from the same readily available sources, but legal writers can distinguish themselves by creating arguments that are not only unique and persuasive but well-suited to their audience's palette. As Chef Lidia Bastianich advises beginning cooks, “Don't become a slave to the recipe. Follow it the first time, yes. But after that, don't worry so much about measuring. Really.”<sup>36</sup>

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“The legal writer quickly comes to learn that the palette of the modern legal reader is uncomplicated.”

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<sup>33</sup> See, e.g., Bryan A. Garner, *Legal Writing in Plain English* (2001); Kristen K. Robbins, *The Inside Scoop: What Federal Judges Really Think About the Way Lawyers Write*, 8 *Legal Writing* 257, 278–81 (2002); Joseph M. Williams, *Style: Ten Lessons in Clarity and Grace* (7th ed. 2002); Richard C. Wydick, *Plain English for Lawyers* (5th ed. 2005).

<sup>34</sup> See Cooper, *supra* note 5, at 1404b.

<sup>35</sup> *Id.*

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<sup>36</sup> Lidia Bastianich, *Let the Recipe Go, but Keep That Spoon*, *Wash. Post*, March 15, 2006, at F1.

# Using the Idea of Mathematical Proof to Teach Argument Structure

“In focusing on proving conclusions, legal writing is in some ways more comparable to mathematical writing than literary writing.”

By Mary Dunnewold

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Most legal writing textbooks explain that in the “A” section of the IRAC (Issue, Rule, Application, Conclusion) paradigm, the analysis or argument section, the writer should apply the law to the facts and draw a conclusion. Students are usually advised to do this in a step-by-step manner. But some students need more explicit guidance about what this means and how to actually structure a law-to-facts application on the page in a way that meets the expectations of a legal reader.

In particular, many students, especially those with undergraduate backgrounds in literature or humanities, seem inclined to tell their readers everything they know, providing almost a meditation on the topic, before drawing conclusions. In fact, the conclusions sometimes seem almost secondary to the thought process. In legal writing classes, in contrast, we teach that legal writing is about helping the reader predict an outcome and decide how to proceed. Accordingly, the legal memo should focus on conclusions and omit any information that does not directly support the conclusions. But novice legal writing students don’t necessarily understand how to apply that directive when writing an argument section.

In focusing on proving conclusions, legal writing is in some ways more comparable to mathematical writing than literary writing. Consequently, drawing on the idea of mathematical proof can help students understand how to structure an argument. While many students are inexperienced with sophisticated mathematical thinking, most had some exposure to the idea of mathematical proof in high school geometry. A two-column geometric proof, taught in basic high school geometry, models the thinking that a beginning

legal writer must demonstrate in the A section of the IRAC paradigm.

In a two-column geometric proof, the writer begins with a statement of the “givens” followed by a statement of the proposition to be proven. (A diagram usually precedes the givens to enhance understanding.) Following the “prove” statement, the writer then constructs a two-column proof that looks like this:

| Statements   | Reasons    |
|--------------|------------|
| 1. Assertion | 1. Support |
| 2. Assertion | 2. Support |
| 3. Assertion | 3. Support |

The assertions in the two columns are numbered to correspond to each other, which ensures that each statement aligns with a reason.

So a simple geometric proof looks like this:<sup>1</sup>

Given:

Segment AD bisects segment BC.

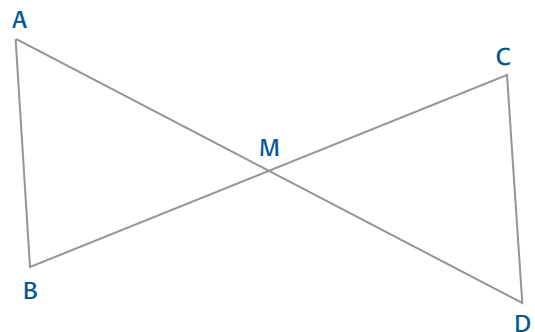
Segment BC bisects segment AD.

The definition of “bisect.”

The SAS theorem.

Prove:

Triangles ABM and DCM are congruent.



<sup>1</sup> See <[www.sparknotes.com/math/geometry3/geometricproofs/section1.html](http://www.sparknotes.com/math/geometry3/geometricproofs/section1.html)> for the basic proof idea, which has been modified here for explanatory purposes with the assistance of Professor Jeffrey Ondich, Carleton College Department of Mathematics and Computer Science.

## Statements

## Reasons

|   |  |
|---|--|
| 1. Segments AM and DM are congruent.    | 1. Segment AD bisects segment BC, and M is the point where segments AD and BC intersect (given). Thus, by the definition of “bisect,” AM and DM are congruent.                     |
| 2. Segments BM and CM are congruent.    | 2. Segment BC bisects segment AD, and M is the point where segments AD and BC intersect (given). Thus, by the definition of “bisect,” BM and MD are congruent.                     |
| 3. Angles AMB and DMC are congruent.    | 3. AMB and DMC are vertical angles, by definition. Thus, by the Vertical Angles Theorem, AMB and DMC are congruent.  |
| 4. Triangles ABM and DCM are congruent. | 4. Statements 1, 2, and 3 show that our diagram satisfies the hypotheses of the Side-Angle-Side Theorem. Applying the SAS Theorem, we may conclude that ABM and DCM are congruent. |

Legal writing students can use this geometric proof paradigm to help them structure their arguments. First, the “given” section parallels the earlier section of the memo that establishes the relevant case facts and the applicable rule.<sup>2</sup> The “given” section that precedes the two-column proof may be quite long in a legal argument, and students need not include all the details in the diagram. But they should understand that the information in their memo that precedes the argument section is “given”—the groundwork for the argument.

Following the “given” section, students are next required to identify the main proposition they intend to prove. This is essentially the thesis sentence of their argument section. They should structure this main idea around the “phrase that pays”<sup>3</sup> central to their legal issue—the main concept at issue. Once the main proposition is stated, the two-column box is filled in. Assertions that support

<sup>2</sup> While the substance or the meaning of the applicable rule is often not a “given,” and in fact, must be carefully constructed by synthesizing a collection of cases, we’ll assume that once constructed, the rule is a “given” for purposes of making an argument. Similarly, in geometry, certain facts are “given,” but so are certain theorems and definitions. Theorems and definitions have at some point been proven or established by someone, just as the legal rule has been established by someone.

<sup>3</sup> The legal writing community is indebted to Professor Mary Beth Beazley of Ohio State University for the invention of this handy phrase. See her book, *A Practical Guide to Appellate Advocacy* (2002), for more discussion of the “phrase that pays” idea.

the “prove” statement go in the “statements” box, and reasons that support each assertion go in the “reasons” box, with corresponding numbers.

For example, consider the issue of whether an assault conviction 20 years ago, which arose out of an arrest during a political protest, shows that a bar applicant lacks good moral character. A two-column proof on this issue might look something like this:

Given:

(1) To determine whether applicant has necessary good moral character for admission to the bar, court focuses on applicant’s overall record of conduct and whether it justifies the trust of clients and the court; court will look at applicant’s candor and remorse related to conduct, age at time of conduct, recency of conduct, seriousness of conduct, factors underlying conduct, and effect of conduct; and

(2) the application of this general rule in *Smith*, *Jones*, and *Johnson* cases; and

(3) the facts of our case.

