

PERSPECTIVES

Teaching Legal Research and Writing

ARE WE TEACHING OUR STUDENTS WHAT THEY NEED TO SURVIVE IN THE REAL WORLD? RESULTS OF A SURVEY

BY LAWRENCE D. ROSENTHAL

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Introduction

Have you ever wondered whether the skills you teach in Legal Research and Writing are the same skills our students need to survive in a law firm environment? During the summer of 2000, the Legal Research and Writing Department at Stetson University College of Law recruited students to become research consultants and help the department with a research and writing survey.¹ The primary objectives of the survey were to determine whether the department was adequately preparing the students for their summer clerkships, and to determine where in our course objectives and methods we could improve.

In the survey, the students were asked to report on

- the types of projects they were assigned;
- the length of the projects;
- the turnaround time for the projects;

¹The department would like to thank Professor Rebecca Cochran of the University of Dayton School of Law for providing us with the survey. Professor Cochran is the individual who developed the idea for this survey and presented the idea at the 1999 ALWD conference in Boston. I also thank Cathy Fitch, Kristine Andromidas, Darby Dickerson, and Ann Piccard for their assistance.

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- the subject matter of the projects;
- what research resources they used on the projects;
- the successes they encountered during the projects; and
- the troubles they encountered with the projects.

The survey also provided space for the students to make any other work-related comments they thought were appropriate.

More than 20 students volunteered to help us with the survey; the results of this survey form the factual basis upon which this article is based. Although not every student returned the same number of surveys, the department received more than 200 responses throughout the summer. After the results were compiled, they were forwarded to all members of the Stetson faculty and administration, who gave positive feedback to the department after reviewing the results.

In this article, I will address some of the highlights from the survey results. I will start by explaining how the department recruited (and later rewarded) the research consultants, and will then discuss some of the more interesting trends the survey revealed. Throughout, I will discuss how the department prepares its students for their summer clerkships and junior associate lives, and will analyze whether these methods are effective. I will conclude with some general thoughts about the results of the survey.

1. How Did We Recruit and Reward Our Research Consultants?

The first step in getting this project off the ground was to recruit research consultants. In conjunction with Stetson's Office of Career Services, we obtained a list of students who had reported their job offers. After obtaining that list, I personally contacted the students and invited them to a lunch, which I used as an opportunity to explain the research consultant program to them.

The first aspect of the program we explained to them was *why* we wanted to start this program. Because the department is always trying to improve and be more responsive to student needs, we explained that this would be the best way to find out what was happening in the "real world."

The other issue we raised was that being a

research consultant could be used as a résumé builder. Although this is not the reason the program was started, we did indeed realize the value such a credential could have on the research consultants' résumés.

After the clerks returned to school and turned in all their questionnaires, the results were organized. This process took approximately one week, but was more time-consuming than it was mentally challenging. After the survey results had been compiled and analyzed, we rewarded our research consultants with a nice lunch, during which we thanked them and discussed the results with them. We also encouraged the research consultants to participate next year.

2. What Are Our Students Being Asked to Do?

Our first objective was to learn whether our students were still being asked to write objective memoranda, such as the ones we emphasize in Research and Writing I. To our surprise, the vast majority of the assignments involved drafting objective office memoranda. Specifically, of the roughly 200 responses to the survey, almost 50 percent indicated that the research consultants were assigned objective research memoranda.² This confirmed the department's belief in the importance of these memos, and also justified a labor-intensive Research and Writing I course load, which requires the students to draft one 10-page, open universe memorandum and another open universe memorandum with no page limit.³ Additionally, throughout the memorandum writing process, we require our students to turn in drafts of their facts, issue statements, and discussion outlines. After we critique and return these assignments, the students typically have a better idea of what we expect in their final memoranda.

These survey results confirm that our students, and presumably students at all law schools, do need to master this skill before they begin their

² For a graphic explanation of the survey results, please look at the attached pie charts. [Chart: *Type of Assignments*]

³ The Research and Writing I students also are required to complete several research exercises, give an oral presentation, and complete an *ALWD Citation Manual* exercise. They are also given research quizzes and a research test during the semester.

clerking positions with private law firms.⁴

Other frequent assignments for these law clerks were drafting persuasive motions and memoranda to be filed with the court and drafting “other” documents. In addition to drafting these “other” documents, such as releases and real estate documents, the research consultants drafted memoranda in support of or in opposition to motions for summary judgment, motions to dismiss, motions in limine, and other pretrial motions. Once again, an emphasis on these skills in Research and Writing II appears to be appropriate.

At Stetson, the department requires the students to draft an eight-page, closed universe memorandum of law in support of (or in opposition to) a motion, typically a motion in limine or a motion for a protective order. Additionally, Research and Writing II students are required to write a 22-page appellate brief.⁵ Although only one research consultant was asked to write an appellate brief during her clerkship, the persuasive writing skills learned and honed in class undoubtedly prepared the research consultants for the memoranda they drafted in support of or in opposition to the various motions.

There were many other research projects the students were required to perform, some of which the department did adequately prepare them for, and some for which the department did not have the time or resources to fully prepare the students. Specifically, many students were asked to draft opinion letters and demand letters. As the Research and Writing II program is structured today, the students are required to draft a demand letter. This demand letter is based on a draft complaint (which later forms the basis for the appellate problem) and requires the students to perform some research. This two-page assignment is the students’ first exposure to persuasive writing at Stetson. One particular comment from a research consultant indicated that the demand

letter exercise did indeed help her with the demand letter she was asked to draft during her clerkship.

Although the Research and Writing II program used to require an opinion letter, that opinion letter requirement is no longer a part of the Research and Writing II curriculum. Nonetheless, an opinion letter assignment does exist in some of Stetson’s other course offerings.⁶ Obviously, with limited class time during the semester, it is impossible to give the students experience in drafting every type of assignment they were given during the clerkships. However, as the accompanying pie chart illustrates, most of the research consultants’ assignments were covered in Stetson’s Research and Writing program or in other Stetson course offerings.

3. What Are the “Hot” Subjects?

Another fact that became clear as a result of the survey was the broad scope of topics in which the students were asked to complete research. Instead of being asked to perform research in the typical first-year topics of contracts, torts, property, criminal law, and civil procedure, most students were asked to research and write about topics to which they had no exposure during their first (and sometimes second) year of law school. This issue was addressed by one student who indicated that on many occasions he was asked to research areas of law that he “knew nothing about.”

The most common subject of these “upper-level” subjects was employment law, but subjects such as environmental law, insurance law, bankruptcy law, and copyright/intellectual property law were also subjects of student research. According to one research consultant, conducting research in unknown areas takes “twice as long” as conducting research in an area with which the student is somewhat familiar.

Because clerks are assigned tasks in various areas of substantive law, Research and Writing II instructors are justified in giving students

“Another fact that became clear as a result of the survey was the broad scope of topics in which the students were asked to complete research.”

⁴ Most students who participated in the survey worked in medium-sized or large firms. This fact is highlighted in the accompanying pie chart. This might have been one reason why the number of objective research memoranda was so high. [*Chart: Firms Represented*]

⁵ The Research and Writing II students also are required to draft a demand letter, complete a computer exercise, argue their motions and appellate briefs, and complete interim assignments during the brief-writing period.

⁶ For example, in my Legal Research and Drafting in Employment Law class, students are required to draft an opinion letter. Additionally, they are required to draft a demand letter, a complaint, an Equal Employment Opportunity Commission (EEOC) charge, and a defensive position statement. [*Chart: Assignments Covered by Stetson’s Course Offerings*]

“[O]ne research consultant observed that law practice is ‘five times as busy as law school.’”

experience in all areas of the law in their memoranda and briefs, rather than limiting the memorandum topics to traditional first-year subjects. In fact, in my Research and Writing II class, most of the briefs are based on employment law, an area with which I am very familiar and an area in which many of my former students are being asked to perform research.

The message this information delivers is that limiting student memos to traditional first-year topics is not the best way to prepare them for their clerkships, and that doing so gives the students a false sense of security. Because these students will be asked to perform research in all areas of the law during their clerkships and during the first few years of their associate lives, giving them experience with unfamiliar topics will benefit them in the long run. By doing so, we will force the students to concentrate on the research process as a whole, give them experience in different areas of the law, and make them start their research from scratch, thereby forcing them to become more familiar with the research process. Knowing how to perform research from scratch is more important than knowing what the probable answer is and working back to the law to support the conclusion.

4. Research and Writing Assignments: How Long Is Too Long, And How Much Time Do I Have?

The one area of the survey that perhaps indicated that the department might be a bit out of step with the “real world” addressed the average page length of the assignments. While the Stetson Research and Writing I program requires a 10-page and a 10- to 15-page memorandum, and the Research and Writing II program requires eight-page and 22-page assignments, the students in our survey were typically being asked to write assignments between one and five pages. The second most common length of assignments was six to 10 pages.⁷

Therefore, most of the assignments the clerks were asked to perform were shorter than our

⁷ See the accompanying pie chart for a graphic illustration of this. [*Chart: Length of Assignments*]

shortest Research and Writing I assignment.⁸ Although this might indicate that law firm mentality indicates that shorter is better,⁹ requiring students to be experienced in writing longer assignments certainly does have benefits and can be easily justified. Specifically, if we were to assign five-page memoranda, we would not be able to determine the depth of our students’ analytical skills, and would not be adequately preparing them for the longer assignments when they are inevitably assigned.

The other real-life surprises many students discovered were the limited time they had to complete written projects and the extended workplace hours these demands required. While students typically have between three and five weeks to draft a memorandum in school, the turnaround time for many of the clerking projects was much shorter. Specifically, the turnaround time for many of these assignments was hours rather than days or weeks.

Many research consultants thought these time pressures were unreasonable, while one observed that she did not like the “extreme pressure” placed upon her for turning an assignment around in days rather than weeks. She expressed her dislike of supervising attorneys constantly asking whether she had found anything on point. Another research consultant indicated that he disliked the “very high degree of pressure to do a good job and do it quickly.” As a result of these added time pressures, one research consultant observed that law practice is “five times as busy as law school,” and that being a lawyer is “not a nine-to-five job, but rather a seven-to-nine job.”

5. Electronic Research: Sooner Rather Than Later?

Perhaps this discussion will open up a new topic that is better suited for an article by itself, but the issue of computerized research is one that will be with us for the foreseeable future. The

⁸ Stetson’s Research and Writing II program requires students to write an eight-page memorandum in support of a motion and a 22-page appellate brief. The memorandum assignment is certainly within the page range most students used during their summer clerkships, while the brief is significantly longer.

⁹ In fact, one research consultant indicated that “lawyers only want answers, not explanations.” Perhaps this attitude explains the shortness of the written assignments.

results of the survey clearly indicate that most students did in fact use Westlaw®, LEXIS®, and other forms of computerized research. Consultants at large and small firms did have access to these resources, indicating that firms of all sizes are using this form of research. Despite its popularity, however, there was some apprehension about the overuse of electronic research.

An important statement about computerized research was written by one research consultant who worked at one of Florida's largest firms. Specifically, he indicated that the department must continue emphasizing book research, and that we should not allow computerized research to replace a thorough and exhaustive explanation of manual research sources.¹⁰ Another research consultant echoed that sentiment when he indicated that students must "learn the books because Westlaw is not the end-all."

Interestingly enough, he was one of the last students at Stetson who was not given access to Westlaw or LEXIS until close to the end of his first semester of Research and Writing I. Since that time, we have become more computer-intensive, beginning with LEXIS and Westlaw closer to the middle of the semester (rather than toward the end of it). Although computer research has grown enormously in the seven years I have been out of law school, and will undoubtedly continue to grow in the future, I am still somewhat leery of giving students access to these tools before they fully understand *why* they are using them.

To make sure Stetson students are indeed competent in computerized research, the Research and Writing II program at Stetson includes a rigorous section on computerized research, and requires students to complete a rigorous, hands-on computer exercise. This experience in Research and Writing II (after first familiarizing the students with computerized research in Research and Writing I), along with advanced training from Westlaw and LEXIS representatives and two years of free access to these computerized databases, should prepare these students to use computerized

¹⁰ His specific statement was, "I heard a rumor that Research and Writing classes were going to introduce students to e-research at the beginning of the semester. If this is true, this is a mistake because most students will not be permitted to use e-research in their jobs. All students need to have the skills to use the books."

research, but not at the expense of not understanding how to perform manual research.

Other Student Thoughts

Perhaps the most interesting responses to the survey were those responses that answered the question regarding "law practice realities." Other than the expected griping about keeping billable hours,¹¹ the research consultants did have many interesting statements that should be passed on to future Research and Writing students. The most common topic in this area of the survey was the difficulty many students experienced with their supervising attorneys. These problems included unclear instructions from supervising attorneys, lack of assistance, failure to give strict (and accurate) deadlines, unreasonable time demands, and attorneys' failure to tell the students they no longer required the research they originally assigned.

Perhaps the lesson to be learned here is that not only do we need to give clear, concise instructions and be as accessible as possible to our students, but we must also convince the students not to be afraid of asking questions of their supervising attorneys. This will save them billable hours, frustration, and the sinking feeling that they are not doing well on the particular assignment. In fact, one research consultant noted, "I find more and more that people are the greatest resource."¹²

Another common theme that we attempt to emphasize at Stetson is attention to detail. While some students might not understand the importance of proper spelling and grammar, practicing attorneys certainly do. Many research consultants discussed the amount of proofreading and editing that occurs in law firms. This point was made emphatically by one research consultant, who noted that she was impressed that an appellate brief she was reviewing had been proofed and edited 56 times before she reviewed

¹¹ In Stetson's Research and Writing II program, students are taught how to keep billable hours and are required to track four days in which they can "bill" at least eight hours. The students' clients are their professors, and the "billable" time includes class attendance, class preparation, outlining, briefing cases, etc. Some students commented that the billable-hour exercise was extremely helpful, while others indicated that four days was not enough.

¹² Echoing this thought, one student wrote, "Don't reinvent the wheel. Go to others first."

“[W]e must also convince the students not to be afraid of asking questions of their supervising attorneys.”

“Law firms are still requiring clerks to churn out research memoranda, to draft memoranda in support of motions, and to draft other legal documents.”

it. Perhaps this anecdote will be good to use when the issue of proofreading and the importance of it comes up in class.

6. What Has the Survey Taught Us?

Fortunately, the survey results confirmed that the department is preparing its students well for their summer clerkships. Law firms are still requiring clerks to churn out research memoranda, to draft memoranda in support of motions, and to draft other legal documents. These tasks were very common assignments in the clerkship programs, and they form the bulk of the work our students perform during the first year. This justifies our emphasis on these tasks. Firms are requiring students to research in all areas of the law, again justifying our approach of not limiting the subject matter of the memos to traditional first-year subjects.

One of the most popular subjects of the survey involved the use of electronic research sources. While many students were happy that they were exposed to LEXIS and Westlaw, some students still took the approach that allowing students to have access to these electronic resources too soon can adversely affect their manual research skills.

The high-pressure atmosphere of most firms definitely affected the law clerks, as they realized that the quick turnaround time can lead to late nights and stress. Being more assertive with supervising attorneys and making sure they know what is expected of them will undoubtedly assist in lowering the stress level at these firms.

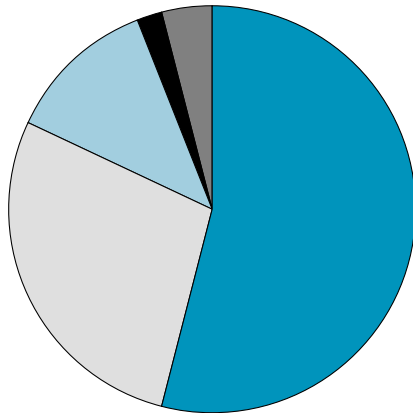
Now that the first Stetson survey has been completed, what has the department done in response to these results? Fortunately, the results will not require the department to make radical changes to its program. The Research and Writing I emphasis on legal research and objective memoranda is appropriate in light of the high number of objective memoranda our research consultants were asked to write.

The department's Research and Writing II program also seems to be preparing its students for their clerkship experiences, as much of the work that is required in Research and Writing II was

also required as part of the research consultants' clerkship experience. Although no radical change is necessary, Research and Writing II has recently been increased to three credit hours, and with that extra hour, the department has been able to add classes that will assist students with their clerkships. Specifically, we have been able to have a panel discussion on the clerkship experience (with returning law clerks as panelists) and a panel discussion with practicing attorneys explaining what they expect from their summer clerks. These panels have been well received.

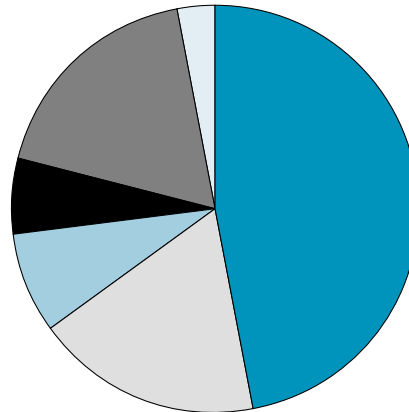
I hope that the results of this survey will be helpful in determining whether your Research and Writing program is adequately preparing its students for their summer clerkships. Next year, the department hopes to have more research consultants participate in the program. After the results of that survey are compiled, I will of course make them available.

Length of Assignments



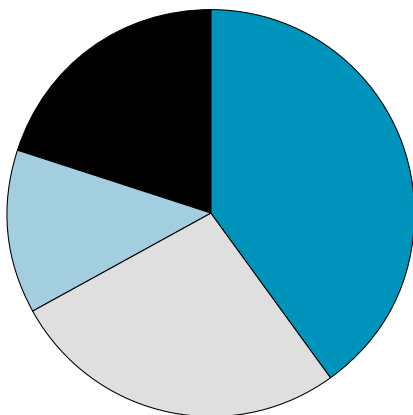
- 1-5 pages: 54%
- 6-10 pages: 28%
- 11-15 pages: 12%
- 16-20 pages: 2%
- 20+ pages: 4%

Type of Assignments



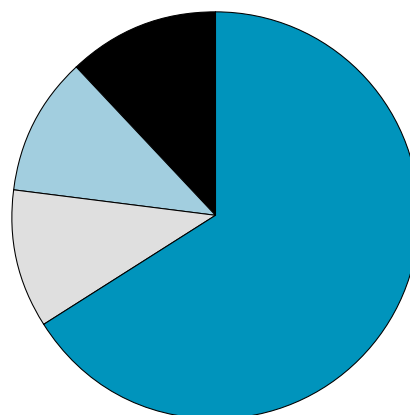
- Objective memorandum: 47%
- Research without full memorandum: 18%
- Motions with or without memorandum in support: 8%
- Discovery: 6%
- Drafting "other" documents: 18%
- Other assignments: 3%

Firms Represented



- More than 100 attorneys: 40%
- 50-99 attorneys: 27%
- 10-49 attorneys: 13%
- Fewer than 10 attorneys: 20%

Assignments Covered by Stetson's Course Offerings



- Assignments covered by Research and Writing I: 66%
- Assignments covered by Research and Writing II: 11%
- Assignments covered by other Stetson offerings: 11%
- Assignments not covered: 12%

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“Synthesis is the ‘combining of often varied and diverse ideas, forces, or factors into one coherent or consistent complex.’”

