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Ten Magic Tricks for an Interactive Classroom[1]

BY LESLIE LARKIN COONEY AND JUDITH KARP

Leslie Larkin Cooney is an Associate Professor and Judith Karp is an Assistant Professor at Nova Southeastern University School of Law in Fort Lauderdale, Fla. Both work in the Lawyering Skills and Values Program. At NSU, the lawyering skills program is a two-year, 12-credit sequence integrating practice, professionalism, and technology. The first-year program combines instruction in legal research, writing, and analysis with other skills such as interviewing, counseling, negotiation, and pretrial practice. Students in the upper-level program elect a transactional track or a litigation track.

Educators have found that active and collaborative teaching methods can be far more successful than those that are teacher-centered. Professors who teach legal skills, including the skills of research and writing, have been at the forefront in legal education in adopting these teaching methods, which include "learn by doing." Students benefit from the "learn by doing" approach because it forces them to take an active role in the learning process and encourages them to learn from each other. With the students, rather than the professor, as the center of attention in the class, the professor can better facilitate the learning process. Although the most obvious application of "learn by doing" is to provide simulations for our students, legal skills professors need not limit themselves to simulations in order to take advantage of the benefits of this teaching method. The following interactive exercises have been used successfully in the legal skills classes of the Lawyering Skills and Values Program at Nova Southeastern University School of Law. We have found that these exercises can be adapted to a variety of topics and levels of training.

1. Piecing It Together

Through this group exercise, students learn that legal writing is like putting together a jigsaw puzzle. Students are given sentences of a paragraph, or portions of a memorandum, client

[1] This article is a revised version of material presented by the authors at the Central Region LRW/Lawyering Skills Conference, "Hands-On: Teaching LRW and Lawyering Skills in the First Year," held in Kansas City, Missouri, on September 24–25, 1999.

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letter, or other writing and are required to organize them in a coherent fashion. If all the pieces of a writing are organized in their proper order, a clear picture appears to the reader.

2. What's My Line

Students are divided into pairs to interview each other as if they were applying for a job position with the class law firm. Each student then writes a paragraph about the interviewed "applicant," introducing the individual to the hiring committee (the entire class). If time permits, each student orally introduces the applicant to the class. The paragraphs are then reproduced in a class "firm brochure."

3. Conjunction Junction

Hand out a multiple-choice test on grammar and punctuation questions. (Questions are readily available in English grammar texts or SAT preparation materials.) Divide the students into teams and have the teams complete the test. Each team must choose only one answer per question. As moderator, you call seriatim on teams for correct answers. The team with the most points wins. You might also award points for enthusiasm and bonus points for any team that can sing the song "Conjunction Junction."

4. Face-Off

Class is divided into two groups, representing opposing parties, and groups are then subdivided into groups of four, which are required to either write an outline of an argument or write a persuasive IRAC. For example, in the criminal case of *The Three Bears v. Goldilocks,* Goldilocks is charged with burglary. Each subgroup is given the elements of burglary and is required to write either an outline of an argument or a persuasive IRAC using the facts in *Goldilocks and the Three Bears*. One student from each group then argues the group's position against a member from an opposing group.

5. Who Wants to Be a Lawyer?

Based on *Who Wants to Be a Millionaire?* Divide your students into teams and have them write five multiple-choice questions based on the reading assignment for the day's class. Teams have 15 minutes in which to write questions of varying difficulty. Teams rate their questions as easy, average, or difficult. Have team members list their names and submit questions and answers. (You may also want to come to class with a bank of your own questions to ensure coverage of any particular part of the material.) Then play the game in the same class. Begin by asking the contestant easier questions and then gradually increasing the level of difficulty. (You may want to use teams instead of individuals as contestants in particularly large classes.) Omit questions that the contestant has authored. Permit the use of lifelines: "ask the class"; "phone (ask) a friend."

6. Team Feud

Student groups draft a complaint based on a given set of facts. The groups then exchange complaints and are required to draft answers to the complaints they received. This can be done in a class period using a simple set of facts and one count.

7. The Cite Is Right

This is a takeoff of the television game show *The Price Is Right*, in which participants are asked to guess which product is marked with the correct price. In the legal writing version, the class is divided into color-coded teams. The object of the game is to be the first team to pick the correct citation from a group of three citations that are written on cue cards (or are projected on an overhead projector). Teams have the opportunity to gain double points if they can identify applicable *Bluebook* rules.