Prove:

Our client’s past criminal conviction does not show that she lacks good moral character, and the client should therefore be admitted to the bar.

“Legal writing students can use this geometric proof paradigm to help them structure their arguments.”

“Students should follow the principle that each of the ‘statements’ in the statement column must relate back to the rule in the ‘givens’ section.”

| Statements  | Reasons   |
|---|---|
| 1. Client was candid about conviction on bar application and at all other times.                          | 1. Facts show client revealed conviction immediately both on bar and to dean of law school. This is similar to applicant in <i>Jones</i> and different from applicant in <i>Smith</i> .   |
| 2. Factors underlying client’s conviction excuse it.  | 2. Facts show that client’s conviction arose from actions taken during a political protest, engaged in because of sincerely held moral beliefs. Applicants who acted for similar reasons in <i>Jones</i> and <i>Johnson</i> were still admitted to bar. |
| 3. Conviction was not recent.   | 3. Facts show that conduct occurred 20 years ago. In <i>Smith</i> , “recent” criminal conduct occurred in the past few years and reflected current moral character. In <i>Jones</i> and <i>Johnson</i> , conduct was 10 or more years in past.          |
| 4. Therefore, past criminal conviction does not show that client lacks good moral character. <sup>4</sup> | 4. Factors that court considers to determine effect of past acts on current moral character show current good character.  |

Students should follow the principle that each of the “statements” in the statement column must relate back to the rule in the “givens” section. That is, the statements should essentially be assertions about whether a particular aspect of the rule is satisfied or not. Further, the corresponding “reasons,” which explain why an assertion is satisfied, also rely on given information, such as the facts from our case and other cases. So the diagram can help students see that their arguments must rely on the information already presented, a point some students have trouble grasping.

Once students have the two-column proof diagram sketched out, they can turn the diagrammed information into a prose argument section by turning each statement/reason pair into a paragraph, beginning the entire section with the “prove” statement refashioned as the thesis sentence. To accomplish this, they should follow these steps:

1. Set out the “prove” statement, framed around the phrase that pays or main legal idea. This should be one grammatically complete sentence, the thesis sentence, and should refer explicitly to the client.
2. Set out one of the “statement” sentences as a complete, grammatical sentence. This sentence should assert a position on one of the considerations identified in the “given” rule section.
3. Provide reasons why the supporting proposition is true, usually in the form of elaboration on the facts and/or comparison of our case facts to reported case facts described in the A section. This may take several sentences and may involve more than one case comparison.
4. Draw a conclusion.
5. Repeat steps 2 through 4, in a new paragraph, for each supporting assertion you want to prove so as to support the larger main proposition. This may result in several paragraphs.
6. Repeat steps 1 through 5 for the counter analysis.

The argument section then may look like this:

*Ms. Sanders’ criminal assault conviction does not demonstrate that she currently lacks good moral character, thus she should be admitted to the Minnesota Bar. First, Sanders has been completely candid about her actions. Like the applicant in*

<sup>4</sup> For the sake of brevity, this argument does not exhaustively apply all aspects of the rule set out in the “givens” section, which a more thorough argument might do.

Jones, who was forthcoming about his conviction with the law school dean, Sanders fully reported all the required information to her law school before admission and to the Board on her application. Thus, her behavior also contrasts with that of the applicant in Smith, whose attempts to hide her conviction raised questions about her honesty.

Further, factors underlying Sanders' conduct show that her conduct does not reflect a general lack of good moral character. Sanders had good intentions when she engaged in the conduct that led to her assault conviction; she was protesting weapons production, and her protest was based on her Quaker religious beliefs. Like the applicant in Jones, who engaged in union strikes to change working conditions he sincerely objected to, Sanders sincerely believes that war is wrong and her protest activities arose from that belief. Thus, her conduct is also like the applicant's conduct in Johnson, whose convictions for trespassing and disturbing the peace all arose from his moral conviction that racial discrimination is wrong. Since both the applicants in both Jones and Johnson were found to have the requisite moral character, Sanders should also be found to have good moral character.

Sanders' actions also occurred many years ago, when she was much younger, like the activities of the applicants in Jones and Johnson. Like Jones, in particular, who attended law school as an older person with a history of protest activities, Sanders is attending law school at a time when her protest-related activities leading to arrest are far behind her. While she has not given up protesting in general, her record in the past 15 years, like Jones' record in the decade before he entered law school, casts no doubt on her character. In contrast, in Smith, the applicant's activities occurred just months before she entered law school. Therefore, Sanders' past actions do not reflect on her current good moral character and she should be admitted to the bar.

The two-column proof diagram can help students who process information visually or who have a mathematical background to more readily see argument structure. It can also help students understand that a legal argument is a system of ideas logically related to each other in a particular way, not a meditation on everything they have learned about a topic. Of course, students must continue to develop their written argument skills so they can make increasingly sophisticated legal arguments. But early in the learning process, the geometric proof diagram can help them organize their argument discussion logically.

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“The two-column proof diagram can help students who process information visually or who have a mathematical background to more readily see argument structure.”

## Learning the Art of Rewriting and Editing— A Perspective

By Brooke J. Bowman

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*“There is no such thing as good writing. There is only good rewriting.”<sup>1</sup>*

*“The art of writing is rewriting.”<sup>2</sup>*

When I was first approached to write this column on editing, I wondered how I would even begin to write the column because I feel that I am still learning the art of editing. The second challenge was to put this “art” into words. Editing involves practice, and I believe that in order to become a good self-editor, a writer must first know his or her strengths and weakness, and second, have an opportunity to edit other people’s work. My perspective on editing has developed over years, and my editing strategies continue to evolve and change. This column discusses how I approach the task of editing and how I teach my students to approach editing.

As legal research and writing (LRW) professors, it is our responsibility to teach many of the fundamental skills that law students need to practice law: research, analysis, writing, attribution, and oral advocacy.<sup>3</sup> Typically, you will not find rewriting and editing listed as skills that we need to teach our students because rewriting and editing are incorporated into the skill of writing. But that does not diminish the importance of rewriting and editing. Editing is an important part of both writing and oral advocacy. We do not train our

students to stand in front of a panel of judges and purposely say, “Excuse me, your honors, I meant to discuss the rule of law from the following case and not the case I just discussed. . . .” Preparation before an oral argument, by writing the memorandum of law or appellate brief, prepares the student to present the argument clearly and completely. The skills of research, analysis, attribution, and oral advocacy all find their basis in writing. And the goal in legal writing is to present the LRW professor, supervising attorney, opposing counsel, or judge with a well-written, well-edited document. So as we are teaching the students how to write, how do we teach them the skill of editing?

Writing is not a linear process.<sup>4</sup> There is not one point at which writing stops and editing begins. Each stage of the writing process discussed below involves different strategies, but there is no ordered list of steps to take. The writer’s strategies may vary according to the writer’s strengths and weaknesses. The most difficult stages occur at the “end” of the writing process, the revision and polishing stages,<sup>5</sup> and students need to understand the importance of these last two stages. The polishing stage is especially important because it is before this stage (after the revising stage) that the writer may think that that he or she is done.<sup>6</sup> If the students understand the strategies in the writing process, we can help them to see the importance of editing, because “readers expect, even demand, a final copy that is clean and correct in every way.”<sup>7</sup>

<sup>1</sup> Justice Louis Brandeis (quoted in Richard K. Neumann Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* 61 (4th ed. 2001)).