TEACHING SYNTHESIS IN HIGH-TECH CLASSROOMS: USING SOPHISTICATED VISUAL TOOLS ALONGSIDE SOCRATIC DIALOGUE TO HELP GUIDE STUDENTS THROUGH THE LABYRINTH

BY CRAIG T. SMITH

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Legal rules that rest on multiple authorities are labyrinths. In these labyrinths, many first-year legal writing students lose their way. Therefore, teaching legal synthesis to beginners is a daunting challenge. I will briefly describe this challenge and how I meet it by combining—synthesizing, really—Socratic dialogue and sophisticated visual tools, namely computer-generated tables or charts, delivered in the classroom using high-tech data-projection equipment. Finally, I will share and explain examples of how I have used these tools to help students negotiate the labyrinths of first-semester legal analysis.

I. The Challenge of Teaching Synthesis

Synthesis is the “combining of often varied and diverse ideas, forces, or factors into one coherent or consistent complex.”¹ Synthesizing rules from various legal authorities is a critical yet difficult skill. Teaching synthesis is likewise difficult. As legal writing professors, we must help beginners learn to work precisely and intelligently with the law’s intangible, intellectual goods—rules, policies, theories, rhetoric—as readily as carpenters work with drills and wood, and artists with brushes and paints. This is a tall task.

Carpenters and painters can experiment with tangible objects to produce tactile or colorful results: a well-joined cabinet, an appealing

iridescence. Lawyers, by contrast, have only words: sounds and symbols. These words, too, are often stand-ins for remarkably complex, multilayered meanings. Though some legal terms are colorful—golden parachute; “piepowder”² court; the fruit-of-the-poisonous-tree doctrine—many more seem drab and lifeless to first-year students. Worse yet, often legal terms—for example, intent and consent—initially seem straightforward but grow elusive once students try to define, explain, and apply them in cases. Sometimes different words are synonymous, while the same word in different places carries different meanings. Finally, some legal words and phrases seem little clearer than Rorschach inkblots. Even words for property are maddeningly ethereal, confoundingly couched in either Latin, English circa 1300, or Law French: res, chattel, corpus, easement, profit à prendre.

Classroom teaching of legal synthesis presents an especially prickly challenge. Classroom work on synthesis typically adds a further layer of abstraction: it proceeds largely in spoken form. Students thus get a particularly fleeting variant of legal authority: mere sounds, floating ephemerally across the classroom.

How then can we, in our classrooms, help beginners learn to perform the abstract, unfamiliar task of legal synthesis? We can enlist one of the students’ strongest, and in classrooms most often neglected, senses—sight—as we walk students through the labyrinth of synthesis.

II. The Promise of Socratic Dialogue Teamed with Computing and Electronic Projection

Legal writing professors can effectively teach legal synthesis in the classroom using, fittingly, a synthesis of teaching techniques. I combine traditional and high-tech teaching methods and aim for synergism: a more powerful means of helping students to carefully, thoughtfully, and critically compare legal texts and discern and articulate rules.

My starting point is the traditional technique of Socratic dialogue. My high-tech addition is use of computer-generated visual aids to address

¹ *Webster’s Third New International Dictionary* (1986).

² A medieval designation meaning “dusty feet.” *Black’s Law Dictionary** (Pocket ed., West 1996).

.....

specific legal problems of a hypothetical client. Hence, I enhance probing colloquy about realistic legal situations by using supportive, interactive visual frameworks—tables, flowcharts, diagrams, and the like, which for simplicity I will just call charts. I create these charts with a computer and then display them on a classroom's large wall screen using high-resolution projection equipment. I then question students about the charts, and, using the computer, fill in or edit the charts in accordance with their responses. I thereby help students perform and (through me and my computer) record their own process of synthesis.

Today's classrooms and learning theories leave little reason to rely solely on Socratic dialogue to teach synthesis to beginners in a legal writing class. Our students include visual learners, and our classrooms increasingly provide sophisticated equipment. In most rooms, "data projectors" can brightly project precisely what appears on the professor's linked computer screen. Accordingly, with these projectors we can show and work with any images, texts, or charts that we can display on a computer screen. Creating useful visual tools is simple too; even flowcharts, for example, are easy to construct with basic word-processing software. The most significant limitation to teaming Socratic dialogue and technology to teach synthesis, therefore, is not so much technical ability as simply our imagination.

Computer-generated, electronically projected charts and tables can improve our teaching of synthesis before, during, and after class. First, using computers to construct useful charts or tables is superb preparation for teaching a class session. It is "writing to learn," where we are learning how to conduct a class session optimally suited to our material and our goals. By constructing and testing a table or chart, we deepen our understanding of the legal authorities students are confronting and prime ourselves to work effectively in class with those authorities.

Second, in class the data projector beams the chart from the professor's computer onto a large wall screen, where students can see and work with the chart easily. The chart thus helps guide us—professor and student—in Socratic dialogue. It provides signposts that help students understand the professor's goals, zero in on useful responses, and avoid tangential detours. By simply pointing

to a diagram, for example, a professor or student can clarify a question, suggest an unrecognized concern, or steer a veering discussion back onto a more fruitful path.

Moreover, the computer-and-projector setup lets the professor instantly (1) record the results of these dialogues using the computer and (2) share them accurately with the entire class using the projector. At a student's suggestion, the professor (or a student or assistant) manipulates the chart or types text into it. Other students can then see—not just briefly *hear*—the student's proposal, because it now is projected onto the wall screen. Seeing the proposal helps students both understand and critically assess it. Or, for example, the professor can briefly project the text of a pertinent judicial decision, highlight a salient quotation, and paste that quotation into the chart. As discussion progresses, too, the professor accordingly can use the computer to edit what is projected. Students also can question the chart itself. This likewise is useful. It helps the professors learn where and why students are having difficulty. It also prompts other students to attempt to explain the analytical process to their colleagues.

The gradually filled-in, edited, and projected framework thus helps the professor guide and record, in visual terms, the students' intellectual work of synthesis. This both engages students in, and simultaneously shows them, how lawyers closely compare and question texts to search for meanings, logical relationships, and conclusions—in short, how they synthesize. Chalkboards, overhead projectors, and document cameras can do this also, but not with the flexibility that personal computers provide. A data projector will display anything the professor's computer can display—and will continue to do so even as the professor, by responsively working in class with the computer, changes that display.

Finally, the computer will readily save the class's collective analysis. This is particularly valuable when a class session ends before the analysis ends; the professor can project the partially completed chart to start the subsequent class session. The professor can also, between or after class sessions, edit the chart and its text. Moreover, the computer can simply and inexpensively distribute to the students—by paper copy, e-mail, or Web site posting—their in-class work. If students know this

“Our students include visual learners, and our classrooms increasingly provide sophisticated equipment.”

“[Our classrooms] become laboratories where, to grasp elusive concepts, students work collectively with words as visible objects, not mere fleeting sounds.”

during class, they feel less compelled to take comprehensive notes. Freed of that compulsion, they seem to engage with greater concentration in Socratic dialogue.

Distributing a document that the students helped create also gives them a sense of accomplishment. That boosts their confidence—another key ingredient in first-year success. It also reduces their anxiety by giving them a document to which they can refer when questions later arise and their memory—as so often happens with 1Ls—falters or plays tricks.

Using computer-generated, electronically projected visual tools, therefore, helps us teach an abstract, intellectual task through more concrete and visible tasks: visually comparing texts and arranging legal terms within charts that suggest the terms' logical interrelationships. Our classrooms function then more like a carpenter's shop or a painter's studio. They become laboratories where, to grasp elusive concepts, students work collectively with words as visible objects, not mere fleeting sounds. The professor uses both oral and visual cues to help students grasp their way through case studies in synthesis—that is, through various legal labyrinths. The professor then sends them out of class with tangible products they have helped create: their own maps of the labyrinths they have negotiated.

III. Examples

The following are excerpts from two examples of computer-generated, electronically projected visual tools that, in combination with Socratic dialogue, I have used in class to help beginners learn to synthesize. In each example, I made the table or chart using fairly simple features of Microsoft® Word: tables and text boxes. The usual array of word-processing options permit color-coding, use of bold or italic text, and other visual cues that further help guide students.

I filled in the table or chart to help me prepare for class. The completed chart recorded precisely the information that I wanted students to provide in classroom discussion. However, in class I then provided students with an entirely or partially blank table or chart, often both as a projection onto the classroom wall screen and as handouts for all students. Our classroom work then consisted

largely of understanding, critiquing and occasionally altering, and finally filling in the table or chart. First, I challenged students to articulate what information an attorney would want and why. Second, I called on students to provide that information. If they could not, we left a blank space on the chart and returned to it in a later class session. Finally, after completing the chart in class, I distributed it to all students using e-mail and the course's Web site.

The first, simpler example introduced our in-class process for learning synthesis. The process involved Socratic dialogue, often punctuated by periods in which students worked instead in small groups. The tables guided their inquiry and recorded their synthesis. The second example used a questionnaire and a “funnel” chart to guide students through a more challenging synthesis.

Example 1

Using Comparative Tables to Analyze a Statutory Provision and Case Law That Construes the Provision

Initially, I introduced my students to comparative tables. Such tables simply line up parallel chunks of information to ease comparative analysis. Filling in a table in class both helped students learn what types of information they must seek to make sense of a statute and let them practice gathering and assembling that information.

First, I projected a very simple, two-column table with only column 1 filled in.³ I challenged students to explain why each category listed in column 1 is important, thereby testing their understanding of points that they should have gleaned from previous reading that addressed how to analyze rules. I then asked students to complete column 2, thereby applying the techniques they have read about to a statute they also had read. Here is how the table looked in my notes:

³ This example uses a provision set forth in Richard Neumann's text, which is required reading for Vanderbilt students. Richard K. Neumann Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* (3d ed., Aspen Law & Bus. 1998).

Initial Comparative Table

1	2
Name	Contracts Code §206
Type of Authority	Statute
Date	1970
Element 1	X made the contract while intoxicated
Element 2	Y had reason to know that X was intoxicated then
Element 3	Y had reason to know that X's intoxication at that time rendered X unable to comprehend the transaction's nature and consequences

This initial table formed a foundational map for subsequent analysis. By adding new columns to the table, I opened room for students to build on this foundation, visually mapping how new information—a judicial decision—changed the analytical landscape. I gave students a case⁴ construing the statute, and then asked them to fill in columns 3 and 4, visually charting how case law amplified the statute:

I later expanded the chart, first adding information on the additional elements in new, lower rows and then adding additional cases, construing the same statute, in new columns inserted between columns 3 and 4.

Expanded Comparative Table (Excerpt)

	1	2	3	4
A	Name	Contracts Code §206	Williamson	Synthesis
B	Type of Authority	Statute	Mandatory Precedent (state supreme court)	
C	Date	1970	1980	(today: the current rule)
D	Element 1	X made the contract while intoxicated	1. Evidence of intoxication must be clear and convincing. 2. Generally, mere intoxication on the day of the contract is not enough; "extreme impairment" at the contract formation is required. But this is not true if other factors combine with less extreme intoxication, e.g., other mental problems or "gross inadequacy of consideration."	X must prove by clear and convincing evidence that X made the contract while EITHER (a) extremely impaired through intoxication OR (b) generally or somewhat intoxicated that day, but also BOTH (1) suffering related mental disabilities AND (2) forming an extremely unfavorable contract.

⁴ The case is an Alabama decision that I simplified and very substantially modified to fit Neumann's statute. Originally, it was *Williamson v. Matthews*, 379 So. 2d 1245 (Ala. 1980).

Example 2:**Using a Questionnaire and “Funnel” Chart to Analyze Common-Law Precedents**

The second example is a more complex exercise. To prepare for writing an interoffice memorandum, students had to analyze four Alabama decisions and synthesize a currently binding set of rules defining the tort of conversion.⁵ To help them do so, they first filled

out a questionnaire in small groups. We then discussed and projected their answers for all to see. Next, they again worked in small groups to transform their questionnaire answers into appropriate text on a synthesis “funnel” chart. This funnel chart showed, more pictorially, a flow of disparate analyses converging on a single, currently governing rule.

The Projected Questionnaire (Excerpt)

Step 1. Build your “umbrella” rule using primarily *{ name the case }* because *{ explain why }*.
According to that definition, conversion is:

- (1) _____
(2) that _____ with the holder’s possessory rights.

Step 2. Analyze this definition’s two main elements.

(1) Element 1: _____

The *{ name the key case }* court said *{ element 1 }* is a:

- (a) _____
 - the court { did OR did not } define this;
 - nonetheless, the decision suggests that “_____” means simply what it means in plain English: The defendant _____ the items by physically picking them up and controlling them.
 (b) of a _____
 (c) from _____
 (d) without the owner’s _____

(2) Piece 2: Serious or Substantial Interference

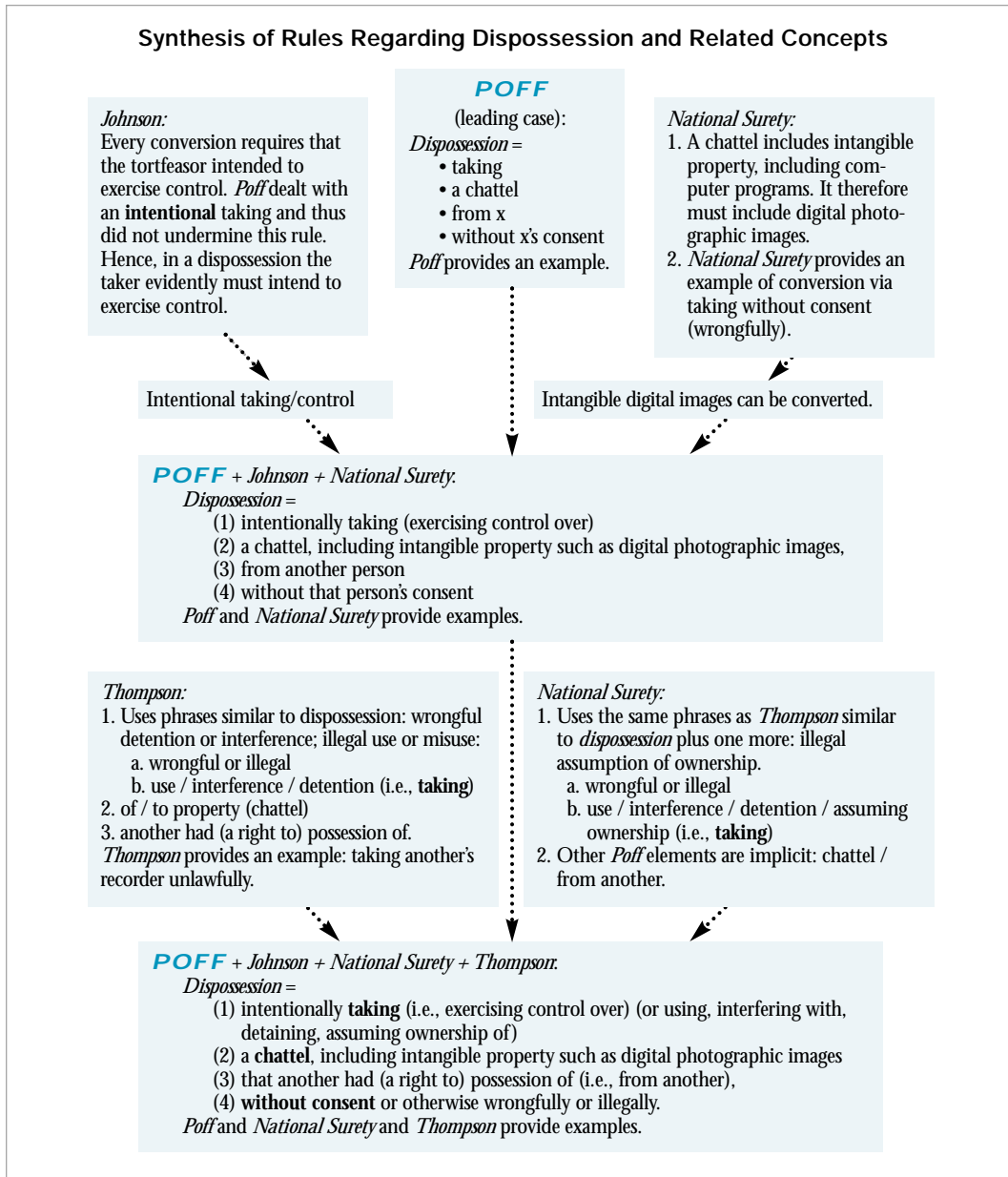
[The questionnaire then lists additional, similar questions regarding this second element.]

Step 3. Analyze what other decisions add.

[The questionnaire then lists additional, similar questions regarding other relevant decisions.]

⁵ Poff v. Hayes, 763 So. 2d 234 (Ala. 2000); Johnson v. Northpointe Apartments, 744 So. 2d 899 (Ala. 1999); Thompson v. City of Clio, 765 F. Supp. 1066 (M.D. Ala. 1991); Nat’l Surety Corp. v. Applied Systems, Inc., 418 So. 2d 847 (Ala. 1982).

Part Three: The Synthesis Funnel Chart (Excerpt—for “Dispossession” only)



IV. Conclusion

Legal synthesis is hard, and students crave guidance. A legal writing professor can provide that guidance in class by engaging one of the law student’s often-overlooked senses: sight. The professor can teach synthesis effectively and enjoyably by teaming Socratic dialogue with sophisticated, carefully tailored, and interactive visual tools. Using technology that is increasingly

available in classrooms, the professor can electronically project these visual tools for all students to see, engage a writing class in working closely with them, and later distribute them—as in large part the students’ own collective accomplishment—simply and inexpensively.