8. Updating Game

Students are divided into teams and each team is given a different case (and/or statute) to update using the print version of *Shepard's*® *Citations*. Each team is given a series of questions to answer concerning the result of its Shepardizing™. Teams must list the names and volumes of each Shepard's source consulted as well as results. Teams are given a set time (15 minutes) and are encouraged to "beat the clock," if possible. The professor is available for consultation during this time. Teams report back to class and debrief the rest of the class on how and what they accomplished.

9. Name That Error

Take the discussion section from a well-

written student office memo from a previous year. Edit the memo to include the 20 to 25 most common student errors that drive you crazy. Consecutively number the sentences in which the errors appear. Divide the class into teams. Have the teams discuss what they believe the errors to be. Reconvene the class. Call on each team for a different number. If the team properly identifies and corrects the error, award a point to the team. The team with the most points may win, but you are the real winner if you can eliminate some of your most dreaded student errors.

10. Prof for a Day

At the beginning of the semester, students sign up to make a "research presentation" at a later date in the semester. Presentation topics may include such things as researching state digests, Shepardizing state cases, researching state statutes, conducting federal research, researching secondary sources, and using ALR. Scatter the presentation dates later in the semester. Student groups create a presentation to teach the class how to solve a hypothetical problem using the assigned sources. The professor should meet with each team before the date of the presentation to coordinate content and should require each team member to be a part of the presentation. The teams then get to be the "Prof for a Day" and present to the class. Groups may use different mediums, including videotaping and PowerPoint presentations.

Conclusion

We hope these "10 Magic Tricks for an Interactive Classroom" will give you ideas for creating active and collaborative exercises for your classes. Anyone wanting more information can contact the authors at Nova Southeastern University School of Law, 3305 College Ave., Ft. Lauderdale, FL, 33314, phone: (954) 262-6100, e-mail: **KarpJ@nsu.law.nova.edu**; **CooneyL@nsu.law.nova.edu**.

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"[A]ctive and collaborative teaching methods can be far more successful than those that are teacher-centered."

"Because of these peculiarities of the legal writing course, legal writing instructors must take particular pains to develop good working relationships with their students early in the course."

Establishing and Maintaining Good Working Relationships with 1L Writing Students

BY MARY DUNNEWOLD

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Effective teaching always depends to some extent on the quality of the relationship between the teacher and the students. Legal writing instructors, however, face at least two important barriers to establishing good working relationships with their students. First, many students are surprised to discover when they get to law school that "writing," a skill they thought they had mastered (and which some have mastered, in nonlegal arenas), must be "learned" all over again. Students may not realize that "legal writing," a potentially misleading course title, encompasses a variety of topics, from commas to hierarchies of authority to synthesis of complicated legal rules. Thus, legal writing students may begin the course with a fundamental lack of understanding about what they should expect to learn and what will be expected of them during the year. These misconceptions can lead to confusion and even hostility on the part of the students, which can be particularly damaging when the students must work closely with the instructor and trust the instructor to respond fairly and skillfully to their work.

Second, perhaps somewhat paradoxically, legal writing instructors are in fact responding to students' *writing*, and many entering law students have not experienced in-depth response to their writing in a number of years. Although college professors may have provided feedback on the content of term papers, they often are too busy to critique grammar, mechanics, and format in any detail. Further, almost all of us have considerable ego involvement in what we write, both in the content and the form. As a result, we can come to feel, at least momentarily, like either a good or bad person depending on how well we write.[1] In combination, these circumstances tend to put legal writing instructors in a difficult position. Our job is to offer instructive, therefore in-depth, critique of students' writing, which has the potential to make students feel both angry and miserable, and to do this when most other teachers in their recent educational history have let all their bad writing habits pass, which has the potential to make us seem unreasonable and picky.

Because of these peculiarities of the legal writing course, legal writing instructors must take particular pains to develop good working relationships with their students early in the course. In my own teaching, I have found that explaining a few basic principles about the course early in the year helps me lay the groundwork for positive and productive relationships with students.

Clarify Purpose and Scope of Course Early

First-year students need to understand right away that their legal writing course is not only about writing. So during the first class, I try to establish that the course is about understanding the communication tools, techniques, and conventions used by a large group of people practicing a particular profession with a particular history. I also discuss the idea that their legal writing course teaches them how to effectively communicate on paper and in oral advocacy the thought processes they are developing throughout their law school experience. The course therefore is integral to the new ways of thinking that they are learning.