<sup>2</sup> Steven D. Stark, *Writing to Win: The Legal Writer* 49 (1999).

<sup>3</sup> Ralph L. Brill et al., *Sourcebook on Legal Writing Programs* 9–33 (1997).

<sup>4</sup> E.g., Christopher M. Anzidei, *The Revision Process in Legal Writing: Seeing Better to Write Better*, 8 *Legal Writing* 23 (2002).

<sup>5</sup> E.g., Susan M. Taylor, *Students as (Re)visionaries: Or, Revision, Revision, Revision*, 21 *Touro L. Rev.* 265, 266 (2005).

<sup>6</sup> Deborah E. Bouchoux, *Aspen Handbook for Legal Writers: A Practical Reference* 206 (2005) (“[O]ne of the most difficult writing tasks begins only when most writers think they have finished a project.”)

<sup>7</sup> Andrea A. Lunsford, *The St. Martin’s Handbook* 32 (5th ed. 2003).

“Writing is not a linear process. There is not one point at which writing stops and editing begins.”

## 1. Writing Process

In the first LRW course at Stetson University College of Law, the LRW professors explain to the students that there are four stages in the writing process: prewriting, drafting, revising, and polishing. The professors present the process early in the semester, and the key is to revisit the process throughout the semester as the students are working on written assignments.

*Prewriting* involves reviewing the problem, identifying search terms, developing a research plan, and beginning the initial research. This is the planning stage in which the writer determines the purpose of the document and who the audience is, and begins to brainstorm about the issues and arguments. At this point, some writers plan by outlining.

The *drafting* stage involves getting words down on paper, reevaluating and revising the research plan, and continuing to conduct additional research. This is the exploration stage in the writing process in that as the writer begins composing and getting words down on paper, the writer is thinking about what he or she already knows and what information he or she still needs to learn through research. Drafting involves discovering more about the topic<sup>8</sup> and coming up with new ideas.<sup>9</sup> The writer should also evaluate his or her research to determine the best sources to use to support the analysis. Notice, I said “evaluate” the sources. Students have a tendency to want to put “perfect” citations into the document during the drafting stage. It would be a shame to put the citations in perfect form at this time, and end up deleting the case and arguments in the next stage of the process, the revising stage. The goal during the drafting stage “is not a final copy.”<sup>10</sup> This is very difficult for law students to understand. Yes, the writer should continue to conduct research (continuing one of the strategies discussed in the previous stage), but

the writer should not be concerned with minor nitpicky details (sentence structure, word choice, punctuation/grammar, or citation) at this point in the writing process, because if the writer starts editing before the revising stage, the writer will find that it is very difficult to remove or delete sections, paragraphs, or sentences, which is what is involved in the next stage.<sup>11</sup> There is a time for attention to details. Right now, the writer should be trying to get all ideas down on paper, and should try to not stop drafting in order to make changes to sentences, phrases, or words.

The next two stages—revising and polishing—are challenging for the new LRW students because the students do not see revising and editing as two separate stages,<sup>12</sup> which is why I developed a visual aid that I use in my LRW classes, training sessions for student teaching fellows,<sup>13</sup> classes for students writing scholarly papers for seminar classes, and law review new associate training.<sup>14</sup> I also point out to students that the revising and editing stages take time. A first-year, non-LRW professor once told me that the writing process took him as long as the time he spent researching, and I agree. In fact, I would argue that revising and polishing a document take almost as long as the prewriting and drafting stages. In fact, I stress with the students that it is important to set the document aside after drafting before revising, in order to allow the writer to look at the document through new eyes. By setting the document aside, the writer will be able to revise and polish more effectively and efficiently.

The *revising* stage involves evaluating and reviewing the content or substance of the document, focusing on the “big picture,” and verifying that the document flows in a logical

“A first-year, non-LRW professor once told me that the writing process took him as long as the time he spent researching, and I agree.”

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 33.

<sup>10</sup> *Id.*

<sup>11</sup> Muriel Harris, *Prentice Hall Reference Guide to Grammar and Usage* 14 (5th ed. 2003).

<sup>12</sup> Terri LeClercq, *Re-Vision Before Editing*, 49 *Tex. B.J.* 838, 838 (1986).

<sup>13</sup> A teaching fellow is a second- or third-year student who is interviewed, hired, and trained by the Research and Writing Department to work with first-year students on their writing assignments.

<sup>14</sup> See *infra* sec. 2.

“I use a visual aid in many of my classes to illustrate the different strategies that occur during the revising and polishing stages of the writing process.”

manner. This is the rewriting stage. The writer must think about the document as a whole and how the information is presented in the document. (The initial question should be, “Does the document contain all the required information?”) The writer should rethink the organization of the entire document, as well as the organization within each section of the document. In addition, the writer should review the arguments and determine whether each argument is properly supported. The writer should question whether he or she has misrepresented facts or overstated authority. At this point, the writer should “re-think the draft from the perspective of the audience,”<sup>15</sup> and determine whether the document is clear, coherent, and complete. Basically, revising is “re-seeing”<sup>16</sup> the document. The writer must add, change, delete,<sup>17</sup> or shift information within the document, before he or she can start the polishing stage or the “repair” stage.

*Polishing* involves repairing or adding the finishing touches—editing and proofreading. The goal in polishing is “to ensure [the] document is correct in all aspects.”<sup>18</sup> The polishing stage involves a careful and attentive eye to details because this attention to detail lends credibility to the writer.<sup>19</sup> The students

should learn that there is a difference between editing and proofreading the document. Editing involves examining the mechanical details of the document—sentence length; correctness in grammar, spelling, word choice, citation form, and punctuation—whereas proofreading involves finding all the typographical errors or imperfections. Editing involves “clarifying, strengthening, and condensing the communication,”<sup>20</sup> and proofreading involves eliminating all the errors and other obvious mistakes. Proofreading “involves a special kind of reading: a slow and methodical search for misspellings, typographical mistakes, and omitted words.”<sup>21</sup> It is important to edit before you proofread.<sup>22</sup> But it is important to point out to the students that changes made during the polishing stage, specifically when editing, may cause the writer to go back to the revising stage to determine whether the changes affected the substance or organization of the document.

## 2. Visual Aid

As discussed above, I use a visual aid in many of my classes to illustrate the different strategies that occur during the revising and polishing stages of the writing process. The visual is a depiction of what I described above. The visual aid seems to help students separate the revising strategies from the polishing strategies.<sup>23</sup>

I first developed this visual aid in an attempt to help myself when editing, as a self-editor and an editor of others’ work. In order to understand my editing strategies, you will need to know that I love citations! Because one of my “weaknesses” as a writer and editor is that I gravitate toward citations, I knew that I needed to change my perspective when editing. Therefore, my goal in designing this chart was to help me put the revising and polishing strategies into perspective. I saw this problem (students gravitating toward citations or other mechanical details) in my

<sup>15</sup> LeClercq, *supra* note 12, at 842.