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“Our required courses are like survey courses in Western Civilization—they are foundational, but they don’t make students into history scholars.”

CERTIFICATE PROGRAM IN ADVANCED LEGAL WRITING: MERCER’S ADVANCED WRITING CURRICULUM

BY LINDA H. EDWARDS

Linda H. Edwards is Professor of Law and Director of Legal Writing at Mercer University School of Law in Macon, Georgia.

It’s spring again. The azaleas are in glorious bloom, but you are inside, sitting at your desk, grading yet another appellate brief. Does what you are reading fill your heart with contentment? Make the sun seem brighter and the warm spring air even balmy? When you put down that last brief, are you left with the feeling that all is as it should be?

Or maybe you teach in a three-semester program. Imagine yourself, then, in December. All around you are holiday decorations, and you still have many gifts to buy. But that’s all right, because you’ve just finished grading that stack of briefs, and you know that your students have learned what they will need to know about legal writing. They are ready to present their client’s case powerfully, draw a contract precisely, and draft a complaint competently. Their documents will be complete and their reasoning will be thorough.

If these pictures are just fantasies, then you are in good company. Every year Legal Writing professors across the country bid goodbye to another class of students who have completed the required writing courses. Yet, rarely do we feel satisfied that the students have learned everything they will need to know. Rarely do we think that they have mastered the critical skills of analysis and communication.

Rather, the great majority of our students have barely begun to master the reasoning and writing skills they’ll need. Even our best students have not yet been exposed to sophisticated writing strategies that can put power into their prose. Will they learn to write masterfully during their service on

the law review, we wonder? If we open the most recent volume, what answer comes to mind?

What about the students who struggled through their required writing courses? Many of those students are still lost in a muddle of untamed words. They probably received low grades in our courses, and their GPAs probably place them toward the bottom of the class already. How likely are they to choose an upper-division writing elective? They surely are not looking forward to repeating the painful experience of floundering in a writing class. More likely, they will graduate without any additional writing experience at all. If they must take a seminar, they will choose a professor who does not require a rigorous writing experience.

In reality, the excellent required courses we teach can only fairly be characterized as introductions to a broad array of information and a set of exceedingly complex skills. After all, we must cover legal research; the conventions of several kinds of legal documents; citation form; miscellaneous legal method information; editing skills; various modes of legal reasoning; a standard paradigm for legal analysis and common variations from that paradigm; clear style; techniques for using authorities; and even occasional reviews of grammar and punctuation. Our required courses are like survey courses in Western Civilization—they are foundational, but they don’t make students into history scholars. To master any subject area, students need an upper-level curriculum.

Advantages of a Coordinated Upper-Level Curriculum

A Certificate Program is one strategy to encourage students to continue their writing education. The Mercer Certificate Program offers students career services advantages that make upper-level writing courses attractive. Completion of the program provides a certificate to hang beside the J.D. diploma and a résumé entry that is particularly appealing to employers. In addition, the writing portfolio showcases both the quality and the breadth of their writing experiences, constituting a far more impressive writing sample than their first-year appellate briefs.

The coordinated nature of the curriculum offers students some assurance that the payoff in improvement will be worth the effort. Many students sense that they simply need more time for basic writing concepts to come into focus. Others are attracted to the small groups and non-hierarchical structure of writing groups. Students who did not do well in their required courses often blossom in this less competitive, more intimate environment. As a matter of fact, the biggest advantage of the Certificate Program probably is the enhancement of a student's self-image and self-confidence as a writer.

Even strong writers benefit from the depth and breadth of the curriculum, which offers both advanced techniques for brief writing and experience in drafting a broad array of documents. Students can tailor the drafting projects to the kind of practice they expect and to the doctrinal areas of their interest. Also, the program does not significantly interfere with their ability to take nonwriting courses of their choice.

The Certificate Program offers institutional benefits too. In addition to the obvious and significant career services advantages, the Certificate Program offers admissions advantages. The program is an effective marketing tool because prospective law students know how important good writing is to law practice and because these students are already thinking ahead to making themselves attractive to employers.

For legal writing teachers, the program can be an effective vehicle for developing good working relations with doctrinal faculty and for involving more doctrinal faculty in the school's writing program. It can serve as a good fund-raising opportunity, impressing endowment trustees, university administrators, and private donors as well. Finally, because the Advanced Writing Group is not labor-intensive for teachers, they offer refreshment for legal writing teachers weary from the unrelenting burdens of traditional classroom teaching. The level of discourse and analysis in the writing groups is significantly higher than in the introductory courses, and the teacher's role as group facilitator is much less onerous than the teacher's role in a classroom setting.

Certificate Program Requirements and Logistics

To earn the Certificate in Advanced Legal Writing, Research, and Drafting at Mercer University School of Law, students must complete the following requirements:

1. Participate in three semesters of Advanced Writing Group (one credit per semester, graded).
2. Take Advanced Research (two credits, graded).
3. Take a litigation or transactional drafting course of their choice (two credits, some graded and some pass/fail).
4. Complete four additional drafting projects done in conjunction with doctrinal courses (no additional credits or separate grade).
5. Achieve a passing score on a grammar and style examination.
6. Prepare a writing portfolio.

Advanced Writing Groups: Students meet in groups of five (plus a teacher) for one hour each week. The writing groups are loosely modeled after Peter Elbow's description of a community of writers.¹ The teacher serves as a group facilitator and provides the activities for the semester, but the group as a whole functions with minimal hierarchy. The primary challenge for the teacher is to remain quiet enough to leave room for student leadership.

The usual group activity is reading and responding to text—sometimes a text written by a group member and sometimes other texts. Through studying their own reactions and the reactions of other group members, students develop and internalize standards of good writing, which they then practice in their own writing.

Usually the first project is to rewrite the final appellate brief from their last required writing course, preparing it for use as a writing sample. Each week, several students bring to the group a part of their brief. The student identifies a particular concern he or she has with that part of the brief and what kind of feedback he or she wants from the group. The writer provides group members with copies of the text and reads the text aloud to the group, sometimes several times.

¹ Peter Elbow & Pat Belanoff, *Sharing and Responding* (2d ed. McGraw-Hill, Inc. 1995).

“Students can tailor the drafting projects to the kind of practice they expect and to the doctrinal areas of their interest.”

“The groups function according to two seemingly inconsistent ground rules: (1) the reader is always right; and (2) the writer is always right.”

At first, students are shy about reading their text aloud, but within just a few weeks, they do not mind at all. Reading the text aloud requires the writer to take responsibility for it and fosters development of a group trust level. Also, a writer often learns important information about the text simply by reading it to others.

After the writer has read the text, the group's primary function is to share with the writer the response the text prompts. While the group can offer advice, the advice is only secondary, and must never precede or substitute for sharing the readers' responses.

The groups function according to two seemingly inconsistent ground rules: (1) the reader is always right;² and (2) the writer is always right. The reader is always right because the reader is describing only his or her reaction to the text. The writer cannot say to the reader, “No, you didn't have that reaction.” However, the writer is always right because the responsibility for the text remains with the writer. The writer is the only person with the authority to decide what, if anything, to do with the reader's reaction. The reader cannot say to the writer, “You should do this or that.” The writer is in charge of the text. As Peter Elbow discovered more than 30 years ago, putting the writer back in charge of his or her own text is remarkably empowering for students.³

In order to allow the writer the room to make real decisions about the text, grading must be flexible enough to accommodate the writer's freedom. Usually this flexibility can be accomplished by including in the course grade a component for effort and contributions to the group and a component for the student's own improvement. Grading criteria that require strict compliance with a teacher's standards stifle the writer's authority. Also, grading criteria that compare students to each other prevent the formation of the kind of supportive writing community that is critical to the group's function.

After the first writing sample is ready, the group goes on to other reading and responding activities.

The group reads texts written by group members (specifically for the group, for a legal employer, or for another course) as well as texts written by others (usually briefs written and filed by lawyers in real cases).

Over the summer between the second and third year, the students read a novel in preparation for their fifth-semester study of advanced techniques for dealing with facts. They begin the fall by discussing the techniques the novelist used to establish motivation, create characterization, and communicate theme. Then students read and respond to fact statements from real briefs filed in the United States Supreme Court. They write a fact statement of their own, present it for group response, and then rewrite it based on what they learned.

To be sure that participation in the Certificate Program does not significantly impact the opportunity to choose other electives, Advanced Writing Groups are scheduled after students have selected their other courses. Once schedules are set, students are assigned to groups meeting at times left free on their course schedules. It is almost always possible to avoid undesirable meeting times and still defer to schedules for other courses.

Advanced Research and Drafting Courses: At Mercer, the Advanced Research course was already a popular elective taught by excellent teaching librarians. The Certificate Program requires participating students to take that course. The program requirement probably has slightly increased the already significant student interest in the research course, but most students who enroll in the Certificate Program probably would have wanted to take the research course anyway, so the impact on the enrollment in Advanced Research has been minor.

Several advanced drafting courses were already offered at Mercer, but the Certificate Program has probably been a factor in encouraging new course offerings and additional sections of existing courses. Currently, Mercer offers multiple sections of Advanced Litigation Drafting, Advanced Transactional Drafting, Real Estate Drafting, and

² *Id.* at 6–7.

³ Peter Elbow, *Writing Without Teachers* (Oxford U. Press, Inc. 1973).

Pretrial Practice (which includes several other litigation skills in addition to litigation drafting). Soon we will also offer Advanced Brief Writing, partly in response to the large student demand for advanced writing courses.

Additional Drafting Projects: In addition to projects completed for the advanced drafting course, students complete four drafting projects in conjunction with doctrinal courses of their choosing. For instance, if a student elects to take Decedent's Estates and Trusts, the student can draft a will and trust. If a student takes Domestic Relations, the student can draft a property and custody settlement agreement. These drafting assignments are based on real cases handled by lawyers who practice in that area, and they require the student to understand both the doctrinal law and the conventions of the relevant documents. Drafts are reviewed by some combination of the doctrinal professor, a practitioner, and the writing professor.

Grammar and Style Examination: At various points in the program, students in Advanced Writing Groups work on issues of grammar and style. Then in the sixth semester, students take a grammar and style examination. The examination covers common grammar and punctuation errors and basic elements of style. Students can retake the exam until they pass it, but they must pass it in order to earn the certificate.

Writing Portfolios: Finally, students compile all of their writing into a spiral-bound portfolio. The law school provides a glossy color cover sheet with the school seal and the title "Writing Portfolio, Certificate Program in Advanced Legal Writing, Research, and Drafting." The portfolio begins with a table of contents listing all of the kinds of documents included—usually all of the legal writing the student has done for the Certificate Program as well as appropriately redacted writing done for legal employers, writing done for other courses, and law review or moot court writing. The portfolio, usually about an inch and a half thick, constitutes an impressive writing sample.

Students turn in a copy of the portfolio to complete the Certificate Program requirements, but the portfolio's greatest value is in the job search. The law school provides multiple copies

of the cover sheet so students can prepare as many copies of their portfolio as they would like. When students mail a résumé and cover letter to a potential employer, they can include a copy of their portfolio and a copy of Mercer's legal writing brochure describing the Certificate Program. Feedback from employers has been overwhelmingly positive.

Do employers read all those documents? Surely not. Most likely they read the table of contents, turn to one or two key documents, and read part of the appellate brief. But the value of the portfolio does not depend on whether the employer reads it through. The portfolio has served its career services purpose just by demonstrating the breadth and depth of the student's writing experiences.

Feedback About the Program's Success

Mercer's Certificate Program began in 1997, and the results have been at least as positive as we had hoped. Lawyers and judges are pleased with our students and with the training they have received. Graduates of the program are writing and calling to tell us how well it prepared them for practice. Current students are clamoring for the limited number of seats available in the program. The student demand is three times the number we can currently accommodate, requiring us to use a lottery to select each new group of students.

The University administration and the trustees of our endowment are so impressed that they have funded an additional tenure-track writing position so we can expand the program. Several doctrinal teachers who have visited Advanced Writing Groups have volunteered to help by taking a group of their own. Other doctrinal faculty are loudly proclaiming to prospective students that the legal writing program is the most important reason to choose Mercer.

But the best part is watching students develop confidence as writers and shaking their hands at graduation, knowing that they are ready to practice law.

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“Students turn in a copy of the portfolio to complete the Certificate Program requirements, but the portfolio's greatest value is in the job search.”

TEACHING ADVANCED ELECTRONIC LEGAL RESEARCH FOR THE MODERN PRACTICE OF LAW

BY STEVEN R. MILLER

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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 & 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, 1100 N.E. Campus Parkway, Seattle, WA 98105-6617, phone: (206) 616-9333; fax: (206) 616-3480, e-mail: hotchma@u.washington.edu.

Introduction

During the last five years, the legal profession has witnessed significant changes in the nature and process of legal research. While print publications continue to be important, changes in the publishing industry and the rise of the Internet have led to the increasing importance of finding information available only or primarily in *electronic* format.¹ Increasingly, students and others seem to believe that all legal research can be done online and that electronic information resources, no matter what their provenance, are as reliable as those produced by commercial publishers. As librarians, we need to dispel this

¹ See generally, M. Ethan Katsh, *Law in a Digital World* (1995).

myth and help students understand the truth about electronic information resources and enable them to harness their power in a cautious and intelligent manner.

In the spring 2000 semester, I taught the first Advanced Electronic Legal Research course at Northwestern. The course was intended for students who wanted to develop or enhance their electronic legal research skills or for those who knew that they would be working at law firms, courts, organizations, or corporations that had trimmed or eliminated their print collection. It was graded, carried one hour of credit, and covered only *electronic* research resources and techniques.

Goals of the New Course

I had several goals in mind for the course. I wanted to introduce students to a variety of online resources other than those covered in the first-year course. Also, I wanted to help them develop the critical skills necessary to evaluate these resources for aptness to task, accuracy, completeness, and currentness. To meet these goals, the students would evaluate commercial products from LEXIS® and Westlaw®, state and federal governmental Web sources, academic Web sites, and law-related portals.

Thirty-two students registered for the first class. Because the area of electronic information resources is growing so rapidly, and because I wanted to expose students to a wide range of information resources, I made extensive use of guest lecturers drawn from the Chicago legal community. While most of the lecturers were attorneys and law firm librarians, the course also drew upon the expertise of a business reference librarian at the University Library, who was the library liaison to the Northwestern University Kellogg Graduate School of Management.

The Components of Advanced Electronic Legal Research

Building upon the legal research techniques presented in the law school's first-year legal writing program, the course offered advanced training on LEXIS and Westlaw and provided a structured introduction to Internet-based legal information resources. The Internet topics covered included electronic mailing lists, World Wide Web

resources, and file transfer protocol (FTP). The course provided the electronic research tools that are needed in the modern practice of law, including the critical skill of how to evaluate information resources.

I taught the course in a smart classroom, and students could bring their laptop computers into the classroom and plug them directly into the Internet at their seat. Instead of requiring students to purchase a textbook, I assigned readings from a selection of materials, including LEXIS and Westlaw manuals, research guides, articles, and Internet publications. I used CourseInfo, which is online course software licensed by the University; Microsoft® PowerPoint slide presentations; and hands-on exercises.

I used CourseInfo to post announcements, assignments, course materials, lecture notes, PowerPoint slides, and other materials for students to view before, during, and after class. I could also begin a class discussion using this electronic product without having to be inside the classroom or having to use video or teleconferencing equipment. Students also could drop off assignments into a digital drop box on my CourseInfo site. Students were responsible for checking their e-mail and the CourseInfo site for assignments.

Topics Covered

During the several weeks of class, I introduced students to electronic legal research in general, including Internet terminology; a range of Web sites; and the process for evaluating search engines and law-related Web sites. We also critiqued well-known and nationally recognized law-related Web sites such as Cornell Law School's *Legal Information Institute*² and *WashLaw WEB*.³ State and local law-related Internet sites and other useful law and non-law-related sites also were analyzed during the class sessions.

For the balance of the course, we covered a range of information types, including business information, corporation information, and advanced LEXIS and Westlaw searching (including cost-effective search strategies). The course

concluded with classes taught by law firm librarians who emphasized effective computer-assisted legal research (CALR) usage and demonstrated research strategies for the modern attorney, including a critical look at the role of the new associate in the six-figure-salaried⁴ "dot-com" world. One presenter emphasized the problems associated with many free and unreliable Web resources, all of which combine to make cost-effective research nearly impossible.

Grading Based Primarily on Problem Sets

I chose not to give a final exam in the new electronic course as we had been doing in the other advanced legal research course that we teach. Instead I chose to give four graded research assignments. Each assignment would take about 10 hours to complete, and students were encouraged to collaborate and discuss their strategy and approach to the questions but they were to turn in their own work.

The first assignment tested the students' ability to retrieve information from the Internet, evaluate the reliability of that information, and apply that information to a fact pattern. Below is one example from the questions in the first problem set.

One of your law firm's clients was playing Frisbee outside the Six Flags Great America Theme Park in Gurnee, Ill., when his dog (a Welsh terrier named Snickers) suddenly bit someone.

(a) What are your client's legal duties under the Village of Gurnee Municipal Code (even if your client is not sued)?

(b) What free Internet source can be used to locate such hard-to-find information? (Hint: Go to the Seattle, Wash., Public Library Web site.)

(c) Can you find this information on LEXIS and Westlaw?

(d) Do most libraries carry print versions of municipal ordinances for cities other than their own?

The question serves two purposes. First, it

“The course provided the electronic research tools that are needed in the modern practice of law, including the critical skill of how to evaluate information resources.”

² <www.law.cornell.edu>.

³ <www.washlaw.edu>.

⁴ For a review of today's salaries for new associates, see Kathleen Maxa Frank, *How Much Is Too Much? The Stunning Rise in Associate Salaries*, Washington Lawyer, Oct. 2000 <www.dcbbar.org/washlaw/october/salaries.html>.

“The three remaining assignments required students to use subscription-based and free Internet sites to do business and interdisciplinary research.”

forces law students to think of municipal ordinances as a source of law. Many second-year and some third-year students tend to think of common-law issues, requirements, and remedies only because of the traditional first-year curriculum. Here the student is on notice that a provision of a village ordinance delineates a specific duty. The second goal is to force students to think of what resources would yield the text of local ordinances. Moreover, Gurnee’s Municipal Code is available through a link provided on the Seattle Public Library’s Web page, material not available on LEXIS or Westlaw.