In addition, students need to understand that they will probably not master any of these skills in the first few weeks, months, or maybe even years of law school. So I also point out that legal analysis and legal writing, like all complex skills, take practice, which students actually get very little of in

[1] Even we experienced writing professionals must admit that our emotional involvement with our writing is not completely reasonable. For instance, I gave this article to my trusted reader, my husband, to read while I was in the process of writing it. He did not respond in quite the manner I wanted him to. My tender writing ego was sufficiently bruised that I refused to talk to him for the rest of the evening.

the first-year legal writing course. In fact, most legal writing courses assign at most three or four major writing assignments during the year. In the first two weeks of their first job or clerkship, however, students may well write more memos than they wrote throughout their entire first year of law school. I assure them that their legal writing skills will improve considerably once the skills are used regularly. In the meantime, students should have reasonable expectations about the progress they will make between this September and next May: they will grasp the basics, but they will not become expert legal writers.

Recognize Skills Students Bring to the Course

Most incoming law students have been reasonably successful writers as college students or as professionals in other fields. As I suggested above, however, most do not yet understand the nature of legal writing. The legal writing instructor must therefore undertake the delicate task of recognizing the sometimes accomplished writing skills that students possess upon entering the course, while at the same time convincing students that legal writing presents new audiences, new purposes, and new expectations, which they must now learn to adapt to. Most importantly, students need to understand that they do not yet know how to write like legal professionals, even though they know how to write in other fields.

Along these lines, Jessie C. Grearson argues that legal writing students should see themselves as being in the process of becoming members of multiple "writing worlds."[2] Further, students can become successful members of the legal writing world by being taught to expect to learn and use new conventions and techniques in *any* new writing situation. Grearson also argues that students can bring important insights and strategies from their other writing worlds into the world of legal writing, thus enriching their legal writing.[3]

Drawing on Grearson, on the first day of class I explain that the legal reader has certain expectations, just as a doctor reading medical charts has certain expectations and a computer scientist reading programming code has certain expectations. I tell them that part of becoming a professional in any field is learning the language and standard communication forms employed in that field. I stress the point that first-year legal writing is about learning these new conventions and that students may be required to revise some of their previous writing habits in order to be successful as legal writers.

I also explicitly recognize, however, that all law students come into law school as writers, usually fairly successful writers. I assure them that they can draw on their previous writing experiences and that they can become equally competent as legal writers. Further, I tell them that once they master the conventions of legal writing, they will be able to participate fully in the legal discourse community, which may include revising and re-creating the conventions and expectations. Before they can advocate for change, however, they must understand what it is they are changing.

Convince Students That Legal Writing Is Not Boring Writing

Because the legal writing course necessarily spends considerable time on what can seem to be rule-bound, formalistic topics like the IRAC format, grammar, and editing techniques, students can easily perceive legal writing itself as being boring, uncreative, and mechanical. They may quickly conclude that if they follow this script and apply these rules, they will become successful legal writers. This perception of legal writing can interfere with the student/teacher relationship because the student does not become engaged with the course or with the teacher. I therefore try to dispel these perceptions early by immediately encouraging students to consider legal writing to be a creative endeavor.

First I talk about reading and analyzing cases and how the students' interpretation and application of the materials can and should be creative and insightful. Their job is not simply to parrot what has been said before but to think about what it means, about what they read "between the lines," and about all the possible ways to apply their analysis to the problem in front of them. I recognize that this can be

"[S]tudents need to understand that they do not yet know how to write like legal professionals, even though they know how to write in other fields."

[2] *See* Jessie C. Grearson, *Teaching the Transitions*, 4 Legal Writing: J. Legal Writing Inst. 57 (1998).

[3] *See id.* at 76.

"[A]ll writers must have critical readers who care enough about them and their work to offer meaningful criticism."

difficult for first-year law students because many do not trust their own ability or authority to decide what a case means. However, I encourage them to think of this as an integral part of their job as attorneys, which they must begin learning and practicing now.

