

USING TECHNOLOGY TO FILL THE GAP: NEITHER PAPER NOR LIVE CLIENTS

BY TIMOTHY D. BLEVINS

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Technology for Teaching ... is a regular 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; fax: (206) 543-5671, e-mail: hotchma@u.washington.edu.

In an earlier issue of *Perspectives*, Ben Bratman described the dilemma of trying to inject a sense of reality into the writing of the objective memorandum.¹ Every year we legal writing professionals gather, and every year we discuss with one another the dry delivery of paper facts to first-year students.² Generally class size and the need for uniformity among the multiple sections that legal writing professors teach necessitated the need to employ the "KISS" principle in making memorandum assignments.³ Bratman incorporated the use of an upper-level law student to act the part of the client and he allowed his students to ask the client questions. While questioning brings a level of reality to the assignment, there are some risks in using actor-clients. To reduce the risks, I have turned to technology.

Before describing how I use technology to convey information to the students, there is a need to describe some of the risks, beyond those

¹ Ben Bratman, "Reality Legal Writing": *Using a Client Interview for Establishing the Facts in a Memo Assignment*, 12 *Perspectives: Teaching Legal Res. & Writing* 87 (2004).

² LWI biennial meetings in even years; ALWD biennial meetings in odd years.

³ KISS: Keep It Simple Stupid.

described in the earlier article, of using the "live" client. Due to time constraints in the writing course, I would not be able to meet, in order to ensure the felicity of the interview, with each of the multiple sections I teach and I would, from necessity, need to rely on the actor remaining true to the part. This is nearly impossible to imagine. Group dynamics being what they are, with some students easily assimilating into a cohesive group while others remain on the fringes of the group, I feared that the actor may interject some information into one interviewing session that was not there in another session, either through voice inflection or kinesics.⁴ Additionally, our team of writing professors wanted to use the same facts so that all our students would be working on the same problem.⁵ Using one client in 12 sections of legal writing was not a task we wanted to deal with, fearing the interviewee would become dry in the presentations with a result similar to facts on paper.

Then there were the logistics of finding interview spaces, a desire that we would want smaller groups of students in the interviews, and accounting for any absent students. If the interview could not be available for an absent student at a later date, we would need to re-create the interview on paper, a derivative of the facts on paper problem.

Finally, in discussions with the team, I recognized that many of our students receive and process information differently than their professors do. It was felt that we should take advantage of the "small screen" to present the facts. Now, we needed to avoid the Sgt. Joe Friday delivery attitude of "The facts. Just the facts, ma'am."⁶ Bring on the technology in the form of a camcorder and a delivery system.

⁴ Not an unfounded fear as I have used live clients at another school.

⁵ I began writing in the first person because the program went through massive reconstruction; a process that involved myself and the director. I moved to the third person in my writing because a team of legal writing professors formed and began using the new program in 2003. It was the team that made the program a success.

⁶ Of course, this reference to the 1960s television series *Dragnet* and Sgt. Joe Friday was lost on many of our students. It is my hope that I have not also lost all of the readers of this article.

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First, however, we needed to create a single issue problem for the assignment. Surprisingly, the scenario described in the earlier article neatly parallels the problem we put together for our students. The earlier article described an intentional infliction of emotional distress issue wherein the author directed the students not to deal with any potential false imprisonment issues; we developed a false imprisonment issue and then directed the students to ignore any intentional infliction of emotional distress issues.⁷ The scene for our problem takes place in a hospital room between a patient and a physician.

There was no budget for this project, and it began at a time when the school was in its earliest formative years. We did have a VHS format camcorder, and I was willing to use my own VCR for playback. I sat down and wrote out a client interview scene, my first screenplay. I recruited a staff member from our library to play the interviewee part, I would be the off-camera interviewer, and another member of our staff would become our cameraman.⁸ Editing would be a nightmare because it would be necessary to use outside resources to cut and splice the film, an expense I did not want to address. My goal was to get the interview in the can in a single, uninterrupted scene. “Take one” had a few problems, but “take two” was a success.

With the scene on tape I set about making multiple copies. I figured six copies would be enough. I placed all copies, except the master, on reserve in the library. I asked that the library code the tapes for a maximum check-out period of four hours and to ask the viewers not to take the tapes out of the library.⁹ The next step was to create the assigning memo.

⁷ Bratman, *supra* note 1, at 88.