The three remaining assignments required students to use subscription-based and free Internet sites to do business and interdisciplinary research. They were to perform comparative searches on LEXIS and Westlaw and to note obvious and subtle differences between LEXIS and Westlaw and then between LEXIS and Westlaw and free and subscription-based Web sources. Additionally, students were asked to integrate what had been covered in the course, tying together elements of Web research, LEXIS and Westlaw searching, and business-related sources as well as, most important, identifying and evaluating the resources’ potential values and shortcomings.

External Links Used to Help Teach the Course

An important component of my CourseInfo site was the external links module, where I included links that directed students to electronic information resources. I included reliable and less ubiquitous sources of information about the Internet, legal research, and URLs that would point my students to specific forms, laws, cases, extralegal information, and statistics that would help them with their research. I used the following folders in the course.

- Internet News Update
- Law and Business on the Internet – An Overview
- Search Engines and Subject Directories
- Legal and Other Information Portals
- University Research Sites
- Legislation/Legislative History/Government Information Sites
- State and Local Materials

- Nonprofit Organizations and Trade Associations
- Evaluating Internet Sites
- Electronic Business Resources
- Electronic Business Resources/Northwestern University Library (Guide I)
- Other Web Information for Business Research (Guide II)
- Online Legal and Business Forms
- Australian Legal Materials
- Canadian Legal Materials
- Foreign and International Law Sites
- Modern Practice of Law
- Commercial Services
- News and Information Services
- The Internet Industry
- Northwestern University
- Miscellaneous

Within each folder, I listed titles and their accompanying URLs. Below is an example of an abbreviated list that I had placed in the Law and Business on the Internet—An Overview folder.

Law and Business on the Internet—An Overview

Around the Web in 19 Clicks <www.business2.com/content/magazine/vision/1999/12/01/11304>

The Art of Using Links and Bookmarks <www.law.emory.edu/LAW/paralegal/links.html>

Blackmon, Josh, *Fact-Finding on the Internet*, Internet Lawyer <www.internetlawyer.com/til/research/articles/factfind.htm>

Business Connections (*New York Times*) (password needed) <www.nytimes.com/library/cyber/reference/busconn.html>

Chaos, Cyberspace and Tradition: Legal Information Transmogrified <www.law.berkeley.edu/journals/btlj/articles/12_1/Berring/html/reader.html>

Feldman, Susan, *Where Do We Put the Web Search Engines?* <www.infotoday.com/searcher/nov98/feldman.htm>

PC Magazine Online, Find It on the Web (December 1998) <www.zdnet.com/pcmag/features/websearch98/index.html>

Hot Sites <www.law.emory.edu/LAW/paralegal/hot.html>

How to Put Internet Search Tools to Work for You
<www.law.emory.edu/LAW/paralegal/tools.html>

Index of Law Related Meta Indexes (Chicago-Kent College of Law) <www.kentlaw.edu/clc/lrs/lawlinks/meta.shtml>

law.com <www.law.com>

LawGirl.com <www.lawgirl.com>

Villanova Legal Express (law-related resources on the Internet) <vls.law.vill.edu/library/express>

Librarians' Index to the Internet <lii.org>

Pathfinder Clearinghouse (American Association of Law Libraries, Research Instruction and Patron Services (RIPS)) <www.aallnet.org/sis/ripssis/pathfinder.html>

Research Tools-Guides & Pathfinders (University of Minnesota Law Library) <www.law.umn.edu/library/tools/pathfinders/pathfinders.html>

Search Tools for Web Sites, Intranets and Portals
<www.searchtools.com>

Student Feedback: Notes from the Field

I solicited feedback from my students throughout the semester about what materials should be covered and what materials might be dropped. There appeared to be a split in the class as to whether litigation resources should be taught. One-half of the class had little interest in litigation resources and thought that more emphasis should be placed on business resources. A few students apparently did not understand the need for attorneys to research and use government documents and statistical information and believed those materials could be eliminated. However, most in the class disagreed. Most had accepted my supposition that such information was vital to attorneys involved in litigation, criminal law, antitrust, or benefits law, or taking on any matter whereby a federal or state agency was involved.

Conclusion

Overall, the implementation and teaching of the Advanced Electronic Legal Research course last spring was a success. Most students had told me that this course had been the most important one they had taken in law school. The technology, course materials, and techniques had worked to better prepare the students to face a new world of electronic-based legal research. I am glad that I had the opportunity to teach this new course at Northwestern and am thrilled to do it again in the spring of 2001. I will add some new things to the course to make it better. I will add Loislaw and additional litigation and business resources to the mix. Because government resources are the most reliable Web resources, I have considered adding a textbook⁵ that would review finding government information on the Web.

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“I solicited feedback from my students throughout the semester about what materials should be covered and what materials might be dropped.”

⁵ Peter Hernon, John A. Shuler, & Robert E. Dugan, *U.S. Government on the Web: Getting the Information You Need* (1999).

“Student editors are grand audiences: smart, interested in every detail you can provide, willing to put your ideas into practice. It’s a heady feeling.”

TEACHING STUDENT EDITORS TO EDIT

BY TERRI LECLERCQ

Terri LeClercq is a Senior Lecturer and Fellow at the University of Texas in Austin. She holds the Norman Black Professorship in Ethical Communication in Law.

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.

Whether in a scheduled course or in a meeting in the journal offices, law journal editors appreciate concrete advice about their jobs. Student editors are grand audiences: smart, interested in every detail you can provide, willing to put your ideas into practice. It’s a heady feeling. This introduction to my ongoing class, *Editing for Editors*, is meant to stimulate other law journal sponsors to teach the elements of a proper, professional edit.

Each year a group of novice editors take on the daunting chores of soliciting, choosing, editing, and publishing legal articles. Practically speaking, they have no, or little, experience except that they perhaps wrote an article that their peers approved. So it is the job of a journal sponsor to help them learn the rest.

How to Edit, What to Edit

Distribute a chart of professional proofreading marks and offer an example of the errors that lead to the use of these marks. You can find a chart inside the cover of most college writing texts; I use one created by Joe Christenson Publishing, a company that has a contract with many of our journals. In addition to providing each editor with the chart, I’ve also enlarged it and had it laminated

for the journals’ walls. If one of your journals uses a proofreading mark that deviates from your handout, ask the editors to explain their choices and insist that the editors emphasize those deviations to their staffs in small-group meetings. I also distribute a few pages of editing that I’ve done, to show them how a professional edit can look and also to show the editors how few changes I make. In the right-hand margin, I use ink and correct any error in grammar, punctuation, spelling, capitalization, or word choice. In the left margin, I pencil questions for the author to consider about style, transitions, flow, etc. (For instance, I may suggest a switch to the active voice if the author’s overuse of the passive has created ambiguous or wordy sentences.)

1) Grammar and punctuation. At each class or meeting, ask the editors to correct grammar and punctuation errors from a handout that you’ve created: You might use a few pages from an actual submission or rewrite a page from a law journal, adding in specific errors you want them to identify and correct. Have your own proofreading edits prepared on an overhead and compare/contrast your work with theirs. My students prefer concentrating on legal examples, but you can use the Web to find samples for editing beyond the confines of legal writing, such as short quizzes from a professional editor at *Copy Editing for Magazines* <www.well.com/user/mmcadams/copy.editing>.

2) Style. A major temptation of student editors is to “repair” an author’s style instead of correcting actual error. Explain the difference between error and style choice by offering a mixture of sentences and asking whether the sentence requires editing. If you reinforce your message of error versus style each week, you might succeed with 10 percent of the editors. That is, sadly, 10 percent will accept that their job is to correct error; the rest will fight for their right to over-edit until they graduate or until the author loses patience, whichever comes first.

Dealing with Substance

Beyond distinguishing between style and grammar/punctuation errors, students will need to be taught how to edit

- organization,
- coherence,

- lack of/misuse of authority, and of course
- *Bluebook* or *ALWD Citation Manual* citation checking.

Student editors will come to your class or meeting with a preconceived notion of their roles, created by the last year's editorial board—indeed, how could they have a larger perspective? You must provide the professional atmosphere and understanding of the author's point of view. Student editors cannot accurately gauge if it is their job to reorganize an article written by a professor or practitioner. If they insist that reorganizing is a part of their job description, ask them how they distinguish between organizational glitches and actual substantive troubles, and how they articulate these problems to the author. I don't believe that organization is something students can add to an author's article, but they all try—in some Messianic quest to create the Perfect Article. Their time would be better spent in the decision process, winnowing out those articles that need hours spent on major organizational changes.

If they must edit for **organization**, though, offer a task-shortening list of editing questions:

- Does the introduction anticipate the organization to follow? (Is there an identifiable "setup" sentence or paragraph?)
- Does the conclusion answer the questions anticipated in the introduction and either reach a conclusion or invite additional thought?
- Are the major and minor divisions of the article (following the introduction) logical and accessible? Different journals use bold face, italics, bullet dots, etc., to signal divisions. These typographic devices need to be consistent within each book or issue, and the editors should investigate what other editorial boards have previously published before they decide to change anything this noticeable.
- Do paragraphs have summary or anticipatory topic sentences? If not, ask the editors to decide if it is their job to rewrite, or add, topic sentences.

The next task of an editor is to read for **coherence**, or logical flow. Should student editors change or add transitional words, phrases, sentences, paragraphs? Unless the organization is so incoherent that it affects the logic of the argument, I don't think so. But if your editors believe this is

also a part of their job description, then offer a list of transitional words/phrases that they can plug in; if they believe they need to add paragraphs or reorganize sections of the article, then suggest that they write or call the author about those changes. Some authors prefer adding these transitions themselves, believing (as I do) that transitions are part of the argument and can destroy meaning if they are haphazardly changed. Some authors may ask the student editor to make provisional changes and send them; other authors may sign off on the product and accept the student editor's changes. However the author responds, a student editor should first ask before jumping in to alter the text.

A much more thorny problem for student editors is the lack of, or abuse of, authority—when is a citation required, and what if the author blithely ignores his or her source material? You can make a strong impression on student editors by bringing this tension into the discussion. This natural tension between student editors and faculty authors evolves from their natural discrepancy in experience; authors know the material so well that they cannot imagine a reader needing a citation to a "known" fact. Student editors don't know all the facts from articles they read and edit, so they want to add references to outside authority. Student editors will save themselves a great deal of time and anguish if they return a copy of the article with unsubstantiated "facts" highlighted as questions; the author can add those references he or she knows and believes will add to the readers' education. After that, it's the editor's judgment call to add or change citations. However, student editors who seek sources for each generalization and add citations may discover that the author refuses to accept the addition even after all the editor's work—and then the journal has a public relations problem in addition to an editing fiasco.

An unsubstantiated generalization differs from misquoted or unquoted material, however. It is an important duty of student editors to check and double-check the sources of facts, opinions, and quotations that they publish in their journals—no matter who the author is. Where unsubstantiated generalizations may or may not be footnoted, facts and quotations must receive a citation or be dropped from the article. The judgment here is one of professionalism and is not debatable. To teach the difference, you might copy a few pages from a

“You must provide the professional atmosphere and understanding of the author's point of view.”

“An enjoyable aspect of working with student editors is encouraging them to create policy and record it for next year’s staff.”

journal, deleting the citations, and ask the group of editors to identify where citation is necessary and then discuss why.

Don’t assume that student editors know *Bluebook/ALWD Citation Manual* rules of citation. Take a few pages from a journal and change the citation form to highlight problems with signals, spaces, etc. After they have made corrections, ask them to locate the rules that back up their changes.

Journal Organizations and Their Problems

An enjoyable aspect of working with student editors is encouraging them to create policy and record it for next year’s staff. Many, many journal staffs have taken over within a vacuum—no written explanation of the journals’ policy, publication dates or issue numbers, symposia ideas, discipline, circulation, fund-raisers, etc. These students reinvent the wheel while simultaneously soliciting articles that they don’t have criteria to evaluate and editing articles they didn’t solicit or choose.

Invite the journals to create their **organizational chart** and work flow; evaluate those jobs that appear to have several masters, like three-tier editing. Why would three students edit the same article for the same reason? Then consider what training each position requires, and where the students get that training.

All journals should have a written policy about completing edits and volumes before the staff leaves for the year; at a recent national conference, student editors reported that their most unpleasant experiences involved leftover issues, including articles accepted by one year’s board but left for the following year’s staff. A firm, articulated policy should eliminate most of these cases and allow each year’s staff to concentrate on its own articles and publication dates. As sponsor or professor, you must help them help themselves here so that the law school editing experience can become a fond memory rather than a recurring nightmare.

Encourage students to keep a record of the **number of editing hours** for each piece and discuss the reasonableness of the results. When a journal reports 60 or 80—or more—hours on an article, I question whether the article should have

been selected, or whether the editors just needed something to fill up evenings instead of studying.

A third problem with student-run journals is a political one: How do students **communicate with, and edit, professional writers**? I assign articles from symposia on student-run journals and James Lindgren’s *An Author’s Manifesto*, 61 U. Chicago L. Rev. 527. Stand back! Student editors are seriously defensive about their editing and have a difficult time understanding how professors can feel the way they do about editors. A great debate ensues!

Politics melds into attitude, and you need to openly discuss **professional attitudes**: a student editor’s attitude toward an author, an editor’s attitude toward a staff member, the committee’s attitude toward slackers. Set the tone for conversations about attitude throughout the semester—for instance, you have seen that I ask student editors questions about their choices; I don’t dictate to them (except for rules of grammar, etc.). Also, they see my editing comments in pencil, on the left margin, where I ask questions of the author rather than changing the author’s style according to my preference or whim.

Finally, you can help student journals’ staff deal with **discipline problems** within their ranks. No one enjoys criticizing a peer, but editors must do just that when a fellow student fails to complete a job or never shows up for work. Most law students have not had experience setting policy, getting groups to cooperate, setting appropriate guidelines, and deciding punishments. You can lead them to the National Conference of Law Reviews Web site for suggested policies and advice at <law.stetson.edu/nclr>.

Materials

Whether during an ongoing class or a lunch-time conversation, you will generate interest and educate best if you use actual examples of legal scholarship. To find examples, you can ask the journals to forward a few of their submissions; you can adjust published articles to meet your purpose. In my class, we edit a different submission each week and return the collective edit to the editor in charge of the piece.

For authority on footnote and citation form, we compare Harvard’s *A Uniform System of*

Citation (The Bluebook) and the new *ALWD Citation Manual*.

For grammar and punctuation authority, the journals bring their own resources, and we compare them to the *St. Martin Handbook*. For word choice, we consult the *American Heritage Dictionary of the English Language* (4th ed.), Theodore Bernstein's *The Careful Writer*, and *Black's Law Dictionary*[®].

For advice on style, we compare the Texas Law Review *Manual on Usage and Style* (MOS), my *Guide to Legal Writing Style*, and any additional stylebook the journals keep in the offices.

I begin each class using an overhead projector to display some truly horrific proofreading goof—

frequently from the comic strips (artists are not grammarians) or newspaper. Students love to see another journal's error up there, too, but I make sure that the example is either anonymous or from a school far, far away.

Obviously, I encourage you to offer an editing course—you and your students will discover something new in each class!

Editing for Editors: 2001 Syllabus

- Syllabus
- Course content
- Objectives
- Course requirements and grading criteria
- Required texts

Syllabus

	Skills	Citations and Footnotes
Week 1	Proofreading Marks Grammar v. Style	BB/ALWD
Week 2	Format Options Table of Contents	introductory signals punctuation between signals
Week 3	Editing for Grammar Standard Reference Texts	3 functions of footnotes
Week 4	Editing for Punctuation Journal Style Sheets	source from another source
Week 5	Choosing the Article Author Relations	parentheticals
Week 6	Editing for Organization	pinpoints, page spans, short cites
Week 7	Editing for Coherence	quotations and omissions
Week 8	Write-ons and Student Notes Journal Rules and Discipline	
Week 9	Editing for Style	abbreviations and spacing

Week 10	Editing for Length	numerals, capitalization
Week 11	The Great Debate: Students Edit the Pros?	
Week 12	Editing for Word Choice	problems with case cites
Week 13	Editing Review: To Edit, or Not?	
Week 14	Symposium Issues Electronic Submissions	constitutions, statutes, documents, affidavits
Week 15	Training New and Returning Staff	

Course Content

This course teaches student editors what to edit within the text and footnotes (rules) and how to edit (techniques). It emphasizes a professional attitude and limited interference with the authors' style.

Objectives

1. Learn grammar and punctuation rules.
2. Learn *Bluebook* and *ALWD Citation Manual* rules.
3. Anticipate "hot spots" in dealing with authors.
4. Encourage journals to create organization and editing policies.

Course Requirements and Grading Criteria

1. Attendance
2. Evaluative quizzes
3. Weekly edits
4. Final examination
5. Final average of 80 required to pass: beginning with 100 points, absences -5. Then, quiz average (1/4); 100/85/70/50 on each weekly edit averaged (1/4); exam counted twice (1/2).

Texts

Required

1. Harvard's *A Uniform System of Citation (The Bluebook)* and the *ALWD Citation Manual*
2. LeClercq, *Guide to Legal Writing Style* (Aspen, 2nd ed. 2000)
3. Texas Law Review *Manual on Usage and Style* (8th ed. 1995)

Suggested

1. Theodore Bernstein, *The Careful Writer* (Atheneum 1965)
2. *The American Heritage Dictionary of the English Language* (4th ed.)

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OBTAINING COPYRIGHT PERMISSIONS: ONLINE RESOURCES

BY ANN HEMMENS

Ann Hemmens is a Reference Librarian at the Marian Gould Gallagher Law Library, University of Washington School of Law, in Seattle, Wash.

I. Web Page: Information on Obtaining Copyright Permissions

A. Purpose

A new school year is about to begin, and the faculty members at your law school are compiling course materials for the new classes they will teach in the fall quarter. Do the faculty members need to obtain the consent of the copyright owner to use a particular work in the student course pack? If so, who is responsible for obtaining the copyright permissions and how do they do it? Some of these questions (e.g., who is responsible for obtaining the permissions) are answered by individual law school policies. Others are answered, at least in part, by this article, which provides basic information on obtaining copyright permissions and describes the content of a Web page on the University of Washington Gallagher Law Library Web site: *Information on Obtaining Copyright Permissions* <lib.law.washington.edu/ref/copyright.html>.