In addition to encouraging creative analysis, I provide students with examples of creative legal writing to remind them that once they are technically proficient legal writers, they should strive to become interesting and creative legal writers. My favorite example is the Michigan Court of Appeals opinion *Fisher v. Lowe* written by Judge J. H. Gillis. The complete text of the opinion is as follows:

> We thought that we would never see
> A suit to compensate a tree.
> A suit whose claim in tort is prest
> Upon a mangled tree's behest;
> A tree whose battered trunk was prest
> Against a Chevy's crumpled crest;
> A tree that faces each new day
> With bark and limb in disarray;
> A tree that may forever bear
> A lasting need for tender care.
> Flora lovers though we three,
> We must uphold the court's decree.
> Affirmed. [4]

After reading the text of the opinion aloud, I explain that while I do not expect, or even want, students to turn in work in verse this year, I do want them to remember that once they understand what they are trying to accomplish with their legal writing, they can go about accomplishing it in many different ways.

Convince Students That They Need a Trusted Reader

In *Bird by Bird*, Anne Lamott suggests that writers need readers to respond to their work, but that usually a writer's first reaction to a reader's feedback is to feel hurt and angry.[5] To convince students of the need for a trusted reader (me) and to assure them that their feelings about being "read" are normal and that I recognize those feelings and have them myself, I spend a few minutes reading from *Bird by Bird* on the first day of class. Lamott writes, for example,

> I know what a painful feeling it is when you've been working on something forever, and it feels done, and you give your story to someone you hope will validate this and that person tells you it still needs more work. You have to, at this point, question your assessment of this person's character, and if he or she is not a spouse or a lifelong friend, decide whether or not you want them in your life at all. Mostly, I think an appropriate first reaction is to think that you don't. ...
>
> My first response if [my reader has] a lot of suggestions is never profound relief that I have someone in my life who will be honest with me and help me do the very best work of which I am capable. No, my first thought is, "Well, I'm sorry, but I can't be friends with you anymore, because you have too many problems. And you have a bad personality. And a bad character."
>
> Sometimes I can't get words to come out of my mouth because I am so disappointed. ... [But w]hen someone reliable gives you this kind of feedback, you now have some true sense of your work's effect on people.[6]

By sharing these passages about the experience of being a writer, some of my own favorite writing on that subject, I hope to let my students know that I understand that receiving writing critique is not easy, but that it is a necessary component of our working relationship. I go on to give them explicit permission to be angry with me and not want to talk to me on certain days, especially after getting their returned assignments. But I encourage them to keep sight of the big picture: my job is to help them learn to be excellent legal writers; I do not offer the extensive critique I do because I have anything against them personally. Rather, all writers must have critical readers who care enough about them and their work to offer meaningful criticism.

I then suggest that students look at the comments on their papers right after the paper is returned to them, but they should then put the paper away for a few days. When they are over being angry and hurt, they should go back to the paper and try to learn something from the comments. *Then*, only after their emotions have cooled, they should come to see me.

Respect Students As People with Complicated Lives

Kent Syverud, giving advice to new law teachers, recognized a number of years ago that students know whether a professor likes and

[4] 333 N.W.2d 67 (Mich. Ct. App. 1983).

[5] Anne Lamott, *Bird by Bird* 162–64 (1994).

[6] *Id.* at 163–67.

respects them, and if they know the professor does not like or respect them, the professor will fail as a teacher.[7] Like Syverud, I believe that demonstrating to students that you respect them and respect the choices they must make during law school is crucial in establishing a good working relationship.[8] A legal writing instructor can show students respect in a variety of ways: by carefully explaining the course and your expectations to them early in the semester, by acknowledging the difficulty of receiving writing critique, and by being consistently available to answer their questions.

Further, in conversations with students, in the amount and difficulty of the work assigned, and in response to students' successes and failures, we instructors need to recognize that our students are whole people, not just legal writing students and not even just law students. Although our job is to help provide students with a rigorous legal education, we must acknowledge that sometimes students face difficult choices while pursuing that education. Sometimes they ignore their legal writing to spend time with their kids, or because they are a month behind in contracts, or because they have to wait tables at night to pay the bills. Although we as teachers may not like the choices students make, and may not think they make the best choices for their educational goals, these are not our choices to make. Thus, I try to recognize on the first day of class that I understand that they have complicated lives and sometimes must make choices that affect their class performance. I also try throughout the year to show an interest in their lives and a willingness to listen when they are having doubts about the choices they make.

Finally, however, I think we also have to admit, if only to ourselves, that in reality we will not like all of our students. Some of them are difficult, some of them are rude, some are unreasonably demanding, some do not put much effort into our course. However, we will establish the best relationships we can with our students if we recognize two basic truths. First, some students are hard to work with. Second, we will not turn all of our students into good legal writers. I find that reminding myself of these truths, week after week, year after year, helps keep my own expectations reasonable. And if my own expectations as an instructor are reasonable, I can then do my best to respond to each student with respect, insight, skill, and good grace.