<sup>16</sup> “Because writing is a recursive process that calls upon the writer to ‘see’ many things at once, revision must serve more than the last stage on an assembly line where the writer corrects errors. Instead, revision, literally ‘re-vision,’ is a process by which the writer becomes the reader with new eyes in order to see in his [or her] work what the audience will see.” Taylor, *supra* note 5, at 274–275 (footnotes omitted).

<sup>17</sup> Deleting information that you have written is a very difficult task as well. “It takes a mature writer to realize that some of the information that [he or she has] included is unnecessary.” Donald H. Graves, *A Fresh Look at Writing* 221 (Heinemann 1994).

<sup>18</sup> Bouchoux, *supra* note 6, at 206.

<sup>19</sup> Toni M. Fine, *Legal Writers Writing: Scholarship and the Demarginalization of Legal Writing Instructors*, 5 *Legal Writing* 225, 239 (1999) (“The ‘lack of careful scrutiny required for a credible legal analysis has a subconscious impact on the reader.’” *Id.*); John D. Ramage, John C. Bean & June Johnson, *The Allyn & Bacon Guide to Writing* 733 (3d ed. 2003) (“Attention to details is essential because it ‘reflects directly . . . on the reader’s image of you as a writer.’”). One misconception that first-year law students have is that attention to details does not matter. Mark Cooney, *Get Real About Research and Writing*, 32 *Student Law* (May 2004) (available at <[www.abanet.org/lstd/studentlawyer/may04/get-real.html](http://www.abanet.org/lstd/studentlawyer/may04/get-real.html)>).

<sup>20</sup> Debra Hart May, *Proofreading Plain & Simple* 45 (1997).

<sup>21</sup> Diana Hacker, *Rules for Writers* 29–30 (5th ed. 2004).

<sup>22</sup> E.g., May, *supra* note 20, at 45.

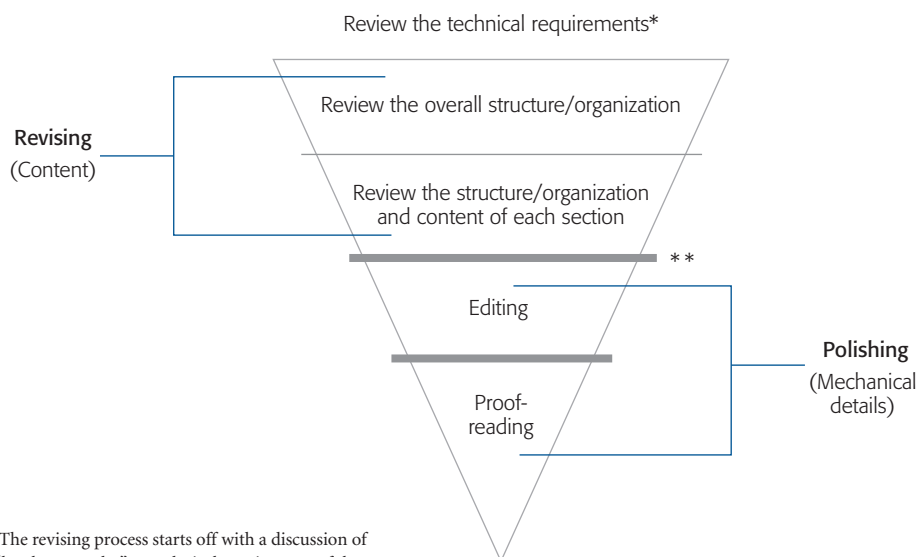
<sup>23</sup> See the visual aid at the end of the article.

LRW class as well, and the chart helped to show the students that they should not worry about the details until after the revising stage of the writing process.<sup>24</sup> Another goal for designing the aid was to get the students to start thinking about every part of the document that they should revise and polish.<sup>25</sup> The goal is to start “big picture,” focusing first on the content and organization, and then to proceed to the sentence-by-sentence, line-by-line, word-by-word review of the document. Hopefully, the students will learn that revising may lead to more drafting, which means that more revising will be necessary later on. Consequently, another benefit of talking about the revising and polishing stages early in the semester would be that the students would learn that writing takes time and rewriting takes even more time.

### 3. Closing Thoughts

The bottom line is that we want students to see the importance of revising (rewriting) and polishing (editing and proofreading) their documents. An artist does not frame his or her painting until the painting is complete; therefore, students should not start revising or polishing until they have a complete section or a complete draft to work with. “Editing is the fine-tuning process of writing.”<sup>26</sup> But more important, “effective writing is a lifetime goal, never a final accomplishment,”<sup>27</sup> which means that the art of rewriting and editing will continue to evolve for every writer.

“The bottom line is that we want students to see the importance of revising (rewriting) and polishing (editing and proofreading) their documents.”



\*The revising process starts off with a discussion of the “local court rules” or technical requirement of the assignment. Actually, I encourage the student to format their documents according to the “rules” before drafting begins—ensuring font, margins, and page numbers are set and any autocorrect features are disabled. But it is always good for the students to reverify that the document is in compliance.

\*\*The thick gray lines indicate that the writer will need to take a break between the revising and polishing stages of the writing process.

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<sup>24</sup> I introduced this visual aid at a presentation at the Legal Writing Institute conference in June 2006.

<sup>25</sup> This visual aid can be used while the class is developing a checklist of items to check in the document that the students have been writing.

<sup>26</sup> Harris, *supra* note 11, at 14.

<sup>27</sup> Ruggero J. Aldisert, *Winning on Appeal: Better Briefs and Oral Argument* 242 (2d ed. 2003).

## What the Best College Teachers Do

By Ken Bain  
Harvard University Press, 2004

### Reviewed by James B. Levy

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We already know that good writers are made, not born. It turns out the same is true of great writing teachers, as well as every other kind of teacher for that matter, according to Professor Ken Bain's recent book, *What the Best College Teachers Do*, winner of the Harvard University Press Award for outstanding book on education.<sup>1</sup> Bain is the director of NYU's Center for Teaching Excellence. His book is the product of a 15-year study in which he and his team sought to understand why some professors become legendary for their teaching ability. Bain wanted to know what these teachers do that the rest of us are not doing, and whether it is possible to learn their secrets in order to improve our own teaching. The book compiles the results of a longitudinal study of more than 60 outstanding college and graduate school professors teaching in a broad range of areas, including law, at a variety of schools, large and small, elite and not-so-elite.

The teachers selected for Bain's study were not those who were merely considered excellent by their home institutions or who received consistently excellent student evaluations. Instead, the study focused on those teachers who are truly outstanding in terms of having a demonstrable impact on student learning. These are teachers who had a profound and lasting impact on the lives of their students; the kind of teachers who helped students learn "deeply and remarkably" as Bain puts it. The study ultimately concluded that although their

personalities and styles defy generalization, outstanding teachers share the fact that they are all passionate, lifelong learners who are experts in their field, care deeply that their students succeed, and possess an unfettered optimism about their students' ability to do so.

Bain recognized that many legendary teachers retire, or unfortunately pass away, before anyone has had the chance to record their stories and study their techniques. He recognized that these teachers have a wealth of insights and experience that other teachers could greatly benefit from, but no one had yet taken steps to preserve their collective wisdom. So, like a modern day Alan Lomax,<sup>2</sup> Professor Bain crisscrossed the country with a laptop in hand, rather than a tape recorder, documenting the secrets of local teaching legends before they were lost forever. His book is a summary of what he learned.