My colleague Mary Whisner, aware of our faculty and staff's need for information to help them obtain copyright permissions, suggested that I create a Web page that organized online resources. The primary audience of this Web page is the faculty and staff of the University of Washington School of Law, but we hope this guide will be useful for others in the academic community seeking permission to use copyrighted materials for teaching, research, or scholarly activities.

B. Layout and Content

The Web page is in an outline format, arranged by type of organization and resource provided.

Section I has links specific to the University of Washington community, such as the *Copyright Connection* <depts.washington.edu/uwcopy/>, a Web site created by Catherine Innes, the copyright information officer at the University of Washington; this site serves as a reference guide on copyright issues related to the use and creation of copyrighted works at the University. Section II covers Web sites with links to publishers' permissions offices, such as the *Copyright Management Center* <www.iupui.edu/~copyinfo/permit.html>, and to copyright organizations, such as the *Copyright Clearance Center* <www.copyright.com/>. Section III provides links to publishers' Web sites, for both legal and nonlegal materials. The majority of the Web sites in this section are available freely on the Internet, such as *Legal Vendors and Publishers* <www.washlaw.edu/publishers/publishers.html>, from Washburn University School of Law Library, and the *On-Line Directory of Law Reviews and Scholarly Legal Periodicals* <www.andersonpublishing.com/lawschool/directory/>, from Anderson Publishing Company. Other links are limited to members of the University of Washington community because they connect to subscription-based online services (e.g., *Books in Print* and *Ulrich's International Periodicals Directory*). Section IV includes organizations providing direct links to author Web pages or searchable databases of author contact information (e.g., *WATCH* <www.hrc.utexas.edu/watch/watch.html>). Section V includes links to government agencies providing copyright information and forms. Section VI has links to intellectual property and copyright ownership policies from selected colleges and universities. The links in Section VII and VIII are to Web sites containing large amounts of information on copyright, including primary legal material, information on fair use, and forms for registering copyright material.

II. Why Permissions Are Important

By grant of the U.S. Constitution, Congress has the power "[t]o promote the progress of Science and useful Arts, by securing for limited

“The purpose of the fair use doctrine is to ensure that copyrighted materials are freely available to people engaged in criticism, scholarship, and research.”

Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”¹ The purpose of copyright law is to find a compromise that protects the rights of copyright owners (to control their works and to receive royalties from the sale of their works) and the rights of the general public (to use works in particular situations). Copyright applies to many types of materials, including the written word, sound recordings, and visual images such as photographs, motion pictures, and videotapes.

The process of obtaining copyright permission involves acquiring the consent or authorization from the copyright owner to use the copyrighted work. Obtaining such permission is a safeguard against legal claims of copyright infringement. For example, when a professor is interested in compiling a packet of materials for a class (a “course pack”) or when a company is interested in distributing multiple copies of a journal article to its clients, such users must obtain copyright permissions for all the relevant materials. The cost of obtaining permissions varies.

Obtaining copyright permissions is not necessary in special circumstances. For example, if the work has passed into the public domain and is not protected by copyright law, then permissions are not required. There are four reasons a work may be in the public domain, the most common of which is expiration of copyright (i.e., the work was published before 1923). Other reasons may be that the owner fails to renew the copyright, the creator dedicates the work to the public, or the work is simply not a type protected by the law. Professor Laura Gasaway, at the University of North Carolina School of Law, created a chart delineating when a work passes out of copyright protection and into the public domain <www.unc.edu/~unc1ng/public-d.htm>.

Another scenario in which copyright permission may not be required is when the use of the material is covered by the doctrine of fair use. The principle of fair use attempts to find a balance between the competing requirements of the guarantees of free speech found in the First Amendment of the U.S. Constitution and the provision of monetary compensation to the

authors of copyright-protected works. The purpose of the fair use doctrine is to ensure that copyrighted materials are freely available to people engaged in criticism, scholarship, and research, such as members of the academic community. Fair use is included in the copyright statute. The four factors considered when assessing what constitutes fair use as found in 17 U.S.C. § 107 are

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.²

These four factors must be balanced in each case to determine whether fair use applies. According to some scholars, the greatest weight can be placed on the fourth factor relating to potential monetary loss to the copyright holder.³

III. Process of Obtaining Permissions

A. Contact the Publisher

One option in your search for the company or person who owns the rights to a particular work and has authority to give permission for the use of the work is to contact the publisher. The most convenient situation involves a publisher that has either a permissions department or a particular employee dedicated to the work of handling reprints and permission requests. Under the heading “Publishers’ Permissions Offices and Copyright Organizations” on the Gallagher Law Library Web page, you will find links to several copyright Web sites that maintain a separate section for linking to the permissions department of various publishers. For example, the Association of Academic Publishers (AAP) maintains a Web page with links to the permissions departments of its members’ home pages and an AAP-approved permission request form.

² 17 U.S.C. §107(1)–(4) (1994).

³ Laura N. Gasaway & Sarah K. Wiant, *Libraries and Copyright: A Guide to Copyright Law in the 1990s* 27 (1994).

¹ U.S. Const. art. I, § 8, cl. 8.

Another path to the publisher is to explore several of the Web sites listed in the “Publishers’ Websites” section of the Gallagher Web page. Here you will find online directories and lists of publishers’ Web sites for both legal and nonlegal materials such as *AcqWeb’s Directory of Publishers and Vendors* <acqweb.library.vanderbilt.edu/acqweb/pubr.html>, and *A Legal Publishers’ List: Corporate Affiliations of Legal Publishers* <www.colorado.edu/Law/lawlib/ts/legpub.htm#list>. These sites will generally take you to the home page for a publisher, and from there you must search for the permissions department.

B. Contact the Author

Another option in the quest for copyright permissions includes searching directly for the author of the work in question. Many authors or their publishers now maintain Web sites with author contact information. For example, the American Society of Journalists maintains a Web page with links to the Web sites of nearly 1,000 nonfiction writers who are members of the organization <www.asja.org/new/memsites/weblist.php>. Additionally, the University of Texas maintains a searchable database of contact information for authors, titled *WATCH: Writers, Artists, and Their Copyright Holders* <www.hrc.utexas.edu/watch/watch.html>. If the work does not display copyright information, you could search the Library of Congress Information System (LOCIS) database from the Copyright Office of the Library of Congress <www.loc.gov/copyright/rb.html> to determine if the copyright is registered and who the copyright owner is.

C. Copyright Clearance Services

If a law professor wants to create a course pack of various materials (e.g., a collection of photocopied articles and book chapters), the easiest solution for obtaining copyright permission may be to contact a private clearance organization such as the *Copyright Clearance Center (CCC)* <www.copyright.com/>. The CCC offers many services designed specifically for the academic community, such as the Academic Permissions Service and the Electronic Course Content Service. These services are useful for obtaining permission for paper or electronic course packs or reserves. The CCC also provides services targeted

toward the commercial world, such as the Transaction Reporting Service (which includes individual permission services).

In the academic setting, university policies may prescribe who is responsible for obtaining copyright permissions for course packs. For example, a university may require that the campus bookstore, copy shop, or another division handle the process of acquiring copyright permissions for faculty members attempting to compile a course pack. At the University of Washington, the Copy Services Division of the Publications Services Office operates a Copyrights Permission Center <www.pubserv.washington.edu/copy/CopyRightsPerm.html>. The services provided by this Center are available to members of the academic community preparing printed course packs to be sold at University of Washington copy centers. The Center obtains permissions from publishers to use selected materials, prints and sells the course packs, and incorporates the cost of the service in the price of the course pack. Other schools may have similar services.

IV. Other Sources of Information

This article provides a brief overview of obtaining permission to use copyrighted material for scholarly purposes and discusses the content of the *Information on Obtaining Copyright Permissions* Web page. The field of copyright law is vast and complicated. For more detailed guidance on determining whether or not a particular work is protected under copyright law, consult resources such as the *Copyright Crash Course* <www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm> from the Copyright Management Center of the University of Texas System Administration Office of General Counsel, or the *UW Copyright Connection* <depts.washington.edu/uwcopy/>, created by the copyright information officer at the University of Washington.

Several Web sites that provide a broader overview of copyright law and specific doctrines such as fair use are found under the headings “General Copyright Websites” and “Mega-Sites” on the Gallagher Web page. For example, *Copyright and Fair Use* <fairuse.stanford.edu/> is provided by the Stanford University Libraries and

“In the academic setting, university policies may prescribe who is responsible for obtaining copyright permissions for course packs.”

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contains links to primary legal materials, current legislation, and cases dealing with copyright and fair use. *Copyright and Intellectual Property* <arl.cni.org/info/frn/copy/copytoc.html> is a Web site provided by the Association of Research Libraries that provides links to copyright legislation and cases as well as international copyright organizations and documents. And finally, for an overview of the copyright policies of various universities and colleges, explore the links under the heading "Selected Academic Copyright Ownership Policies."

There are many other sources of information available for questions related to the use and creation of copyrighted materials in an academic setting. Many, if not all, universities have an official staff person devoted to the topic, often called a copyright information officer. Additionally, many universities publish copyright policies in faculty or research handbooks. University officials responsible for answering copyright questions may include the general counsel, the director of technology development, or the director of the office dealing with research grants and contract administration.

The *Information on Obtaining Copyright Permissions* Web page is one more tool available to you in your search for copyright permissions in an academic setting. If you have any suggestions or comments on the Web page, please send them to Ann Hemmens at hemmens@u.washington.edu.

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USING ELECTRONIC RESEARCH TO DETECT SOURCES OF PLAGIARIZED MATERIALS

BY ANNA M. CHERRY

Anna M. Cherry is a Reference Librarian at William Mitchell College of Law in St. Paul, Minn.

Plagiarism is a difficult issue for law schools, but not one that can be ignored. The problems of inconsistent definitions, policies, and enforcement among law schools have been recently discussed in an article aimed at students.¹ The subject also has been covered in detail in the academic literature.² But for the professor faced with a questionable paper, the first step is investigation.

The suspicion of plagiarism usually arises when a paper seems inconsistent with a student's other work through vocabulary, sentence structure, or style. Perhaps the professor finds the language in the paper reminiscent of something she read recently. A check of the footnoted materials may reveal plagiarism through carelessness or laziness. But what if it's not that easy?

Electronic research services and the Internet can be used to help identify copied sources through full-text Boolean searching. This article suggests ways to use LEXIS®, Westlaw®, and Internet search engines to identify language in published sources that matches language in a submitted writing. Also included are two Internet services that, for a fee, will check papers against texts received from term paper mills and documents on the Internet.

LEXIS and Westlaw Searching

Westlaw and LEXIS have large, full-text databases that are both easy to copy from and easy to search for copied material. Choose Terms and Connectors searching as the search option.

Natural Language searching is not helpful in these circumstances because it retrieves results based on the relative weighting of the search words rather than using an exact word match.

For search terms, choose words and phrases from the suspicious paper that sound likely to have been copied. Choose longer and unique phrases, but don't choose something too long. The longer the phrase the more likely it is that some of the words will have been changed and no exact matches will be returned.

There are two strategies for making a search out of the phrase. The simplest is to put the entire phrase in quotation marks. This works better for shorter phrases. The other is to use a within-same-sentence connector—the /s—to connect the words within the phrase that are most likely to have been copied, eliminating words that may have been changed.

Here is an example paragraph copied from a recent law review article:

The procedural vacuum left by the statute and two decades of creative interpretation of it by various Minnesota appellate panels has created a perplexing situation for lawyers and judges faced with assessing whether a modification request should or will proceed. The uncertainty makes it difficult at this critical juncture of a modification dispute to predict with any degree of accuracy the weight a court will give to competing information before it. Furthermore, because trial judges have not received clear procedural guidance from the appellate courts, they may render inconsistent rulings.³

The following are examples of searches that will retrieve this article from Westlaw or LEXIS:

- “procedural vacuum” /s “creative interpretation” /s “perplexing situation”
- “uncertainty makes it difficult at this critical juncture”
- “trial judges” /s “clear procedural guidance” /s “inconsistent rulings”

The third search takes longer for the system to

¹ Lynn Weisberg, *Giving Credit Where It's Due*, Student Lawyer, Nov. 2000, at 19.

² Terri LeClercq, *Failure to Teach: Due Process and Law School Plagiarism*, 49 J. Legal Educ. 236 (1999).

³ Robert E. Oliphant, *Redefining a Statute Out of Existence: Minnesota's View of When a Custody Modification Hearing Can Be Held*, 26 Wm. Mitchell L. R. 711, 712 (2000).

process because of the common words it uses, but all three retrieve only the one article.

For papers that have been heavily paraphrased, another suggestion is to search the databases using the citations from the questioned paper as search terms.⁴ If an article contains the same citations as a student's paper, it may have formed the sum total of the student's research.

The principle of searching for citations in a text is the same as searching for a phrase. For example, the search "**21 wm. mitchell l. rev. 989**", including the quotation marks, will retrieve documents that have cited another article by Prof. Oliphant, "*Is Sweeping Change Possible? Minnesota Adopts the Uniform Interstate Family Support Act*," 21 Wm. Mitchell L. Rev. 989 (1996). Words from the citation can also be strung together with connectors to shorten typing or avoid missed retrievals due to typographical errors in the database. For example, **oliphant & uniform & 21 +s 989** will also retrieve citations to Professor Oliphant's article on Westlaw. On LEXIS, the equivalent search would be **oliphant pre/20 21 pre/5 989**. Both the +s and pre/n connectors require words to be in proximity and in the same order as entered. The difference is that Westlaw allows the option of having the words be in the same sentence whereas LEXIS requires the searcher to count the number of words between.

LEXIS and Westlaw Databases

LEXIS and Westlaw have individual databases for individual titles and also combined databases lumping journals and other secondary sources together. Some of these combined databases are listed below. Very recent or unpublished cases should also not be overlooked as possible sources of copied materials. The online and printed database directories provide additional options. Calling customer service is another way to find out if a particular publication is online. The West Group Reference Attorneys can be reached at 1-800-REF-ATTY (1-800-733-2889). LEXIS customer service can be reached at 1-800-543-6862.

To find which individual titles are included in

⁴ David J. Shakow, *Computers and Plagiarism*, 42 J. of Legal Educ. 458, 459 (1992).

these databases and the range of dates covered, check the scope or guide pages. When using the Web interface, information about a database can be found by clicking a button with the international information symbol (a small *i* in a circle) next to the database name in the directory. It is important to remember that these services were invented in the late 1970s. Texts and articles published before the early 1980s are probably not included.

Some useful databases on Westlaw

JLR—The full text of hundreds of law reviews, CLE courses, and bar journals. Full coverage of all articles in the journals starts with 1994. Prior to that date, only selected coverage is available.

TEXTS—Texts, treatises, and legal encyclopedias in full text.

ALR—*American Law Reports* series, except ALR® First.

TP-ALL—The catch-all database for texts and law reviews.

ALLNEWS—Newspapers and other news sources. Note that an automatic date restriction limits searching to the most recent articles, unless the searcher specifies otherwise.

MAGSPLUS—Magazines, journals, and newsletters. Note that an automatic date restriction limits searching to the most recent articles, unless the searcher specifies otherwise.

Some useful databases on LEXIS

LEXIS also includes hundreds of full-text law review articles; selected treatises; the *American Law Reports* series, except ALR First; and probably the world's largest database of magazines, newspapers, and other news sources. In the Web version of LEXIS, these files can be browsed by category. Look for law reviews and texts under *Secondary Legal*; look for news sources under *News*.

Internet Search Engines

There is no single search engine for the World Wide Web. Different search engines work differently and have different strengths and weaknesses. Which ones have the most coverage also changes over time. Meta tag search engines that send the same query to multiple search engines are probably not a good choice because

they usually return only the top hits from each engine, often the same hits.

Unique words or short phrases can be searched anywhere, but the FindSame search engine—www.findsame.com—is the only one designed to match text by phrases, sentences, and paragraphs. A large chunk of text or an entire document is entered and the search engine looks for Web pages that contain significant fragments of that text.

Google—www.google.com—is a search engine that ranks its results not by how many keywords from your search match a page, but by how many other sites link to it. This makes Google especially useful for finding official Web sites for organizations—for example, a government agency or association that may have authored a report.

Sites such as Search Engine Showdown—www.notess.com/search/— and Search Engine Watch—searchenginewatch.com/—evaluate search engines. Visit these sites to select a search engine and to compare features. Each search engine has its own quirks of operation. Most will accept quotation marks to denote a phrase. Most use a plus sign (+) to mark a word as required, e.g., +**hearing**. With any search engine, it is wise to read the search tips section before attempting the kind of complicated searching described in this article.

Other Internet Resources

The Center for Excellence in Teaching and Learning of the University at Albany has created a useful Web page for teachers at www.albany.edu/cetl/resources/plagiarism.html.

New fee-based services aimed primarily at the college market offer testing of papers against databases of previously submitted papers, many from Internet term-paper mills, and searches of the Web. It should not be assumed that term-paper mills do not include law and law-related topics. Two of these services are www.plagiarism.org and www.integriguard.com. The latter site includes a free service for checking originality of papers at www.howoriginal.com.

Limitations of Online Research

All of the text-matching strategies discussed so far depend on the full text of a document being available online, but even in this electronic age, many are not. LegalTrac, for example, indexes hundreds of law review articles from 1980 to the present that are not available in full text on LEXIS or Westlaw. LegalTrac and Index to Legal Periodicals (from 1981) are available for searching through a Web subscription or through their LEXIS and Westlaw files.

Another possible resource not to overlook are continuing legal education materials. Many American Law Institute–American Bar Association (ALI-ABA) and Practising Law Institute (PLI) course materials are online on LEXIS or Westlaw. Local CLE materials should be searchable through a local law library's online catalog.

Conclusion

In this age of online research, documents available from LEXIS, Westlaw, and the Internet make intentional and unintentional plagiarism easier. With a little creativity and persistence, the professor can use these tools to make detection of plagiarism easier too.

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“All of the text-matching strategies discussed so far depend on the full text of a document being available online, but even in this electronic age, many are not.”

“[W]e engage in a kind of reading triage—What can I put aside? What must I read next? and Whatever it is, can I skim it?”

SO WHAT? WHY SHOULD I CARE? AND OTHER QUESTIONS WRITERS MUST ANSWER

BY GREGORY G. COLOMB AND JOSEPH M. WILLIAMS

Gregory G. Colomb is a Professor of English at the University of Virginia in Charlottesville. Joseph M. Williams is a Professor of English at the University of Chicago. Both are visiting professors at the National Judicial College. They are regular contributors to the Writing Tips column in Perspectives.