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"I believe that demonstrating to students that you respect them and respect the choices they must make during law school is crucial in establishing a good working relationship."

[7] *See* Kent Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. Legal Educ. 247, 247–48 (1993).

[8] *See* Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. Legal Educ. 524 (1998). Iijima argues that during the legal education process, law students tend to lose their "interconnections" with friends and their "intraconnections" with their own emotional, physical, and spiritual selves. These losses then contribute to law student dysfunction. As part of a solution, Iijima suggests that law faculty need to create a more supportive environment and should encourage students to maintain these connections, which will help them live more balanced lives.

BRUTAL CHOICES IN CURRICULAR DESIGN...

WHAT SHOULD BE TAUGHT FIRST: PRIMARY AUTHORITY OR SECONDARY AUTHORITY?

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.

Editor's Note: *In this installment of* **Brutal Choices***, Penny A. Hazelton and Donald J. Dunn, two experienced legal research teachers who are also well known for their writings on the subject, take up the difficult curricular decision of what to introduce first to 1L students: primary or secondary authority.*

WHY DON'T WE TEACH SECONDARY MATERIALS FIRST?

BY PENNY A. HAZELTON[1]

Penny A. Hazelton is Professor of Law and Law Librarian of the Marian Gould Gallagher Law Library at the University of Washington School of Law, Seattle, Washington. She is a member of the Perspectives *Editorial Board, author of* Computer-Assisted Legal Research: The Basics *(West Pub. Co., 1996), and co-author of* Washington Legal Researcher's Deskbook, 2d *(2d ed., Gallagher Law Library, 1996).*

Just one of the "big four" legal research textbooks (*How to Find the Law*,[2] *Fundamentals of Legal Research*,[3] *Legal Research in a Nutshell*,[4] *The Process of Legal Research*[5]) includes chapters on secondary sources before chapters on primary legal materials. Why do Christina Kunz and her co-authors use this organizational structure when none of the other textbooks do? Because teaching about secondary sources first is the right way to teach legal research!

OK, OK! Give me a few minutes of your time to persuade you to at least think about my recommendation. I know that legal research has always been taught by starting with court reports, digests, and case verification systems. And, as we all know, "always" has the weight of tradition, even precedent behind it! I know that primary materials are "the law" and important. I agree that the ultimate goal in legal research is to find "the law" relevant to the problem. But teaching students first about court reports misleads them about the role of judicial decisions in the rule of law and confuses them as they later learn how to solve a legal research problem.

For many years I have been using a modified version of Professor Marjorie Rombauer's research strategy from her book, *Legal Problem Solving*.[6] She suggests five steps in the research process—preliminary analysis; search for statutes; search for mandatory case authority; search for persuasive case authority; and refine, double-check, and update your work.

As part of my explication of the first stage of research—preliminary analysis—the classroom discussion focuses on what a good researcher needs to know before beginning the process of research itself. The relevant facts must be isolated from the mass or paucity of information known about the problem. From these relevant facts, the researcher should try to formulate the issue(s) that need to be researched. The jurisdictions whose law will control need to be identified. From this basic information, the researcher then

[1] I am indebted to Donald Dunn, who recently started arguing with me about this topic. I became exercised and decided to try to put my money where my mouth is.

[2] Morris L. Cohen et al., *How to Find the Law* (9th ed. 1989).

[3] J. Myron Jacobstein et al., *Fundamentals of Legal Research* (7th ed. 1998).

[4] Morris L. Cohen & Kent C. Olson, *Legal Research in a Nutshell* (6th ed. 1996).

[5] Christina L. Kunz et al., *The Process of Legal Research* (4th ed. 1996).

[6] Marjorie Dick Rombauer, *Legal Problem Solving: Analysis, Research & Writing* (5th ed. 1991).

must identify words and phrases that will help find relevant legal material.

We can probably all agree that these are essential elements in the preliminary analysis of a research problem. Now, however, we separate the wheat from the chaff! As an additional stage in the preliminary analysis step, researchers all analyze what they know about this subject matter. If the researcher knows little or nothing, some time spent using secondary sources is usually advised. And how often do we really know much about what we are researching? We're usually doing research because we don't know the answer to the client's problem!