Those who qualified for inclusion in Bain's study were not just run-of-the-mill excellent teachers with a few teaching awards under their belts. Rather, they were bona fide stars. He was interested in studying only the kind of teacher who changed students' lives and reached the ones everyone else considered unreachable. For example, many of the teachers chosen for the study had a disproportionately large number of students follow them into academia because of their influence.

In selecting which candidates to study, Bain looked for the kind of evidence indicating that a teacher had a significant impact on student learning; but determining whether and how much students learn

<sup>1</sup> Ken Bain, *What the Best College Teachers Do* (2004).

<sup>2</sup> Legendary musicologist and preservationist who traveled the country, particularly the Deep South, in the '30s and '40s recording indigenous American music for the Library of Congress before it was lost.

“ [T]he study focused on those teachers who are truly outstanding in terms of having a demonstrable impact on student learning. ”

is not an easy task. The reality is that most of us don't have as much of an effect on our students' learning as we'd like to believe.<sup>3</sup> So, Bain looked for objective indicia of a teacher's impact on student learning, such as consistently superior performance on standardized tests like the Law School Admission test (LSAT) or the Medical College Admission test (MCAT).

Once they made the cut, Bain and his research team studied their subjects' teaching methods exhaustively, including observing them in the classroom (in some cases it meant enrolling in the teacher's class for a semester), conducting detailed interviews with the teacher, speaking with students past and present, in groups and individually, speaking to colleagues, and analyzing in detail all their classroom materials, even lecture notes. The researchers were looking for teachers who challenged the assumptions students brought with them to the classroom and who, by semester's end, had fundamentally changed their thinking.

After studying this elite group of undergraduate and graduate school professors for more than 15 years, Bain reached some general conclusions about what makes them so special. First and foremost, he concluded that outstanding teachers are lifelong learners themselves who have a deep, intellectual curiosity about the world around them and their chosen field of study in particular. A key to their effectiveness, he concluded, was that they shared their sense of awe with the students. Not surprisingly, outstanding teachers are considered experts in their field and thus are heavily involved in whatever scholarly debates are taking place within that discipline. They are inquisitive, and thus go deep in terms of their own thinking and are therefore able to take their students deep as well.

But Bain points out that great scholars are not always great teachers. Several additional

considerations go into making someone who is already a great scholar also a great teacher. Bain found that great teachers are fascinated by how people learn. They spend a great deal of time thinking about it and their instincts about human learning turn out to be remarkably consistent with accepted learning theory and empirical research.

They genuinely care about their students' learning and often share with them their own intellectual journeys, particularly the struggles, as a way of connecting with their students. These teachers don't just want to pass along whatever information is needed to successfully complete the course, but instead want to impart lessons that will stay with students well beyond the classroom. Their love of the subject matter combined with their inherent understanding of learning theory and their passion for helping students learn enables these master teachers to design a curriculum that broadens and deepens students' thinking. For example, these professors are able to frame for students the great intellectual debates raging within their own disciplines in a way that is both accessible and meaningful so their students are able to share their teacher's passion for the material.

Outstanding teachers know that knowledge is not imparted; rather, it is constructed. They understand that their students enter the classroom with certain mental models, or schema, for organizing and thinking about the world around them. To help these students grow intellectually means challenging those models so that they develop new ways of seeing the world. Outstanding teachers do this, for example, by presenting students with questions or hypotheticals that show them that their existing models no longer work. Students are thus forced to confront and reevaluate some of their fundamental assumptions, and in the process they learn to "think about their own thinking," which is the hallmark of critical thinking. These teachers have specific goals for their students' intellectual development. They know where they want their students to be by the end of the semester and have a plan for scaffolding from their existing cognitive models to new, deeper ones by semester's end.

“They genuinely care about their students' learning and often share with them their own intellectual journeys, particularly the struggles, as a way of connecting with their students.”

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<sup>3</sup> Bain, *supra* note 1, at 23–24. There's a growing body of literature that finds students, even the best ones, don't learn as much as we think. Instead, they "plug and chug" their way through the course—figuring out whatever is needed to get a good grade—without any fundamental growth in their understanding. *Id.*

“ [T]he best teachers know how to simplify and organize the material in a way that is understandable to novices without losing essential nuances. ”

Top-notch teachers also know and understand their students' academic background when they walk into class that first day. While they push their students in terms of intellectual growth, these teachers understand the difference between where the students are and where they need to be by the end of the semester. Framed in the law school context, that means a teacher who understands that although the ultimate goal is to prepare students for practice, first-year students are not yet ready for a “sink or swim” experience. Instead we need to begin in a way that is more commensurate with their existing skills.

Thus, the best teachers know how to simplify and organize the material in a way that is understandable to novices without losing essential nuances. Excellent teachers are able to explain the material in a way that helps students understand it on their own terms and shows students why it's important to their lives. As we already know, learning theory tells us that people pay better attention to, and care more about, that which they see as having immediate importance to their lives.

Bain found that the best teachers also set high, but realistic standards. They understand the importance of pushing students, but not overwhelming them. Outstanding teachers push their students intellectually because they fervently believe their students can meet the challenge. These teachers believe that, fundamentally, students show up to class eager and willing to learn. Because they believe so much in their students' abilities, outstanding teachers are able to establish an atmosphere of mutual trust in the classroom. These teachers recognize the power of self-fulfilling prophecies. They possess a “if you build it, they will come” ethos: establish high standards and students will work to meet them.

The point is well illustrated by a study described in the book involving minority students at Northwestern University who were having difficulty in a tough undergraduate biology class that was a gateway course for medical school. Their teachers worried that placing these students in a remedial biology program would only reinforce the students'

fear that they couldn't compete with the so-called “better” students. Instead, these teachers did the seemingly counterintuitive thing by inviting the students to participate in a biology honors workshop. The fact that teachers expected more from these students rather than less provided them with a needed morale boost that raised their standardized test scores significantly compared to a comparable control group.

While outstanding teachers place high expectations on their students, they are even more demanding on themselves in terms of their classroom teaching. When their students don't do well, rather than blame the students, the best teachers reflect on how they could have done a better job. Bain observed that outstanding teachers make mistakes, have bad classes, and screw up just like the rest of us. The difference, though, is that they use those mistakes as an opportunity for self-reflection and growth that ultimately leads them to better teaching.

The best teachers are also empathetic and sensitive to their students' needs. They scan the class observing body language and any other signs that their students might not be “getting it.” It's obvious to students that these teachers care that they learn. Teacher “warmth” is a theme mentioned throughout Bain's book; he found that the best teachers have “warm” personalities and they communicate their warmth and caring to their students.

Interestingly, with respect to the instructional techniques used by the best college professors, many of Bain's observations are reassuringly consistent with established legal writing pedagogy. For instance, outstanding teachers allow students to do multiple, ungraded drafts of an assignment, which lets them make mistakes, learn from those mistakes, and then try again without fear it will affect their grade. Bain found that the best teachers make extensive use of problem-solving exercises that illustrate important concepts to students in a way that is concrete, relevant, and authentic. The best college professors often use a Socratic-like approach in class that respectfully challenges students in order to get them to reflect upon and ultimately reevaluate their preexisting assumptions. Based on Bain's research, it

is safe to say that legal writing professors as a group are on par with the best professors in terms of instilling critical thinking skills in their students.