In our last column, we showed why readers prefer documents that begin well. We explained that readers are more likely to find a paragraph, section, or document easy to read and understand when they can quickly identify an opening segment that meets three criteria:

- It names the main characters in what follows.
- It names the key concepts in what follows.
- At its end, it states in a sentence or two the point of the unit, its central claim; or, if the main point is at the end of the unit, the opening segment ends in a point that anticipates what follows.

Readers depend on these features most in the largest units—in whole documents and in long, multipage sections. They need them less in short paragraphs, so long as they understand how those paragraphs fit into a larger chunk.

But even if readers find all the help they need to understand a document and its parts, they need more than formal coherence to motivate them to read in a careful and engaged way: They need good reason to read *at all*. If readers read without interest, or worse, not at all, we waste our efforts to make our documents coherent. So our first task as writers is to motivate readers to engage with our documents enough to read as long and as carefully as we need them to.

We would not have to work as hard to motivate our readers if they didn't have so much to read. As a consequence, we engage in a kind of reading triage—*What can I put aside? What must I read next? and Whatever it is, can I skim it?* Some

lawyers think that the law motivates their readers to read with interest: The attorney who asks for a research memo must want to read it; judges and other decision makers must be dedicated to reading briefs, motions, memoranda, and other documents sent to them; their clients must be eager to read every letter of legal advice they receive.

But it's a shortsighted writer who assumes that readers owe her their time and interest. Few readers recognize the importance of our documents as clearly and quickly as we do. Our readers will read more willingly if we give them a reason to read that goes beyond their duty to. So you have to think about a document not only in terms of how it helps you do *your* job, solve *your* problems, and achieve *your* goals, but in terms of how it does those things for your readers.

You can anticipate that readers begin most business and professional documents with three questions:

- *Why should I read this?* Most of us have more reading than time; so we want to know sooner than later why we need to read a document closely or at all.
- *What do you want from me, and why should I do it?* Few of us read legal documents for fun, so we want to learn sooner than later what the writer wants us to know or do—and why it's in our interest to do so.
- *How do I find what I need to know?* We don't want to waste time reading, but we can't afford to miss something important, so we want to know where to find the information we need quickly.

You answer those questions by telling readers as quickly as possible why your document merits their attention. So to the three criteria of coherence we listed above, add this principle of reader-friendly organization: Start readers with a clear and specific understanding of how they will benefit by reading what you write and why it is in their self-interest to do so.

Let's look at two examples where the need to motivate readers is obvious. Suppose your firm has been asked to write to manufacturers of chemical products encouraging them to take an action. Your readers are busy people, and they do not expect to receive your report.

Read the following two introductions. Which is more likely to motivate readers to read it carefully? Imagine those readers asking, *Why should I read this? How will reading this help me? What do I have at stake in understanding what this says?*

1. For years, the pharmaceutical industry has cooperated with the Drug Enforcement Agency to prevent the diversion of chemical products to illegal drug production under the Chemical Diversion and Trafficking Act. Our joint efforts have succeeded domestically, but the global market is more difficult to control because law enforcement cannot monitor international sales. The problem has only been compounded by new strategies for disguising transactions. As a consequence, governments cannot track patterns of sales and transport, and legitimate producers and suppliers like yourself will unknowingly become a part of illicit drug traffic.

Congress is now set to begin hearings on amendments to the Act to help control the diversion of substances on a global basis by allowing cooperative arrangements among law enforcement agencies. If these amendments are not passed and the situation deteriorates, we may face far more intrusive alternatives that will cost the industry millions. We therefore ask you to join us in our support of these amendments by subscribing to the attached letter that will be forwarded to relevant congressional committees.

2. In the last decade, lawsuits by those injured by asbestos, silicone, and other chemical substances have increased, leading to the current discussion in Washington of reforms in the way injuries are compensated. We believe that compensation for personal injury from chemical exposure should be based on sound research, and we know you support research on health and environmental effects of your products. We believe that a separate program for adjudicating competing claims is unnecessary. Mechanisms should be supported that have been established to process compensa-

tion claims for serious injury or illness, such as the state tort law system, worker's compensation, Social Security, and programs such as the Black Lung Benefits Act. We actively promote studies to define the possible relationships between hazardous substances and diseases and develop reasonable national policies but only to encourage the use of sound science in litigation and to prohibit scientifically unqualified witnesses from testifying about unproven effects of various chemical substances.

Almost all readers think that the first introduction is more likely to motivate chemical manufacturers to read and consider what the document proposes. This introduction ends by clearly and specifically answering the question, *What do you want from me?* It asks readers to support a proposal by subscribing to a letter. Thus we end the introduction with a strong framework for reading the rest of the document: We know that it will develop and support several main points: It will certainly develop the problem in more detail and then explain why the new legislation will solve it. We can also identify the characters and concepts we expect to see as the focus of the document's story and the basis of its conceptual coherence.

Before this introduction tells readers what it wants of its readers, however, it tells them why they should care. It answers the question *Why should I read this?* by placing its recommendation in the context of a problem that the recommended action would help solve—two problems, in fact. The first problem is that the current law is not entirely successful because it does not allow law enforcement to monitor international sales. Since a problem is not really a problem for the reader unless there are costs *they* will pay, a writer must explain why that situation creates costs that readers do not want to pay. This writer explains, "legitimate producers and suppliers like yourself will unknowingly become a part of illicit drug traffic."

The second problem is that Congress may not pass the proposed amendments. And once again the writer is explicit about the cost to her readers if they do not pass: "we may face far more intrusive

“Thus we end the introduction with a strong framework for reading the rest of the document.”

“You’ll remember that readers always understand new information best when they encounter it in the context of information that they already know.”

alternatives that will cost the industry millions.” By explicitly stating costs, these two problem statements motivate readers to read on.

The problem statements also help build the framework that readers bring to the rest of the text. When the writer states the costs that make each problem important to readers, she also defines the role that she wants readers to play in relation to these problems: the role of good citizen wanting to support the law and stop illicit drug trafficking. Doing so, she indicates what knowledge and attitudes she wants readers to adopt in understanding the rest of her text.

But even before the writer states the problem and its costs, she does one more thing to help readers know what to expect. You’ll remember that readers always understand new information best when they encounter it in the context of information that they already know.¹ Since the writer assumes that her readers do not already know about her problem, she begins with something that readers already know, or at least that won’t surprise them: “For years, the pharmaceutical industry has cooperated with the Drug Enforcement Agency to prevent the diversion of chemical products to illegal drug production under the Chemical Diversion and Trafficking Act. Our joint efforts have succeeded domestically. ...”

This familiar ground does two things. First, it prepares readers for the problem and solution to follow: If the industry has successfully cooperated in the past, it should be ready to cooperate with new amendments. Second, it also locates readers in a context of stability and success: The industry is cooperating with law enforcement to limit domestic production of illegal drugs and is succeeding. What could be better? But then the writer upsets that stability by announcing a problem: Those apparently successful laws in fact are insufficient. That small surprise—what we thought was complete is not—adds one more motivation for readers to read on.

So we can see how each step in this introduction prepares readers for the next one and

contributes to the conceptual framework they need to understand the text as a whole. But when we imagine readers moving through these steps, we can also see how each step motivates them to read *at all*.

- The introduction begins by making readers comfortable, putting them on familiar ground of information, experiences, and attitudes they share with the writer, a ground of unproblematic stability. We’ll call this step **Common Ground**.
- Next, the introduction disrupts that stability by raising something new and troubling: a problem that readers did not know they had. The writer is careful to state what costs those problems impose on readers, because we are all motivated to deal with problems only when we see in them costs that we find intolerable (or at least greater than the cost of the solution). We’ll call this step the **Problem Statement**. That problem consists of two parts, the **Situation** and its associated **Costs**.
- Finally, the introduction promises us a return to a stability by recommending an action that will help to solve the problem. We call this step the **Resolution**.

Together, these steps form a familiar pattern: (Stable) Common Ground + (Destabilizing) Problem + (Restabilizing) Resolution

Here is the first introduction again, with its parts indicated:

1. For years, the pharmaceutical industry has cooperated. ... Our joint efforts have succeeded domestically, **[common ground]** but the global market is more difficult to control ... compounded by new strategies for disguising transactions. **[problem 1 situation]** As a consequence, governments cannot track patterns ... become a part of illicit drug traffic. **[problem 1 cost]**

Congress ... we may face far more intrusive alternatives that will cost the industry millions. **[problem 2 cost]** We therefore ask you to join us in our support of these amendments by subscribing to the attached letter that will be forwarded to relevant congressional committees.

[solution to problem 1]

¹ Gregory G. Colomb & Joseph M. Williams *The Writer’s Golden Rule*, 7 Perspectives: Teaching Legal Res. & Writing 78 (1999).

.....

This is, of course, the pattern of every fairy tale and most drama:

Once upon a time, Little Red Riding Hood was skipping happily through the woods on her way to Grandma's house [**common ground**] when suddenly the Wolf jumped out from behind a tree [**problem**]... They lived happily every after. [**resolution**]

It is a pattern we find in documents of all sorts. You'll find it at the beginning of many newspaper stories and in most magazine articles, book chapters, and academic papers, including law review articles.

When you want readers to invest their time and energy reading your document, you can offer no better compensation than the solution to a problem they want to see solved. You may be motivated to write because of a problem of your own, but if you can solve it only with the help of your readers, you have to make your problem theirs. Then you have to make them believe that they will find their solution in your document. Only when readers see what they have at stake in reading on will they commit themselves to reading your document carefully.

Just as important, if you make clear what's at stake in reading, you don't waste the time of those who don't have the problem you've solved. Readers judge you not by how much time they spend on your documents, but by how little. Readers will judge you as writer by how quickly you make clear that they don't have to read what you've written at all.

With this analysis in mind, look again at introduction #2. How much of what we have seen in #1 can you find in #2? Does it have Common Ground, a Problem Statement, or a Resolution? If there, they are not obvious.

And that explains why we find #2 less motivating than #1. It begins with something that seems to be familiar common ground:

In the last decade, lawsuits by those injured by asbestos, silicone, and other chemical substances have increased, leading to the current discussion in Washington of reforms in the way injuries are compensated. ...

But it does not disrupt that seeming Common Ground with a clear problem statement. We can eventually infer from what does follow that the

reforms under discussion may be a problem, but it is a mystery what the specific problem is and why we should care about it. At the end, we get a claim about the value of scientific research, but we cannot tell what we are supposed to do about it: Do research ourselves? Admire those who do it? Give money to those who do the research? We can't see how this is a document that will repay our attention. By the end of this introduction, readers are sure to be asking the question most challenging to a writer's success: *So what?*

Let's look at another context in which writers typically state each element of the default structure explicitly and in detail: the law review article. Writers and editors know that an article has at most a page or two to capture the right readers—those who will be repaid for their time and effort because the article helps them solve a problem. Readers may be drawn in by a good title, but they are unlikely to read past an introduction that does not tell them why they should read on. This introduction needs only three paragraphs to tell readers exactly who should be interested, and why:

I. Introduction

It is now nearly three years since Congress passed the Telecommunications Act of 1996 (TCA). ... The TCA limits the authority of local zoning boards to deny siting to wireless facilities, and provides for review in federal court of any decision adverse to a facility applicant. Wireless facilities, in addition to telephone transmissions, may accommodate data, paging, global positioning systems, and other transmissions.

As cases brought under § 704 wended their way through the judicial system, certain consistent principles for interpreting the TCA began to emerge. By the end of 1997, it seemed that a consensus was emerging on the meaning of some of the provisions of section 704: . . . [**common ground**]

But by the end of 1998, these seemingly settled principles were being revisited and, in fact, turned out to be not so settled. In several decisions, including the first decision by a U.S. court of appeals, courts declined

“Writers and editors know that an article has at most a page or two to capture the right readers.”

“Most lawyers write more letters, memos, and pleadings than law review articles or industry reports.”

to follow the emerging consensus, and instead opened up the airwaves to new rules and standards. [problem situation] As a result, 1999 brings a more fluid and uncertain landscape for both municipalities and wireless providers, because there exists support on either side of every issue, and courts are now forced to deal with questions that did not confront them before. In other words, while the towers themselves are sturdy, their legal underpinnings have been slightly shaken this past year.²

[problem cost]

This example is shorter than the introductions to most scholarly articles in legal journals or law reviews, but when successful writers produce longer introductions, they simply expand on each step.

Compare how much we learn about why someone would read the TCA article with how little we learn in this introduction:

Litigation abuse has received considerable public attention in the last several years. The shareholder suit is at the forefront of this debate. Corporate America, claiming that strike suits are crippling business profitability, has pressed for litigation reform. Regulators at a variety of levels have responded to complaints of excessive litigation. At the same time, defenders of shareholder litigation stress its importance and warn that efforts to curtail litigation will reduce management accountability.

The debate, which is a lively one, offers a variety of teaching issues. Through the material on shareholder litigation, one can explore the basic themes of corporate law and corporate governance, including questions about the appropriate degree of separation of ownership and control in the public corporation, the relative merits of different governance mechanisms that seek to reduce agency costs and increase management accountability, and the appropriate role of litigation in business

² Robert B. Foster & Mitchell A. Carrel, *Towers of Bable: The Continuing Struggle over Wireless Siting Issues Under the Telecommunications Act of 1996*, 31 Urb. Law 849–850 (1999) [footnotes omitted].

law. This Essay attempts to illustrate the relevance of shareholder litigation to some of the major themes I cover in the basic Corporations course.³

Like the introductions to many unsuccessful student essays, this one tells readers what is in the article, but not why it matters. What’s the problem? Why would anyone read this article? Is it because the author’s course is so extraordinary that other teachers will suffer if they don’t know about it? Because law professors lack ways to teach “the basic themes of corporate law and corporate governance?” Because shareholder litigation is the best way to teach it? Because students lack some *particular* critical understanding about these issues? There may be some good reason to read this article, but this introduction doesn’t reveal it.

To help you understand the default structure of a motivating introduction, we have used examples that are not typical of much legal writing. Most lawyers write more letters, memos, and pleadings than law review articles or industry reports. And you usually do not have to work so hard to tell your readers why they should care about the documents you send them. But even in the most routine documents that warrant only a few lines of introduction, you help readers by stating a problem. Your clients may not need a problem statement to know why, in general, your legal documents are worth their time, but they do need one to understand how they should deal with each one.

Consider, for example, a routine piece of correspondence in which you memorialize a phone conversation. Suppose your aim is only to create a record for some unknown future use, from simply remembering what was said to protecting you or your client in some later dispute. In that case, you need your reader only to file your letter against some future need. Most lawyers would introduce such a letter simply by stating what *it* does. This is perhaps the most typical version:

Pursuant to our conference call with representatives of Clearlines.com from 2:12 to 2:51 p.m. on June 2, 2000, this letter summarizes the discussion of the exclusivity and first-refusal proposals.

³ Jill E. Fisch, *Teaching Corporate Governance Through Shareholder Litigation*, 34 Ga. L. Rev. 745 (2000).

.....

This introduction may tell a reader what he will find in the letter, but because it focuses on what is *in* the document rather than on a problem that it solves, this introduction gives the reader no guidance on the key question, *What do you want me to do?* It forces the reader either to guess or to read the whole letter to see what it's good for—just what you don't want for a letter intended only for your client's files.

Here is a version that is more helpful because it states all three elements of a complete introduction.

As you recall, in our conference call from 2:12 to 2:51 p.m. on June 2, 2000, we discussed the exclusivity and first-refusal proposals with representatives of Clearlines.com. **[common ground]** Since we may have to rely on the details of that conversation in our future dealings on this contract, **[problem]** please keep this summary of that conversation in your files. **[resolution/recommended action]**

This introduction is a bit longer, but it saves a reader time and energy, because it frames the document in terms of the reader's problem and is clear about what you want the reader to do.

We can see how important a clear problem statement can be, even in so routine a document, when we consider how many other goals you might have for this letter, goals that involve different problems and require readers to take different actions. For example, if you and your reader must agree on what was said, your reader has a specific problem:

As you recall, in a conference call from 2:12 to 2:51 p.m. on June 2, 2000, we discussed the exclusivity and first-refusal proposals with representatives of Clearlines.com. **[common ground]** I will be negotiating the final wording of the contract next week, and I may have to rely on certain representations you made in that conversation. In order to ensure that my notes correctly reflect what you said, **[problem]** please review the following summary of that conversation. Let me know by Monday the Xth if I have misunderstood any of your positions. **[resolution/recommended action]**

You could, of course, just tell your reader what you want him to do:

As you recall, in a conference call from 2:12 to 2:51 p.m. on June 2, 2000, we discussed the exclusivity and first-refusal proposals with representatives of Clearlines.com. **[common ground]** Please review the following summary of that conversation. Let me know by Monday the Xth if I have misunderstood any of your positions. **[resolution/recommended action]**

But without the problem statement that recommendation seems peremptory, if not rude; and most readers would do a better job of reviewing the text if they knew what they were trying to accomplish, that is, what problem their review would solve.

In this column we have described the default structure of introductions that both motivate readers to read on and give them a framework to guide that reading. This is a structure that legal writers often use for client communications, letters between lawyers, articles, speeches, and so on. But there are also specialized forms of legal writing that require you to use this structure in special ways. In subsequent columns, we will discuss the specific considerations that apply to two large categories of legal writing: cooperative legal writing, in which the writer's goal is to serve the needs of a client or colleague, and competitive legal writing, in which the writer's goal is to persuade a decision maker to decide as you propose rather than as others do.

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“All legal writing texts recognize the QP’s role in persuasive writing and devote some measure of attention to teaching students how to compose it.”

TEACHING THE POETRY OF THE QUESTION PRESENTED

BY TRACY BACH¹

Tracy Bach is an Assistant Professor of Legal Writing at the Vermont Law School in South Royalton.

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 moment 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.

“How you come out here depends on how you came in.”

– Judge Abraham Freedman²

A teachable moment occurs when students are ready to learn and the teacher knows it. Two factors tend to create these opportunities in the legal writing context: 1) students needing to put theory into practice, usually with a deadline looming, and 2) the teacher recognizing that equilibrium point of interest and panic, and using it to develop new strategies for meeting students’ learning needs. Such is the genesis of educational epiphanies on both sides of the podium.