The breadth and depth of a search using secondary sources will vary with the problem, the researcher, and how much the researcher needs to educate himself or herself about the problem. For example, if the issue is hard to formulate or express, the researcher may find a legal encyclopedia useful to help conceptualize the problem. If the issue is very narrow and specific, ALR® might be a good choice for a quick search. If jurisdiction is in doubt, a recent law review article can help formulate a research plan that includes resources from the correct jurisdiction(s). If the researcher can identify the broad area of law—contracts, banking, torts—finding relevant passages in publications from the Nutshell Series® or Hornbook Series® or in treatises will include specific terminology and definitions, jurisdictional analyses, context, history, and the like.

In any of these situations, the legal researcher's foray into legal information is by way of the secondary literature. If you know little about the subject matter, how else can you determine what kind of law (court decisions, statutes, regulations, constitutional provisions) is most likely to answer your question? Knowing this before you begin searching in bewildering and arcane statutes or millions of court decisions can help make your research efficient and productive.

Secondary sources can help you determine the relationships between different types of primary authority. If the common law rule has been changed by statute, your research strategy will be very different than if you find that there are both federal and state statutes relevant to your research problem.

Another reason to use secondary authority early in your research stems from the difficulty of formulating legal analogies, especially in this day of electronic legal information. Searching online for cases using facts may actually hide the potential legal analogies. Secondary sources tend to focus more on legal issues so that relevant analogies are easier to identify.

Not only do secondary sources analyze and synthesize legal doctrine, rules, and precedent, but secondary materials also refer to cases, statutes, regulations, and other primary and secondary legal information. Reading that key law review article or treatise may give you a direct lead to the important statutes, cases, or regulations that will help answer your question, thereby satisfying the first rule of any research: find someone who has already done the work for you!

Once the legal researcher has completed preliminary analysis of the research problem by identifying the issue(s) to be answered, the jurisdiction(s) involved, and the appropriate words and phrases, then a search of relevant statutes is the next step. Why? Because statutes rule.

I hope that I have convinced you that most legal researchers cannot begin to understand and make use of primary materials—statutes, cases, or regulations—without some early help from secondary materials. If this is so, why don't we teach students about secondary sources first?

I assume that legal research courses have historically taught court reports first because most law students only deal with court decisions in their first-year courses. But, in my opinion, a legal research course that teaches court reports, digests, and citation-checking systems first reinforces the notion that law is only made by judges. Most of us realize that students are very likely to misconstrue the relative roles played by the various sources of law—statutes, cases, regulations, constitutions/charters, and the common law (if you wish to think of common law as a source of law). Teaching a legal research course by beginning with secondary sources can help dispel the notion that case law is all that matters in the law.

In fact, since 1Ls read so many cases in their other classes, they might actually be more ready to learn secondary sources first. When law review

"[A] legal research course that teaches court reports, digests, and citation-checking systems first reinforces the notion that law is only made by judges."

articles or legal encyclopedias cite to cases, the students already know what they are. And students love it when they learn that a civil procedure hornbook can help them understand *Pennoyer v. Neff*!

So, next time you are planning a legal research course, think about the organization of your syllabus. Are you sure you want to teach students about court reports first? And even if you are not willing to change the order of your course for first-year students because yours is the only class that teaches students about the elements of a court decision, consider starting with secondary sources in your advanced legal research classes. It makes a lot more sense. And, besides, secondary sources are awesome!

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"Another reason to use secondary authority early in your research stems from the difficulty of formulating legal analogies, especially in this day of electronic legal information."

WHY WE SHOULD TEACH PRIMARY MATERIALS FIRST

BY DONALD J. DUNN

Donald J. Dunn is Dean and Professor of Law at Western New England College School of Law, Springfield, Massachusetts. Prior to becoming Dean in 1996, he was Law Librarian at his school for 23 years. He is a member of the Perspectives *Editorial Board and co-author (with Jacobstein & Mersky) of* Fundamentals of Legal Research *(7th ed., Foundation Press, 1998).*

When teaching legal research, some differences of opinion exist as to which sources the instructor should expose the students to first—primary or secondary authority. Frankly, I had never given the issue a great deal of thought until I found myself debating the issue with Penny Hazelton in the midst of a *Perspectives* Editorial Board meeting. Thereafter, I was asked to write this article presenting my side of the argument. The answer is self-evident. Primary means "main" or first. Everything else is secondary. In other words, "secondary" comes after primary.