Confounding easy categorization, Bain found that outstanding teachers do not have a single personality type or classroom persona outside the fact that they all have a “warm” demeanor. Some are classroom dynamos while others are more shy and reserved. Some conduct class in an informal manner such as calling on students by their first name while others are much more formal. Some of them dress primly and properly and others teach in a T-shirt and jeans. Indeed, he found that personality played little role in their effectiveness. Rather, what they all shared was a noncombative style that one way or another communicated to students “I want you to learn, I believe you can learn, and I’m here to help you learn.”

In sum, the overarching characteristic of outstanding teachers, Bain concludes, is their attitude toward students and their belief in students’ ability to achieve. Every classroom decision these teachers make is motivated by a genuine desire to help facilitate deep learning.

These teachers possess a generous spirit that enables them to place their students’ interests above a personal agenda and accept responsibility whenever classroom outcomes fall short.

In this respect, Bain’s conclusions remind us that teaching is ultimately about the quality of our relationships with students. Oftentimes, the reasons we find for our students’ failings are rooted in our own fears and anxieties about ourselves rather than anything having to do with the students. Thus, one lesson we can draw from Bain’s research is that to become a great teacher, we first need to become a great person by letting go of our petty insecurities and self-doubt, which only serve to cloud our ability to believe fully in our students. Only when we learn to fully accept ourselves, will we be in a position to genuinely and authentically accept and believe in our students. It’s a laudable goal all of us should be working toward anyway.

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“Every classroom decision these teachers make is motivated by a genuine desire to help facilitate deep learning.”

## Another Perspective

“Teaching, like any truly human activity, emerges from one’s inwardness, for better or worse. As I teach, I project the condition of my soul onto my students, my subject, and our way of being together. The entanglements I experience in the classroom are often no more or less than the convolutions of my inner life. Viewed from this angle, teaching holds a mirror to the soul. If I am willing to look in that mirror and not run from what I see, I have a chance to gain self-knowledge—and knowing myself is as crucial to good teaching as knowing my students and my subject.”

—Gerald F. Hess, *Learning to Think Like a Teacher: Reflective Journals for Legal Educators*, 38 Gonz. L. Rev. 129, 137 (2002–2003).

## Legal Research and Writing Resources: Recent Publications

### Compiled by Donald J. Dunn

*Donald J. Dunn is Dean and Professor of Law at the University of La Verne College of Law in Ontario, Calif. He is a member of the Perspectives Editorial Board. This bibliography includes references to books, articles, bibliographies, and research guides that could potentially prove useful to both instructors and students and includes sources noted since the previous issue of Perspectives.*

Karin Alexander, et al., *Truth Commissions and Transitional Justice: Update on a Select Bibliography on the South African Truth and Reconciliation Commission Debate*, 20 J.L. Religion 525 (2004–2005).

An update of a bibliography published in volume 16, no. 1, of the *Journal of Law and Religion* (2001). Focuses on “the continuing critical dialogue around the structures, processes, and outcomes of the South African TRC, ... expand[s] the focus to include the implications for the design of alternative truth seeking mechanisms, including truth commissions, [and] ... prioritize[s] the socio-economic aspect of transitional justice and reconciliation.” *Id.* at 526.

American Bar Association, Section of Legal Education and Admissions to the Bar, *Sourcebook on Legal Writing Programs*, 2d ed., 2006 (forthcoming) [Chicago, IL: ABA]

Covers the goals and content of legal writing programs, pedagogical methods, grading and academic credit, staffing models, hiring a director, administration and training, advanced courses and writing beyond the first year, politics, and resources. Includes a new section on teaching students who speak English as a second language and a bibliography on legal writing.

J.D.S. Armstrong & Christopher A. Knott, *Where the Law Is: An Introduction to Advanced Legal Research*, 2d ed., 2006 [St. Paul, MN: West, 252 p.]

Focuses on the types of information researchers need, rather than on descriptions of particular information products. Includes new chapters on municipal law, court rules, and form books.

Association of Legal Writing Directors & Darby Dickerson, *ALWD Citation Manual: A Professional System of Citation*, 3d ed., 2006 [Waltham, MA: Aspen Publishers, 572 p.]

Comprehensive coverage includes citation for primary and secondary sources, citation of electronic sources, and incorporating citations into documents. Includes in this edition international materials, updated examples, and citation forms for working papers, blogs, cartoons, ads, and patents. The only rival of *The Bluebook*.

Mary Beth Beazley, *A Practical Guide to Appellate Advocacy*, 2d ed., 2006 [Waltham, MA: Aspen Publishers, 369 p.]

A thorough introduction to the techniques and process of writing appellate briefs. Emphasizes a process approach to writing with numerous annotated examples. Includes four sample briefs with annotations. Several topics expanded over the previous edition.

Laura A. Bedard, *Creating and Maintaining Legal History Collections*, *Legal Reference Services Q.*, No. 3/4, 2005, at 1.

Contains, in addition to the results of an Association of American Law Schools survey of legal history curricula and a listing of rare book dealers, a selective bibliography for “creating and maintaining legal history collections.”

Charles D. Bernholz, *The “Other” Treaties: Comments on Deloria and DeMallie’s “Documents of American Indian Diplomacy,”* *Legal Reference Services Q.*, No. 3/4, 2005, at 107.

A discussion of Vine Deloria and Raymond DeMallie’s chapter entitled “Chronological List of Ratified or Valid and Operable Treaties” and how it contributes to the body of knowledge regarding recognized treaties between the federal government and Indian nations.

John Bronsteen, *Writing a Legal Memo*, 2006 [New York, NY: Foundation Press, 150 p.]

Designed to make it easy for law students to learn and remember the basic elements of writing a good legal memorandum. Walks the

reader through each step of completing a memo assignment, providing specific instructions and explanations.

Charles R. Calleros, *Legal Method and Writing*, 5th ed., 2006 [Waltham, MA: Aspen Publishers, approx. 624 p.]

Provides a comprehensive and practical approach to teaching writing and analysis skills. Covers writing in law school and in the law office, advocacy writing, appellate brief, pretrial advocacy, and writing to parties. Also covers pleadings, motions, contracts, letters, case briefs, course outlines, and exam essay answers.

Jon R. Cavicchi, *Intellectual Property Research Tools and Strategies: Series Introduction—Intellectual Property Research: From the Dustiest Law Book to the Most Far Off Database*, 46 IDEA 317 (2006).

Describes how intellectual property research has changed and evolved over time. Discusses judicial opinions, secondary sources, nonlegal research, computer-assisted legal research, the Web, premium services, and overlooked sources. Shows that much of the available information still exists only in print form. The first in a planned series.

Michael Chiorazzi & Marguerite Most, *Prestatehood Legal Materials: A Fifty-State Research Guide, Including New York City and the District of Columbia*, 2006 [Binghamton, NY: Haworth Information Press, 1,500 p. in two books]

A guide to the history and development of law in the United States and the change from territory to statehood. Includes bibliographies, references, and discussion on a varied list of source materials, including state codes drafted by Congress; county, state, and national archives; journals and digests; state and federal reports; citations, surveys, and studies; books, manuscripts, papers, speeches, and theses; town and city records and documents; and Web sites to help in searching for more information.