⁸ My gratitude to Virginia Musso and Warren McEwen for their contributions in scene one and Professor Gerry Glynn for his contribution in scene two.

⁹ These were not real problems; we had two VCRs and one portable television in the library. Technology, like the school, was in its infancy.

The assigning memo was the firm’s interoffice memo written from the senior partner to the associate. The crux of the memo was that the firm was considering taking on a new client and that the associate needed to craft a not-more-than-six-page memorandum that analyzed the potential for a false imprisonment claim. The client wanted us to look at every avenue available that would prevent the defendant from ever doing this to anyone again. The assigning memo went on to state that, as it was the firm’s policy to videotape every client interview, with the client’s permission, a copy of this client’s interview was available to them through the firm’s library. The senior partner recognized that there may have been other causes of action that the associate may identify after watching the videotape. However, the associate was to focus only on this one cause of action. As such, the senior partner had assembled a criminal statute and three cases that the associate should apply to the facts. No other authorities could be cited in the associate’s memorandum.¹⁰ A date was assigned for the completion and submission of the memorandum.

The exercise worked beautifully. The students watched the videotape in groups or by themselves. We had engaging classroom discussions regarding the content of the interview. The students began submitting separate portions of the memorandum and, later, they completed drafts of the memorandum. Along the way we provided extensive feedback on the writing, the analysis, and the citation form, and, when necessary, we challenged students on the use of relevant facts. Uniformity was achieved in the problem presentation, and every student heard the tonal inflections and watched the body language of the interviewee.

¹⁰ The wording was carefully chosen. We did not want the students to cite to any other authorities (closed universe) but we also did not want to prevent the student from doing some independent research in the applicable areas of law.

There were a couple of problem areas, both of which can be easily corrected in the assigning memo. First was the spelling of proper names. The writing team certainly knew what we expected the students to hear and understand when it came to names. What we had failed to account for in our planning was the cultural backgrounds of our students. The pronunciation of a name does not always result in one simple spelling of that name. Future assigning memos will include this detail. Second was the students' understanding of what was meant by the phrase "to look at every avenue available." The professors wanted the students to advise the senior partner of what could be done under the law, both criminally and civilly. Initially, many students recognized for their professors that the criminal aspects would be handled by the state attorney and since we were a "firm," the students would deal only with the civil side of the problem. Clarity in the assigning memo should resolve this conflict.

This semester we digitized the videos into a format that could be viewed on a computer, and we delivered the video via the program's Web page. We have added a couple of VCRs and televisions are more accessible, but we also have many computer terminals from which the students can now access the information. They can watch it as often as they want to watch it, and they can stop the video to make notes whenever they need to stop it. We are currently working with our information technology (IT) personnel, our main campus video production personnel, and our School of Art and Theater students to create better quality computer files that are more readily accessible to students at off-campus locations, which should make the videos even better in the future.¹¹

¹¹ In addition to the people I have already identified in this article, I want to acknowledge Jeff West and Rob Pamplona, our on-campus IT gurus; Nancy Strohmeyer, my colleague and associate director of the library; Associate Dean Glen-Peter Ahlers, interim director of the Legal Research and Writing program; and Helia Hull, assistant professor, along with Visiting Professors Anjali Nayyar and Julie Koves, for their assistance and feedback in creating this project. Dean J. Richard Hurt has allowed us the opportunity to test and evaluate the use of this technology.

For the purists amongst our legal writing community, I know you will recognize that videotaping client interviews is not standard operating procedure in most firms, and the use of video files prevents students from interacting with the clients. However, I believe that the use of technology in the practice of law will lead to the creation of more client files that contain computer video files to preserve the information and to insulate practitioners from claims of malpractice. As far as interacting with clients, well, I will save that skill training for my client counseling course where, I am certain, we will revisit some of these video files before moving on to live interviews.

The project was declared a success; the students themselves declared it so in their course evaluations.¹² Overall the students appreciated working with a client rather than getting the facts on paper. We have moved on to another level in delivering the assignments, and we look forward to improving the process as we learn.

Barry University invites you to review the videos and supporting materials. Please go to <www.scribes.org/tblevins>. From this Web site you may view the videos or download them for later viewing.

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¹² There were a couple of discouraging remarks made by students, and we may not be able to overcome each problem. We will, however, take into consideration the student comments as we move to the next generation of problem delivery.

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