For my second-year Appellate Advocacy students, a teachable moment occurs when, within the first few weeks of “becoming” counsel to parties of a pending United States Supreme Court case, I require them to draft the Question Presented (QP). Although some legal writing

teachers view the QP as passé³, others have noted its continued vitality.⁴ All legal writing texts recognize the QP’s role in persuasive writing and devote some measure of attention to teaching students how to compose it. One writing reference book describes the QP as “[t]he lens of the legal analyst’s camera.”⁵ In his book on appellate advocacy, Judge Ruggero J. Aldisert remarks that “seeing a splendidly crafted statement is a real joy.”⁶ Yet another experienced advocate admonishes brief writers to “[w]rite the questions presented so that they inspire the answers you want.”⁷

Clearly learning to frame an issue persuasively, so that it “inspires”⁸ the desired outcome and even brings joy to the busy legal reader, benefits those learning the craft of legal writing. At a teaching threshold, having new brief writers draft a QP at the start of their briefing schedule⁹ helps

³ See, e.g., Peter Friedman, *The Question Presented, A Misbegotten Convention* (paper presented at LWI conference, Seattle, July 2000) (arguing the QP’s irrelevance in objective memos); two recent conversations with LWR colleagues, one who, as a judicial clerk, observed readers ignoring them, and another who found them inevitably tedious to read, given how much they try to include.

⁴ See, e.g., Stewart A. Baker, *A Practical Guide to Certiorari*, 33 Cath. U. L. Rev. 611, 614 (1984) (“The questions presented are the first—and sometimes the only—parts of the petition the law clerks and Justices read.”); Aldisert, *supra* note 2, at 118 (“Appellate lawyers must understand what I have previously described as the environment of brief reading. Very seldom do appellate judges read one brief all the way through and then read the other. More often than not, I read the appellant [question presented], then immediately turn to the appellee’s response.”)

⁵ Mary Bernard Ray & Jill J. Ramsfield, *Legal Writing: Getting It Right and Getting It Written* 289 (3rd ed. 2000).

⁶ Aldisert, *supra* note 2, at 121.

⁷ *Id.* at 123.

⁸ “Everyone is familiar with the fact that experts who prepare public opinion polls have substantial control over the response they get by the questions they frame. A scientific pollster attempts to frame neutral questions in order to get honest answers. An able lawyer, on the other hand, tries to frame questions which, without misleading the court, inspire the answer his or her client desires.” *Id.*

⁹ But see Richard K. Neumann, *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* 367 (3rd ed. 1998) (noting two different approaches to drafting a brief, i.e., Model I, which instead begins with the point headings, argument, and statement of the case before turning to the QP and those other parts of the brief, and Model II, which begins with the QP and then progresses through the statement of the case, point headings, argument, and the rest of the brief [the model I use with my Appellate Advocacy students]). Professor Neumann highlights that the theory behind the Model II approach is that “other parts of the brief will be more focused if the issues are first precisely defined.” *Id.*

¹ The author wishes to thank Eric Shepard for his research assistance in preparing this article.

² Ruggero J. Aldisert, *Winning on Appeal* 138 (Revised 1st ed. 1996).

the professor to identify whether students have the “camera” trained on the right subject (as well as their dexterity in operating the manual focus). Moreover, because my Appellate Advocacy students must follow the Supreme Court’s rules,¹⁰ the QP appears on the opening page of the brief and thus presents a singular opportunity to make a good first impression. As one attorney put it, “[T]his is the first place you can be sure of presenting your legal contentions to the court. You will nowhere else present them with such brevity. If the court’s attention and sympathy are not caught here, they may well never be caught at all.”¹¹

Ruminating on these admirable qualities of an effective QP—precision of thought, persuasive structuring, economy of language—led to my teachable moment one day: Why not view the QP as a kind of poetry? Legal poetry, to be exact. If brevity is the soul of wit, then let the judges smile (with joy) as they digest these finely tuned sentences that capture the essence of the advocate’s case.

But how to phrase these pithy but persuasive queries—to move beyond a well-written QP to a brilliantly written one?¹² All legal writing texts outline the key pieces of an effective QP, namely “(1) the general rule of law governing the question, (2) the legal question to be answered in this situation, and (3) the legally significant facts necessary for the analysis.”¹³ Professor Neumann

suggests a three-step approach to drafting that begins with a narrow statement of the question and a separate list of determinative facts that are later merged and edited for concision.¹⁴ Frank Cooper supplies a helpful checklist for judging the effectiveness of a draft QP, including eliminating unnecessary detail, being readily comprehensible on the first reading, eschewing self-evident conclusions, stating in terms of the case’s facts deemed acceptably accurate by opposing counsel,¹⁵ and persuading subtly.¹⁶ Stewart Baker, a former Supreme Court law clerk, recommends that advocates “[a]sk someone who does not know the case to read your questions. If he has to read them twice, they need editing.”¹⁷ Of course, requiring first drafts and redrafts as a part of a legal writing course helps students to understand that honing these skills takes time.¹⁸

Students also learn by seeing it done successfully by skilled attorneys. In class they can analyze selected QPs and deconstruct those elements that shape their reading of the competing issues at bar. One example I use are the QPs submitted on one issue in *United States v. Nixon*.¹⁹ James D. St. Clair, arguing for petitioner President Nixon, wrote:

This internal dispute within co-equal branches does not present a justiciable case or controversy within the meaning of Article III, Section 2 of the Constitution.

In contrast, Special Prosecutor Leon Jaworski framed the respondent’s statement of this issue as:

This dispute between the United States, represented by the special prosecutor, and

“If brevity is the soul of wit, then let the judges smile (with joy) as they digest these finely tuned sentences that capture the essence of the advocate’s case.”

¹⁰ See U.S. Sup. Ct. R. 24.1(a) (1991) (“A brief on the merits for a petitioner or an appellant shall ... contain in the order here indicated: (a) The questions presented for review under Rule 14.1(a). The questions shall be set out on the first page following the cover, and no other information may appear on that page.”); see also U.S. Sup. Ct. R. 14.1(a) (1991) (“A petition for a writ of certiorari shall contain, in the order indicated: (a) The questions presented for review, expressed concisely in relation to the circumstances of the case, without unnecessary detail. The questions should be short and should not be argumentative or repetitive. ... The questions shall be set out on the first page following the cover, and no other information may appear on that page.”)

¹¹ Aldisert, *supra* note 2, at 123.

¹² “A well written question explains precisely the issues before the court. A brilliantly written question not only fairly describes the issue before the court but makes the court want to decide that issue in favor of the author’s client.” *Id.*

¹³ Ray and Ramsfield, *supra* note 5, at 289. See also Neumann, *supra* note 9, at 333. (“Structurally, a Question Presented is an inquiry plus a list of the most determinative facts and an allusion to the body of law that would govern the result[.]”)

¹⁴ Neumann, *supra* note 9, at 335.

¹⁵ Frank E. Cooper, *Writing in Law Practice* 80 (1963), cited in Neumann, *supra* note 9, at 336.

¹⁶ It’s important to emphasize with students the subtlety of persuasion in a QP. “The common wisdom is that each question should be stated so that the only possible answer is the one you want. Forget this advice. If the answer were so obviously in your favor, you would not have lost below. Besides, the Court does not sit to decide obvious cases. Trying to ‘load’ the questions too heavily starts you out on the wrong foot; it makes you look like someone who cannot even be trusted to state the issues in a fair and straightforward way.” Baker, *supra* note 4, at 614.

¹⁷ *Id.*

¹⁸ “Given the relatively few words involved, a persuasive Question Presented can be one of the most difficult drafting jobs in legal writing.” Neumann, *supra* note 9, at 335.

¹⁹ 418 U.S. 683 (1974).

the President—two distinct parties—
presents a live, concrete, justiciable
controversy.²⁰

My Appellate Advocacy students have noted the petitioner's use of the adjective "internal" and the phrase "within co-equal branches" and how it precisely contrasts with the respondent's declaration of a conflict between "two distinct parties," i.e., the special prosecutor representing the United States and the president. They are also struck by the respondent's description of the controversy as "live" and "concrete." After looking at a few more examples, the students detect consistent patterns in the poetry: precise and sometimes colorful word choice, and careful ordering of the legal claims and key facts. In this manner they learn that the legal poetry of QPs consists of two separate but important tasks: one of writing (or drafting) carefully chosen words and one of editing, to arrange the concepts as effectively as possible.

As Justice Frankfurter once observed, "[I]n law also the right answer usually depends on putting the right question."²¹ Although short and sweet, the power of an effectively composed QP cannot be underestimated. By learning to frame the "right question" for a court, our students hone their analytical and wordsmithing²² skills while developing their persuasive voice. In teaching them the power of each phrase, we legal writing teachers contribute to the poetry of law.

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²⁰ Aldisert, *supra* note 2, at 124.

²¹ Estate of Rogers v. Commissioner, 320 U.S. 410, 413 (1943), cited in Aldisert, *supra* note 2, at 138.

²² I like this phrase because it provides such a strong image of the writer forging phrases on the keyboard, like a blacksmith hammering out metal objects on an anvil.

WHAT GIVES CITIES AND COUNTIES THE AUTHORITY TO CREATE CHARTERS, ORDINANCES, AND CODES?

BY PETER J. EGLER

Peter J. Egler is Reference Librarian at the Sacramento County Public Law Library in Sacramento, Calif.

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.

Introduction

The purpose of this teachable moment is to provide a brief overview of “local law” or city and county charters, ordinances, and codes. The law of the state in which the city or county is located will govern the nature of these local laws. While charters, ordinances, and codes may be difficult to locate initially, they are essential to identifying the powers, privileges, rules, and regulations of a municipality or county. Prudent researchers will

check the state legislative code to gain a better understanding of the nature and structure of local laws.

City and County Charters

Every form of government in the United States has some express authority that justifies and defines its existence. For the federal government, the United States Constitution is this authority. Each of the 50 states has a constitution. Cities and counties have some type of charter, which defines their terms of existence. The charter is the city or county’s “constitution,” and the starting point for all other regulations.

States grant cities and counties the ability to administer government on the local level. A state’s constitution and/or legislative code sets forth the powers of cities and counties organized under the laws of that state. For example, Article XI, Sections 1 and 2 of the Constitution of the State of California direct the state legislature to prescribe a uniform procedure for the formation of cities and counties in that state. Under that directive, the California Government Code, sections 23000 et seq. and sections 340000 et seq., include the procedure for the creation of cities and counties, and set out the status and powers of counties and cities organized under California state law.

Although some states have other systems, and occasionally the terminology varies, most states recognize two kinds of charters: general law charters and home rule charters. Cities and counties that operate under the procedures set forth in the laws and constitution of their state have a general law charter. General law charters are created by and are consistent with the state law. State constitutions also give cities and counties the ability to write and adopt their own charter. These are home rule charters. State constitutions and laws will specify the procedures a city or county must go through to create and adopt a home rule charter. Article XI, Section 3 of the Constitution of the State of California gives cities and counties the ability to draft and adopt home rule charters.

Typically, a majority of the population in a city or county must vote in favor of a home rule charter in order for the charter to be adopted. Once the home rule charter is adopted, it becomes

the governing law of the city or county. Because state laws authorize the creation of the home rule charter, the home rule charter is seen as having the same force as state laws. If a state law conflicts with a home rule charter provision, the charter provision overrides the state law within the city or county jurisdiction. As a result, home rule charters provide cities and counties with a degree of independence from the state's legislature. Home rule charters don't override the state's constitution. The ability to create and modify cities and counties, and their charters, will vary by state.

Charters list the powers and structure of the city or county government. For example, the charter for the city of Sacramento, California, includes provisions outlining the powers of the city, the structure of the city government, city elections, and the city's board of education. The charter for the county of Sacramento, California (an entity separate from the city of Sacramento that governs the unincorporated areas of the county), includes provisions defining the powers of the county, the structure of county government, county elections, county fiscal procedures, and county roads.

Ordinances

Through their laws and constitutions, state governments give city and county governments the power to regulate matters of local concern, such as animal control, local law enforcement, local parks, and local roads. Cities and counties create ordinances to regulate these matters. An ordinance is the equivalent of a statute, passed by a city council, county council, or an equivalent body.

Cities and counties have only those legislative powers that are expressly granted to them by their state's constitution or laws. The Constitution of the State of California, Article XI, Section 7, states that "a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws" of the state of California. This provision applies to both general law and home rule cities and counties. Note that the constitution provision expressly gives the state law precedence over the local ordinance.

The Constitution of the State of California, Article XI, Sections 4 and 5, state that home rule charter cities and counties may develop ordinances to govern local affairs. The constitution further states that ordinances passed by home rule charter cities and counties take precedence over conflicting state laws as to local affairs. State laws take precedence over home rule charter ordinances as to matters that are not local affairs. There has been a large amount of litigation in the state of California debating what constitutes a local affair.

Codes

After federal laws are passed, they are codified, or systematically arranged by subject area, and placed into the *United States Code*. After state laws are passed, they are codified and placed into the state legislative codes. After ordinances are passed, they are codified and placed into the city or county codes. All types of codes are arranged in some sort of subject order so that the laws of the jurisdiction can be more easily accessed.

For example, the Sacramento City Code includes chapters governing public health and safety, vehicles and traffic, streets and sidewalks, buildings and construction, and zoning regulations. The Sacramento County Code includes chapters governing revenue and taxation, animals, "public peace, morals, and safety," airports, water and sewers, trees, and land development.

Locating Charters, Ordinances, and Codes

The charters, ordinances, and codes of a city or county can usually be found at the jurisdiction's public law library, usually at the city or county courthouse. If the jurisdiction doesn't have a public law library, or the public law library doesn't have the information you are looking for, try contacting the clerk or the legal department for the city or county. Many city public libraries maintain a copy of their city and county codes, and many academic law libraries collect the laws of local jurisdictions.

In the past, many city and county codes and charters have been difficult to locate because they were not widely distributed outside of the city or

county. Currently, many city and county charters and codes are now available on the World Wide Web. The city or county's main Web page should contain a link to its code if it is available online. The increased access to city and county codes provided by the World Wide Web has been a major benefit to researchers.

The following Web sites contain links to county and city government information and are exceptionally well organized and maintained:

1. *Piper Resources State and Local Government on the Net*. <www.piperinfo.com/state/index.cfm>
2. *Seattle Public Library Municipal Codes Online*. <www.spl.org/govpubs/municode.html>
3. *Municipal Code Corporation*. <www.municode.com/database.html>
4. *National City Government Resource Center*. <www.geocities.com/CapitolHill/1389>

Updating Codes

Updates to city and county codes are usually issued several times per year. To determine the current status of a particular section, check the date the code was last updated and then review all ordinances passed after that date to see if the code section was amended or new relevant code sections were passed. Traditionally, the uncodified ordinances were kept in notebooks or files, with limited finding tools. Finding newer materials usually involved paging through individual ordinances. Today's researchers will find that many cities and counties are publishing their codes and ordinances online, enhancing both retrieval and research. Check your city or county government home page for links to this information.

Historical Research

Researchers may need to determine what city or county code provision was in effect at a previous date. It is the responsibility of the local jurisdiction to maintain its historical codes. All too often, local jurisdictions fail to keep useful history notes or to maintain repealed ordinances in an accessible format. A researcher's best bet when researching a historical code provision is to find a local library that archives that jurisdiction's old ordinances and codes.

Conclusion

States grant cities and counties the power to exist and the power to govern local affairs. States have also granted cities and counties the ability to draft their own charters and create their own powers, as long as these powers do not conflict with the state's powers to govern. Cities and counties create their power to govern through their charters, and in turn, govern through their ordinances. Researchers working on local issues need access to city and county charters, ordinances, and codes. Fortunately, as local governments embrace the Web as a tool to respond to citizen requests for information and access to governmental services, researchers benefit from the increased availability of city and county charters, codes, and ordinances.

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TWO PROGRAMS ARE BETTER THAN ONE: COORDINATING EFFORTS BETWEEN ACADEMIC SUPPORT AND LEGAL WRITING DEPARTMENTS

BY HERBERT N. RAMY

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Introduction

In most law schools, legal writing instructors are uniquely positioned to assess which students will need assistance from an Academic Support Program (ASP). While most doctrinal courses are taught in large classes where the interaction between student and teacher is limited, legal writing classes tend to be small and the assignments frequent. Due to the smaller class size and frequency of assignments, legal writing instructors are often the first to see that a student may need additional assistance. Usually, a student is deemed “at risk” if factors such as LSAT scores or college grades indicate that the student will have difficulty graduating from the law school or passing the bar exam. While helpful as a starting point, this method fails to reach all students in need of assistance.

During the 1999–2000 academic year at Suffolk University Law School, legal writing instructors and ASP instructors began working together more closely to try and reach, as quickly as possible, students in need of academic assistance.¹ This new working relationship was not intended to supplant other methods of identifying at-risk students. Instead, I view the new relationship between the ASP and the Legal Practice Skills (LPS) offices as a method of supplementing what both programs were already doing to reach students in need. In fact, ASP instructors

continued to contact students deemed at risk due to LSAT scores and college grades, work with all first-year students during orientation, and assist upper-class students who were experiencing academic difficulty.

This new working relationship has helped both departments meet their respective goals. When legal writing instructors began referring students to the ASP office, they were helping the ASP department reach out to these students earlier than was otherwise possible. When ASP instructors began helping students with their writing, we became another voice that reinforced the instruction that the students were already receiving from their legal writing professors. While the new working relationship between the departments has proved to be a success, as with any new idea, there were some unique problems with which we had to deal. In particular, we had to address several administrative and organizational issues.

Administrative Issues

A very close working relationship between the ASP and the legal writing departments may not work in all law schools for several reasons. First, whenever two administrative departments begin working together, “turf” issues naturally arise. Second, a working relationship between the two departments can generate a great deal of additional work for ASP instructors—work that a small ASP staff could not handle. Finally, ASP instructors must have a good understanding of the work performed by legal writing instructors in order to provide meaningful and consistent assistance to the students. Several aspects of Suffolk’s ASP and legal writing department have made these administrative issues easier to overcome.

There are few turf battles between the ASP staff and the LPS staff at Suffolk because both programs are under the umbrella of the legal writing program. While I do have a great deal of autonomy in directing Suffolk’s ASP, I report to the director of the legal writing program.² This organizational structure leaves the final decision-making authority in the hands of a single person and helps the two departments work together as a

¹ We have continued this program into the 2000–01 academic year.