Bradley G. Clary & Pamela Lysaght, *Successful Legal Analysis and Writing: The Fundamentals*, 2d ed., 2006 [St. Paul, MN: West, 226 p.]

Features fundamental advice, a problem-solving perspective, and illustrative examples and templates. Includes expanded discussion of statutory analysis and brief writing.

Timothy L. Coggins, *Legal, Factual and Other Internet Sites for Attorneys and Others*, 12 Richmond J.L. & Tech. 17 (2006), <<http://law.richmond.edu/jolt/v12i4/article17.pdf>>.

“[I]ncludes sites for primary authorities, both federal and state, as well as URLs for other types of information such as names of possible expert witnesses and biographical and background information. . . .” *Id.* at 1. In 11 sections: search engines; portals; legislative and administrative materials, state and federal; case law; Virginia legal research; foreign and international materials; secondary materials; people, places, weather, vital records, and more; legal and other news, including law blogs; sources difficult to categorize; and URLs for Virginia law schools. Only available online.

Brady S. Coleman et al., *Grammatical and Structural Choices in Issue Framing: A Quantitative Analysis of “Questions Presented” from a Half Century of Supreme Court Briefs*, 29 Am. J. Trial Advoc. 327 (2005).

“[S]eeks to provide a starting point for attorneys drafting the Questions Presented portion of appellate briefs. The authors statistically analyze the content of the Questions Presented in past Supreme Court briefs and advise attorneys as to the most accepted ways of phrasing the issues at hand.” Abstract.

Debra Moss Curtis, *You’ve Got Rhythm: Curriculum Planning and Teaching Rhythm at Work in the Legal Writing Classroom*, 21 Touro L. Rev. 465 (2005).

“[E]xamine[s] an educational perspective of different teaching styles, and discuss[es] how these styles operate specifically in the legal writing classroom. . . . [I]ntroduce[s] some educational perspectives on teaching styles,

curriculum planning and teaching ‘rhythm’ and appl[ies] these styles to the legal writing classroom. ... [O]ffers some conclusions and recommendations to bring to the teaching of legal writing.” *Id.* at 466.

Linda H. Edwards, *Legal Writing: Process, Analysis, and Organization*, 4th ed., 2006 [Waltham, MA: Aspen Publishers, 435 p.]

Provides a basic guide to the skills of legal writing that takes students through outlining, creating a working draft, creating the final document, and revising effectively. Includes examples and sample documents.

Michele G. Falkow, *Pride and Prejudice: Lessons Legal Writers Can Learn from Literature*, 21 *Touro L. Rev.* 349 (2005).

Identifies 25 great works of literature and uses examples from these works to attempt to improve law students’ legal writing skills.

Thomas R. French, *Law Librarians and Library Design, Construction, and Renovation: An Annotated Bibliography and Review of the Literature*, 98 *Law Libr. J.* 99 (2006).

A guide that “provides a starting point for librarians wishing to study what has been done in other libraries, become aware of the issues they might face, and prepare themselves for the work ahead.” Abstract.

Ian Gallacher, *Forty-Two: The Hitchhiker’s Guide to Teaching Legal Research to the Google Generation*, 39 *Akron L. Rev.* 151 (2006).

Muses about contemporary legal research and different ways the subject should be taught. Points out the tensions between proponents of book research and those who embrace technology, discussing the pros and cons of both approaches. “[R]eflects on some possible pedagogical strategies the legal research teaching community might adopt in order to bring law students further along in their understanding of this topic, looks at the way legal research is taught in American law schools and proposes that we recalibrate our approach to the subject, favoring a client-based approach over the more familiar medium-based approach in

which book research is taught first and computer research second.” *Id.* at 154.

Bryan A. Garner, *The Redbook: A Manual on Legal Style*, 2d ed., 2006 [St. Paul, MN: West]

A comprehensive guide to the essential rules of legal writing that provides detailed, authoritative advice on punctuation, capitalization, spelling, footnotes, and citations. Includes illustrations in legal contexts.

Michael H. Hoffheimer, *Bollywood Law: Commercial Hindi Films with Legal Themes*, 98 *Law Libr. J.* 61 (2006).

“[D]iscusses commercial Hindi (Bollywood) films with legal themes, recommends twenty titles for addition to law library film holdings, and considers cataloging and citation challenges presented in transliterating Hindi titles.” Abstract.

Marci Hoffman, *Bibliography of Works by Richard M. Buxbaum*, 23 *Berkeley J. Int’l L.* 303 (2005).

An unannotated listing of books; articles and book chapters; shorter works, teaching materials, and other contributions; and book reviews by an important figure in both international and comparative law who joined the Boalt Hall faculty in 1961.

David Hollander, *Jewish Law for the Law Librarian*, 98 *Law Libr. J.* 219 (2006).

A guide to the Jewish legal system written for the purpose of providing law librarians with basic knowledge that will enable them to assist patrons with their research. Discusses both primary and secondary sources.

*The Inter-American Citorator: A Guide to Uniform Citation of Inter-American Sources for Writers and Practitioners*, 37 *U. Miami Inter-Am. L. Rev.* 339 (2006).

Illustrates how to cite to unofficial (non-English language) versions of cases, codes, and constitutions from numerous foreign countries.

Gerald Lebovits, *Legal-Writing Myths—Part I*, 78 N.Y. St. B.J. 64 (Feb. 2006); *Part II*, 78 N.Y. St. B.J. 64 (March/April 2006).

Part I debunks 10 myths about legal writing, e.g., literary style isn't important in legal writing; boilerplate is good; Part II debunks 10 additional myths.

*Legal Writing Symposium*, 21 *Touro L. Rev.* 265–550 (2005).

Contains several articles devoted to different topics of legal writing, each of which is annotated elsewhere in this column.

Susan Nissen Lerdal, *Evidence-Based Librarianship: Opportunity for Law Librarians?*, 98 *Law Libr. J.* 33 (2006).

Describes the recent incorporation of evidence-based research from library science and other fields into the decision-making framework. Includes an annotated bibliography on evidence-based librarianship.

Susan Lyons, *Renewable Energy Law—A Bibliography*, *Legal Reference Services Q.*, No. 3/4, 2005, at 143.

An annotated bibliography pertaining to renewable energy law and covering federal and state laws and those of Puerto Rico and the District of Columbia. Also includes references to law review articles from the past 10 years.

Matthew Mantel, *Researching House and Senate Rules and Procedures*, *Legal Reference Services Q.*, No. 3/4, 2005, at 67.

“[P]resents a discussion of ... [parliamentary] rules and procedures within the context of difference between the House of Representatives and the Senate. ... [D]escribes where to locate these rules and procedures in full text, online and a discussion of the sources which contain these rules and procedures.” Abstract.

Susan Nevelow Mart, *Let the People Know the Facts: Can Government Information Removed from the Internet Be Reclaimed?*, 98 *Law Libr. J.* 7 (2006).