Imagine this scenario: You are before a judge and you put forth a brilliant legal argument, throwing in some policy and concluding with a black letter principle of law. At this point the judge asks, "Counselor, can you cite some authority for that proposition?" You respond, "Yes, your honor, I have a C.J.S. section, an ALR annotation, a law review article, and a learned treatise." I don't even want to think about what happens next, but I assure you it's not a pretty sight. If you want to make yourself look even worse, try rattling off a few digest paragraphs to the judge.

During the first days of law school, law students are likely to find themselves in a course on constitutional law, another focusing on the Federal Rules of Civil Procedure, and still others involving the Model Penal Code and the Uniform Commercial Code. The first deals with the ultimate primary authority, the U.S. Constitution—it trumps everything else. Interpretation of the Constitution and its amendments are found in the cases. The federal rules are a massive statutory compilation, with subsequent cases providing clarification. Criminal law, another part of the first-year course package,

will likely blend statutory interpretation and case law. So will contracts. First-year students typically take property and torts too, where case law reigns supreme. They learn a lot about the common law.

Academic pedagogy suggests that reinforcement is a good thing. Why would teachers want to begin a course on legal research with anything other than what the neophyte law students are encountering every day? I submit that they shouldn't. Students need to understand the importance of the Constitution in the development of our legal system. They need to appreciate the role of federal and state legislatures and how laws are enacted and compiled. They need to grasp the organization of the court system, the difference between a holding and *dicta*, a majority opinion and a dissent. Students need to recognize that they are reading appellate cases and that trials make headlines, but appeals make law. The latter can be found in the law library, the former in trial transcripts (sometimes). Bottom line, students must realize what are the most powerful and forceful sources for formulating legal arguments. Teachers accomplish this best by teaching primary authorities first.[7]

The process of legal research is often compared to a treasure hunt—the search for that special gem that will bring the researcher wealth and happiness if found. Of course, no treasure hunt will be successful unless the students know what they are seeking. So, too, with primary authority. Law students need to understand the value of constitutions, statutes, and cases before they can undertake a meaningful search. Once they appreciate the precedential value of primary authorities, then and only then can they enjoy the excitement of the hunt and the thrill of the find.

I have had a long association with the *Fundamentals of Legal Research*,[8] becoming a co-author in 1994. I worked on the assignments and instructor's manual as far back as 1985. When I began that work, I remember tracking the organizational structure of *Fundamentals* back to its founding. There it was—a discussion of primary authority followed by secondary authority. The arrangement and flow made eminently good sense. There was a logical connection with the sources students encountered in their first-year classes. Those encounters are still the same today; students continue to confront primary authorities first in the contemporary classroom experience. Therefore, the logic of teaching these materials first in a legal research course still holds.

Don't get me wrong; I think secondary sources are wonderful tools. They help one find the law, contribute to its understanding, and synthesize the issues. These secondary sources give the law context and perspective. Oftentimes they unravel and explain the mysteries of the law in ways that a straight reading of cases and statutes never will. But use of secondary sources in this fashion begs the question about whether to teach primary or secondary sources first.

Over the years we have seen an evolution, albeit a slow one, in the makeup of the traditional casebook. Books that used to be titled *Cases on …* have become *Cases and Materials on ... .* Gradually, casebook content has expanded to include references to, and sometimes even the text of, statutes, Restatements, and law review articles. Heck, we now even see some law professors, particularly those teaching first-year courses, listing hornbooks (secondary authority) as "recommended" or even "required" reading. Why? Quite simply, the body of the law is becoming increasingly larger and more complex. The Socratic method (or the so-called "modified Socratic") still provides the framework for developing legal analytical skills—we continue to refer to law students learning to "think like a lawyer." Law professors don't assign hornbooks to help the student do research; they assign hornbooks to give the broad overview, to facilitate the learning process, and to enhance classroom discussions. In other words, hornbooks provide narrative summaries of general principles of law. They help students grapple with the subtleties and nuances of the casebook's contents and the

> "Why would teachers want to begin a course on legal research with anything other than what the neophyte law students are encountering every day?"

[7] Anyone needing proof of what the bench and bar thinks is most important should read the MacCrate Report. Analyzing the fundamental lawyering skills, the first listing under "Legal Research § 3.1, Knowledge of the Nature of Legal Rules and Institutions," is to "Case law" and the next is to "Statutes." Task Force on Law Schools and the Profession: Narrowing the Gap, Am. Bar Ass'n, *Legal Education and Professional Development—An Educational Continuum* 157 (1992).