² Kathleen Elliott Vinson directs Suffolk University Law School’s legal writing (Legal Practice Skills) program.

team. Teamwork between the two administrative offices is essential due to the increased number of referrals that legal writing instructors can generate. Referrals from legal writing instructors can generate a large amount of additional work for an ASP office, making sufficient staffing essential. A full-time director, one full-time instructor, and one part-time instructor staff Suffolk's ASP office. Every member of the ASP staff is a former legal writing instructor. This prior experience means that each ASP instructor is well acquainted with the job being performed by the legal writing staff, which in turn makes it easier to help Suffolk's students.

A clear division of responsibilities between the two departments also helps avoid turf battles. When I began directing Suffolk's ASP in the summer of 1999, I was told that one part of my job would be to help all students, but particularly first-year students, with their writing. As the school's LPS instructors were already providing some of this assistance, it was essential to put policies into place that would help avoid duplicative or contradictory efforts by the ASP and writing staffs.

The "No Pen to Paper Policy"

After several discussions with instructors from both the LPS and ASP departments, a basic policy began to take shape. While Suffolk's LPS instructors do answer student questions about their papers, they may look at only small portions of the paper prior to it being handed in. With as many as 60 students each, writing instructors simply did not have enough time to review papers in their entirety prior to their due date. This long-standing policy also helped maintain confidentiality for purposes of grading, but it often made it difficult for an LPS instructor to provide students with meaningful assistance.³ Having ASP instructors read the papers seemed like a natural way of providing students with help, while at the same time maintaining anonymous grading. The danger of this approach was that the ASP would become a proofreading service, and students would end up being graded on work

that was not truly their own. To deal with these concerns, Suffolk's ASP eventually adopted its "no pen to paper" policy.

The most basic aspect of the policy precludes ASP instructors from writing on student papers in any fashion. Instead, students bring their papers to an ASP instructor who first reads it. Next, the instructor engages the student in a dialogue about the paper. For example, an instructor may ask what message the student intended to convey in a particular section of the paper, and then explain why that message is not coming across. In essence, the meetings are formalized brainstorming sessions where the students are forced to confront the weaknesses in their work and discuss ideas for improving it. If the ASP instructor notices weaknesses in the more basic aspects of the student's writing, such as grammar and sentence structure, additional meetings are scheduled to address these problems. Exercises created by the ASP staff are used to work on these problems, not the LPS papers. Thus, the policy achieves the desired effects—the ASP office does not end up as a proofreading service, and students are graded on their own work.

Should ASP Instructors Be Familiar with the Memo Topics?

One of the more difficult issues we encountered when creating this program was whether the ASP instructors should be familiar with the substantive law topic being used in each instructor's memo. On the one hand, a general understanding of the topic could make it easier for the ASP instructor to provide meaningful comments about a student's paper. On the other hand, the law used within the problem was viewed by some as the province of the legal writing instructor. In addition, each of Suffolk's 11 writing instructors creates his or her own problems. This means that the ASP instructor would have to become familiar with 11 different factual and legal scenarios. After experimenting with both methods, we discovered that the ASP instructors did not need a working knowledge of the problems in order to assist the students. By not reading

“Teamwork between the two administrative offices is essential due to the increased number of referrals that legal writing instructors can generate.”

³This policy is under review.

“To avoid the perception that Suffolk’s ASP provides only remedial assistance, we have developed a two-tiered approach to providing students with writing assistance.”

the problem itself, ASP instructors had no preconceived notions about the best manner for presenting the information. In fact, we learned that it was easier to determine whether a student had effectively conveyed the necessary information if we did not have a working knowledge of the topic. In other words, if the ASP instructor still had questions about the law or the facts after reading the memo, then the paper needed additional work. Admittedly, not reading the problem or the associated cases made it more difficult to identify problems with the substance of the papers. Students are reminded, however, to meet with their legal writing professor for assistance with the law used in their memos.

Avoiding Stigmatization

If an ASP hopes to provide meaningful writing assistance to students, it must avoid stigmatizing them. If students feel that the ASP office merely provides remedial training, then the students with the greatest need will avoid seeking help for fear of being stigmatized. To avoid the perception that Suffolk’s ASP provides only remedial assistance, we have developed a two-tiered approach to providing students with writing assistance. Under this two-tiered approach, instructors refer specific students to the ASP office, but also inform their classes that the ASP office will help all students with their writing.

Writing instructors are encouraged to refer their weakest students to the ASP office, with referrals occurring as soon as the instructor finishes grading the first group of student papers. It is essential that these referrals occur as early as possible so that the students begin receiving the needed assistance before they begin working on their next papers. Otherwise, the writing problems are likely to persist and the students will become more and more disillusioned regarding their ability to succeed in law school.

In order to ensure that instructors are referring the “right” students to the ASP office, the two staffs meet prior to the beginning of the semester to discuss a general set of referral standards. I will not go into the standards we use at Suffolk in great detail. In general, instructors refer students who are having difficulty with basic aspects of writing,

such as grammar, punctuation, sentence structure, and organization.

In addition to establishing referral standards, we also discuss the mechanics of referring a student to the ASP. While the mechanics of referring a student may seem relatively unimportant, they should be discussed so that the ASP office receives as much information about the referred student as soon as possible. In addition, referrals should be conducted in a fashion so as to minimize stigmatization of the referred student. At Suffolk, the first step in referring a student is a discussion between the legal writing instructor and the student. Through this conversation, instructors convey two important messages: the ASP office can help the student make the most out of his or her abilities; and the student is not a problem that is being “dumped” onto another instructor. Thus, the student is reassured that the working relationship with the legal writing instructor will continue.

The next step in referring a student to Suffolk’s ASP is the completion of a referral form that is then forwarded to the ASP office. The form includes lists of the most common writing problems—for example, sentence structure, large-scale organization, and passive voice—in addition to a section for general comments by the instructor. The instructor then attaches a copy of the student’s latest work to the referral form before forwarding it to the ASP office. A staff member within the ASP office begins working with the referred student as soon as possible. Generally, the first meetings occur with one week of the referral. If a referred student does not contact the ASP office within a week, he or she is contacted by an ASP staff member and encouraged to make an appointment. Despite these efforts, stigmatization would still be a danger if referred students were the only ones allowed to use the services of Suffolk’s ASP—they are not.

All first-year students can take advantage of two specific services offered by Suffolk’s ASP. First, the ASP runs a weekly “Academic Excellence Class,” which covers a variety of topics, many of them related to writing. Topics in these weekly courses range from grammar basics to the use of topic sentences to create paragraphs with a well-

thought-out theme.⁴ In addition to our weekly Academic Excellence Class, Suffolk's ASP will review any first-year student's memo. Both of these services are heavily promoted by the school's legal writing instructors. Every week, the writing instructors announce the topic for the next Academic Excellence Class. In addition, they regularly remind their classes that ASP instructors are available to review student work. These announcements help to destigmatize getting help from an ASP instructor by letting students know that seeking assistance is acceptable and available to everyone.

Is ASP Usurping the Legal Writing Instructor's Role?

When I have discussed Suffolk's ASP with others, particularly legal writing instructors, a number of questions arise. Aren't the ASP instructors teaching skills that should be left to the legal writing staff? Isn't there a danger of confusion when students learn a single skill from multiple sources? Will the ASP office's assistance undercut the important student/teacher relationship? In larger programs, how can the ASP instructors be expected to provide assistance regarding the substantive law aspects of the different problems being used in various classes? These are all valid questions that we have had to address at Suffolk University Law School. While the relationship between Suffolk's ASP and legal writing programs is still in evolution, open lines of communication and respect for the work each department is performing have helped us deal with these issues in a more than satisfactory fashion.

Avoiding Inconsistency

To avoid inconsistency between the messages emanating from the two departments, the ASP staff sends students back to their legal writing instructors to answer certain types of questions. For example, ASP instructors focus on writing basics, such as sentence and paragraph structure, when assisting students with their first-year memoranda. Further, ASP instructors will refer students back to their legal writing instructors for

questions on basic writing topics when the answer might be different from instructor to instructor. A simple example of this is the use of the word "their" as a singular or plural pronoun. Although technically a plural pronoun, some instructors accept or even encourage students to use it in the singular. To avoid any contradiction, we refer students with these questions to their LPS instructors. In addition, we refer students to their writing instructors for answers to questions relating to the substantive law used in the memo. Referring students to their legal writing instructors helps reinforce the primacy of the writing instructor's role in teaching legal writing.

The referral system benefits the writing staff in two additional ways. First, legal writing instructors can focus on other topics, such as legal analysis, knowing that the referred students are receiving additional basic writing instruction from the ASP office. Second, the instruction provided by the ASP staff reinforces the instruction given by the legal writing instructors. For example, a student who doubts the importance of strong paragraph structure in legal writing is more likely to listen when that same message comes from a second source. The student having difficulty understanding, as opposed to disagreeing with, his or her writing instructor gains the benefit of hearing similar lessons being taught by a different person. Simply hearing the same lessons repeated using different examples often makes an important difference to a struggling student.

From the standpoint of an ASP office, these meetings serve the important goal of acquainting students with the services the office provides. A student who has a positive experience with an ASP instructor with regard to assistance with a memo is more likely to take part in a seminar on exam preparation or outlining. Even more important, these early meetings allow the ASP office to identify at-risk students more quickly. There is a strong correlation between students referred to the ASP office by their writing instructors and students already identified as at risk based on LSAT scores or college GPAs. The correlation, however, is not 100 percent. Each semester, LPS

“Referring students to their legal writing instructors helps reinforce the primacy of the writing instructor’s role in teaching legal writing.”

⁴ The program also covers more traditional ASP topics such as exam preparation and outlining in these classes.

“Once these students discover that the ASP staff can help them improve their writing, they are motivated to return to the office for additional assistance.”

.....

instructors refer students to the ASP office who have never been identified as at risk based on LSAT performance or college grades.

From the standpoint of the ASP office, a student who is performing poorly in a legal writing class is a prime candidate for poor performance in law school as a whole. The “carrot” for getting these students to work with the ASP office is the promise of help with their legal writing assignments. Once these students discover that the ASP staff can help them improve their writing, they are motivated to return to the office for additional assistance. This additional assistance can be in the form of exam-taking skills, time management, outlining, or any number of skills traditionally taught within an ASP office.

Conclusion

The close working relationship between Suffolk’s ASP and LPS department has benefited both programs. The ASP has been able to reach a larger number of students in need of academic assistance, while the LPS department can rely on ASP instructors to provide additional basic writing instruction to a large number of students. Most important, however, it is the students who are reaping the benefits of the relationship between the two programs.

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COMPILED BY DONALD J. DUNN

Donald J. Dunn is Dean and Professor of Law at Western New England College in Springfield, Mass. 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.

Deanna Barmakian, *Better Search Engines for Law*, 92 Law Libr. J. 399 (2000).

The author "compared fifteen search engines for effectiveness in retrieving legal information on the Web. She reports the results of two separate studies in which she examined known item searching and topical searching. She also considers the impact of various search engine issues on legal researchers." *Id.*

Linda L. Berger, *A Reflective Rhetorical Model: The Legal Writing Teacher as Reader and Writer*, 6 Legal Writing 57 (2000).

Since it is generally accepted that legal writing teachers' most important responsibility is reading and responding to student work, these teachers must begin to apply what has been learned to their own reading and writing.

Robert C. Berring, *Legal Research and the World of Thinkable Thoughts*, 2 J. Appellate Prac. & Process 305 (2000).

Technological innovation in providing legal information has emphasized a generation gap in the way research is conducted. The author says "[i]t is time to reconceptualize the law, legal categories, and legal education" and that the "legal profession must seize control of its own information destiny." *Id.* at 317-18.

Christopher D. Byrne, *Journals of the Century in Law*, Serials Libr., No. 2, 2000, at 87.

The author ranks the 20th century's best law journals through an analysis of journals issued from 1985 to mid-1999 and the frequency with which others cite them. *Harvard Law Review* leads the way for the general-purpose reviews. Subject-oriented journals are arranged topically, and numerous titles are included in this listing.

Nancy Carol Carter, *American Indian Tribal Governments, Law, and Courts*, Legal Reference Services Q., No. 2, 2000, at 7.

This selective bibliography "provides a guide to primary and secondary materials on tribal law and government, tribal courts and tribal judges." *Id.*

Yvonne J. Chandler, *Legal Information on the Internet*, J. Lib. Admin., No. 1-2, 2000, at 157.

An extensive, thorough analysis of legal and governmental information resources available on the Internet. Covers both primary and secondary sources.

Clinical Education: An Annotated Bibliography, Revised Edition: The Czapanskiy Bibliography. <www.law.umaryland.edu/Clinic/CLINEDU/Czapanskiy_bibliog.pdf>.

Originally prepared by Karen Czapanskiy, this is an electronic version of a bibliography that is in the process of being revised by others and scheduled for publication in the *Clinical Law Review* in 2001. Requires Adobe Acrobat Reader to access.

Christian C. Day, *In Search of the Read Footnote: Techniques for Writing Legal Scholarship and Having It Published*, 6 Legal Writing 229 (2000).

A "nuts and bolts" compilation of techniques intended "to assist fine writers in the efficient production and publication of scholarly articles." *Id.* at 231.

Jill Ann Duffy & Elizabeth Ardella Laub Lambert, *Researching the Supreme Court of the United States: Available Resources for Commonly Asked Questions*, Legal Reference Services Q., No. 2, 2000, at 25.

This extensive bibliography provides references to and discussion of a panoply of sources relating to the U.S. Supreme Court, e.g., collective biographies, nomination hearings, tributes, rules, and procedures.

Jo Anne Durako, *1999 Survey Results, Association of Legal Writing Directors/Legal Writing Institute*, 6 Legal Writing 123 (2000).

Provides the results of an extensive survey

conducted in 1999 by compiling the data obtained from 117 programs.

Jo Anne Durako, *A Snapshot of Legal Writing Programs at the Millennium*, 6 *Legal Writing* 95 (2000).

"This article is the fourth comprehensive, national review of legal research and writing programs to be published since the first survey was conducted in 1970." *Id.*

Lynn Foster & Bruce Kennedy, *Technological Developments in Legal Research*, 2 *J. Appellate Prac. & Process* 275 (2000).

With a focus on appellate opinions, this article discusses "how new technologies have made possible new types of legal research and new means of access to the law." *Id.* at 275. It also traces the transition of decisions from a print to electronic medium and offers ideas as to how appellate decisions will be disseminated and will affect legal research.

Joyce J. George, *Judicial Opinion Writing Handbook*, 4th ed., 2000. [Buffalo, NY: William S. Hein & Co., 604 p.]

This volume is intended to enable judges to become better opinion writers by offering forms and structure outlines along with a review of existing method, styles, rules, and techniques. Two new sections discuss "Judges' Views" and "Criticism of Judges' Opinions."

Sally J. Kelley et al., *Agricultural Law: A Selected Bibliography*, 1996–1999, 53 *Ark. L. Rev.* 495 (2000).

This extensive, unannotated, and topically arranged bibliography (more than 160 pages) covers titles published from 1996 to 1999. It updates earlier bibliographies published in 61 *Mo. L. Rev.* 877 (1996) and 19 *Wm. Mitchell L. Rev.* 481 (1993).

James P. Madigan & Laura Y. Tartakoff, *Doing Justice to the Potential Contribution of Lyric Poems*, 6 *Legal Writing* 27 (2000).

The authors argue that lawyers can become better advocates by reading lyric poetry because "style" is important in legal discourse.

Lars Noah, *One Decade of Food and Drug Law Scholarship: A Selected Bibliography*, 55 *Food & Drug L.J.* 641 (2000).

This unannotated, subject-arranged bibliography provides references "to most of the significant food and drug law articles that have appeared in other law journals over the last decade" when this journal's predecessor, the *Food Drug Cosmetic Law Journal*, periodically published "Citations to Articles of Interest in Other Journals." *Id.*

Laurel Currie Oates, *Beyond Communication: Writing as a Means of Learning*, 6 *Legal Writing* 1 (2000).

Describes the waiting-to-learn movement and then discusses this movement according to the theories of behaviorism, composing process, knowledge telling and knowledge transforming, and cognitive psychology, concluding with an analysis of the types of writing best for law school learning.

William L. Thomas, *Select Bibliography of Articles and Books in International Environmental Law* (1997–Present), 13 *Geo. Int'l Envtl. L. Rev.* 47 (2000).

Provides references to sources on air and atmosphere, fresh water, oceans, energy, internal hazard management, international commons, natural resource management and conservation, international economy and environment, security, and country/region materials.

David D. Walter, *Student Evaluations—A Tool for Advancing Law Teacher Professionalism and Respect for Students*, 6 *Legal Writing* 177 (2000).

This article argues that student evaluations can be used as a tool for advancing a teacher's professionalism and, hence, enhancing respect for students.

Melissa H. Weresh, Book Review, *The ALWD Citation Manual: A Truly Uniform System of Citation*, 6 *Legal Writing* 257 (2000).

After tracing the history and criticisms of *The Bluebook* and its competitors, this review evaluates the differences between the *ALWD Citation Manual* and *The Bluebook* and then assesses whether this new manual might replace the old standard.

Acing Your First Year of Law School: The Ten Steps to Success You Won't Learn in Class

BY SHANA CONNELL NOYES AND HENRY S. NOYES, BUFFALO, NY; WILLIAM S. HEIN & CO., 1999

REVIEWED BY APRIL MARTIN

April Martin is a third-year law student at the University of Texas in Austin.

This is another in a long list of how-to books designed to help alleviate the fear and anxiety of the first-year law student. It's a futile but apparently lucrative effort. The authors use their achievement of "making Law Review" to lend authority to their advice, promulgating the common perception that law school success is defined by law review and class rank. Regardless of your definition of law school success, this is not a book legal writing professors should recommend to students.

By including topics such as "Legal Research" and "Legal Writing" alongside "How to Read a Case" and "Outlining," the authors minimize the importance of the first-year writing curriculum. It is a disservice to the students to encapsulate "Legal Writing" in seven pages, with no references to more comprehensive materials, and claim that this covers what a student needs to know for the first year of law school. At best, this book provides an outline of the materials that should be covered in a comprehensive orientation. Students may find some anxiety relief in the "Dicta Column" at the end of each chapter, explaining what they *don't* need to know, but it's not likely to outweigh the anxiety that will result from discovering, perhaps too late, that legal writing is more than a "tip" for law school success.

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Teaching Legal Research and Writing

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