“[E]xamines the legal bases of the public's right to access government information,

reviews the types of information that have recently been removed from the Internet, and analyzes the rationales given for the removals. ... [S]uggests that the concerted use of the Freedom of Information Act by public interest groups and their constituents is a possible method of returning information to the Internet.” Abstract.

Andrea McArdle, *Teaching Writing in Clinical, Lawyering, and Legal Writing Courses: Negotiating Professional and Personal Voice*, 12 *Clinical L. Rev.* 501 (2006).

Posits that while clinical, lawyering, and legal writing teachers need to instruct students in practice-based writing, students also need to retain their individual voice in their writings. Suggests pedagogical approaches through which instructors can help students negotiate between professional and personal voice.

Roy M. Mersky & Jeanne Price, *The Dictionary and the Man: The Eighth Edition of Black's Law Dictionary*, Edited by Brian Garner, 63 *Wash. & Lee L. Rev.* 719 (2006).

A slightly different version of a review from one published in 9 *Green Bag* 2d 83 (2005). Points out the contributions that the new editor of *Black's*, Bryan Garner, makes to the success of the publication and to legal scholarship in general.

Michael A. Millemann & Steven D. Schwinn, *Teaching Legal Research and Writing with Actual Legal Work: Extending Legal Education into the First Year*, 12 *Clinical L. Rev.* 441 (2006).

“Argue[s] that legal research and writing (LRW) teachers should use actual legal work to generate assignments ... recommend[s] that clinical and LRW teachers work together to design, co-teach, and evaluate such courses ... [and] describe[s] two experimental courses [the authors] developed together and co-taught to support and clarify their arguments.” *Id.*

Laurel Currie Oates & Anne Enquist, *The Legal Writing Handbook: Analysis, Research, and Writing*, 4th ed., 2006 [Waltham, MA: Aspen Publishers, 914 p.]

Provides a state-of-the-art approach to legal research, with an emphasis on electronic

research. Takes users from prewriting, drafting, and editing to final form. Demonstrates concepts through the use of examples. Introduces students to statutory and case analysis and then guides students through the process of writing an objective memo and trial and appellate briefs. A separate fourth edition (2006) of *Legal Writing Handbook: Practice Book* contains numerous exercises to help students with their research and writing skills.

Jill J. Ramsfield, *Culture to Culture: A Guide to Legal Writing*, 2005 [Durham, NC: Carolina Academic Press, 402 p.]

Designed for lawyers from other countries. Explains the legal system's rhetorical preferences, linguistic specializations, and current conventions. Describes how lawyers analyze problems and explain solutions.

Mary Barnard Ray, *The Basics of Legal Writing*, 2006 [St. Paul, MN: West, 303 p.]

Introduces legal writing in the context of other academic disciplines. Focuses on research memos and trial court briefs, but also discusses reading legal documents, using legal research tools, citing sources in legal documents, making oral presentations to senior partners and to courts, writing business correspondence and e-mail, and drafting other documents.

Edward D. Re, *Increased Importance of Legal Writing in the Era of "The Vanishing Trial,"* 21 *Touro L. Rev.* 665 (2005).

Notes that while fewer and fewer cases go to trial, the importance of legal writing has increased because of the proliferation of cases decided "on papers submitted" to the court. Discusses various aspects of the writing process.

Amy E. Sloan, *Basic Legal Research: Tools and Strategies*, 3d ed., 2006 [Waltham, MA: Aspen Publishers, 381 p.]

Provides step-by-step instruction on the basics of legal research using a building-block approach. Includes sample pages and end-of-chapter checklists, examples, and summary charts.

J. Thomas Sullivan, *The Perils of Online Legal Research: A Caveat for Diligent Counsel*, 29 *Am. J. Trial Advoc.* 81 (2005).

Illustrates how the speed with which courts now disseminate opinions in electronic form can produce opinions with errors that have to be recalled and provides examples of the difficulties this rapid dissemination can cause for counsel.

Susan M. Taylor, *Students as (Re)visionaries: or, Revision, Revision, Revision*, 21 *Touro L. Rev.* 265 (2005).

Discusses how students should be both macro- and micro-editors of their own papers. Describes the process of zero-drafting (prewriting through generation of ideas through stream of consciousness) and the importance of peer review, student-teacher conferences, and critiques by the instructor, all of which focus on multiple revisions.

Judith B. Tracy, "I See and I Remember; I Do and I Understand": *Teaching Fundamental Structure in Legal Writing Through the Use of Samples*, 21 *Touro L. Rev.* 297 (2005).

"[E]xplores ... the introductory LR&W curriculum, beginning with objective legal research, analysis, and writing assignments. ... [S]uggests including within that basic curriculum skills which students will apply as practitioners. [D]escribes specifically how different kinds of samples can be integrated into the curriculum so that students are exposed to examples of the types of documents they are being asked to prepare and, through examination of these samples, are able to self-identify a useful and logical structure for the written presentation of legal analysis." *Id.* at 300.

Christine M. Venter, *Analyze This: Using Taxonomies to "Scaffold" Students' Legal Thinking and Writing Skills*, 57 *Mercer L. Rev.* 621 (2006).

"Argues that legal writing faculty should take a more direct approach to thinking, by fostering students' metacognition skills [and that] [t]eachers need to develop precise and overt strategies, based on taxonomies, to teach students analytical skills and enable them to master the skills of thinking and writing like lawyers." *Id.* at 622.

Kathleen Elliott Vinson, *Improving Legal Writing: A Life-Long Learning Process and Continuing Professional Challenge*, 21 *Touro L. Rev.* 507 (2005).

“[E]xamines the need to improve legal writing beyond law school and the responsibility of the legal profession to join efforts with the academy to meet that challenge.” *Id.*

Robin S. Wellford-Slocum, *Legal Reasoning, Writing, and Persuasive Argument*, 2d ed., 2006 [Albany, NY: LexisNexis, 730 p.]

Emphasizes the process of legal reasoning, writing, and persuasive argument. Enables students to learn basic skills and build gradually toward mastery of more complex skills, using a single, evolving hypothetical and examining each predrafting and drafting step in sequence, from the initial client meeting, through the initial drafts of the document, to the final draft.

Melissa H. Weresh, *Fostering a Respect for Our Students, Our Specialty, and the Legal Profession: Introducing Ethics and Professionalism into the Legal Writing Curriculum*, 21 *Touro L. Rev.* 427 (2005).

Argues that discussion of and materials relating to legal ethics and professionalism should be incorporated into all legal writing courses. Provides the rationale for this position.

Melissa H. Weresh, *Legal Writing: Ethical and Professional Considerations*, 2006 (forthcoming) [Albany, NY: LexisNexis]

Designed to supplement a legal writing, ethics, or clinical course. Tracks the types of documents produced in a first-year legal writing curriculum. Identifies ethical rules and professional concerns that pertain to the particular type of document, while introducing cases to illustrate how the rules should influence lawyers' behavior when preparing and submitting these documents.

Sanja Zgonjanin, *Ruthann Robson: An Annotated Bibliography 1979–2005*, 8 *NYC L. Rev.* 681 (2005).

Published as part of a symposium to honor Professor Ruthann Robson, a professor at the City University of New York School of Law since 1990, for her contributions to lesbian legal theory.

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# Index to Perspectives: Teaching Legal Research and Writing

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Teaching Legal Research and Writing

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