[8] J. Myron Jacobstein et al., *Fundamentals of Legal Research* (7th ed. 1998).

sequencing of those materials.

Sometime during their first year, students are thrust into the law library (or the online environment) to prepare a moot court brief. Imagine their consternation if they didn't have a fundamental understanding of case, statutory, and constitutional law as primary authority. How would they know the hierarchy of the court system and thus realize the distinctions in value between an opinion by the Supreme Court of the United States and one from a lower federal court or their own state court? They couldn't distinguish a holding from dicta, overruled from affirmed, or a headnote or syllabus from an opinion. Without learning primary authority first, students won't even recognize what a citation is and how to look it up. Nor will they recognize the difference between constitutions and statutes and the annotations that often accompany these primary authorities.

"Without learning primary authority first, students won't even recognize what a citation is and how to look it up."

So it's first things first. Start by teaching primary authority to emphasize its importance; teach secondary authority next to provide assistance in locating and understanding cases, statutes, and constitutions. Put it all together and you have a systematic, pedagogically sound approach to teaching legal research.

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TEACHING PARAGRAPHS

BY LOUIS J. SIRICO, JR.

Professor Louis J. Sirico, Jr., is Director of Legal Writing at Villanova University School of Law, Villanova, Pennsylvania. He is co-author of Legal Writing and Other Lawyering Skills *(3d ed. Matthew Bender, 1998);* Persuasive Writing for Lawyers and the Legal Profession *(Matthew Bender 1995); and* Legal Research *(Casenotes, 1996). He is a member of the* Perspectives *Editorial Board.*

Editor's Note: *In this issue of* Perspectives*, we introduce a new column:* **Teachable Moments for Teachers**. *It is 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. This column is a companion to our existing* Teachable Moments *column edited by Barbara Bintliff, which has focused on providing quick and accessible answers to questions frequently asked by students and other researchers. To distinguish the two, the existing column has been renamed* **Teachable Moments for Students**.

In this first installment of Teachable Moments for Teachers*, Professor Sirico tells how he first realized what he was up against—and therefore what he needed to change—when teaching about paragraphs. Readers are invited to submit their own "teachable moments for teachers" to* 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**.

We sometimes talk about teachable moments: times when students and lawyers are particularly open to learning. However, teachers also have teachable moments when a lightbulb turns on and they learn how to teach a lesson more effectively. Here is an example.

I always found it a fairly simple matter to teach about paragraphs. A paragraph is a unit of discourse, just as a sentence is. The typical paragraph has two components. The first component consists of one or more topic sentences that state the point of the paragraph. The second component discusses this point. In some paragraphs, the point is only implicit (as in this paragraph) or unnecessary (for example, in a paragraph of narrative, like most of the following paragraphs).[1]

When I would teach about paragraphs, students would seem to accept the lesson easily. However, when I would read the homework that they later completed, I would be surprised at how many students seemed to ignore what I had taught them.

When I asked students why they wrote the paragraphs the way they did, I usually heard one of two answers. Some students told me that they wrote the paragraphs in a way that permitted their ideas to flow. Others told me that they were following the format of the five-sentence paragraph—a topic sentence, three discussion sentences, and a concluding sentence.

The students' explanation sparked my teachable moment. I realized that I was competing with formidable opponents, the students' grade-school and middle-school teachers. Some of their teachers taught a very unstructured approach to writing that focused upon "flow," while others taught a rigid, formulaic approach that celebrated devices like the five-sentence paragraph.

Once I realized that I was working against powerful historical forces, I revised my teaching method. I began to ask students what their previous teachers had preached. I then explained why I took a different, middle-way approach and encouraged them to try it. By confronting the lessons of the past, I increased my success in teaching my students a new lesson.

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"The students' explanation sparked my teachable moment. I realized that I was competing with formidable opponents, the students' grade-school and middle-school teachers."

[1] For a fuller explanation of what I teach about paragraphs, see Nancy L. Schultz & Louis J. Sirico, Jr., *Legal Writing and Other Lawyering Skills* 115–21 (3d ed. 1998); Louis J. Sirico, Jr. & Nancy L. Schultz, *Persuasive Writing for Lawyers and the Legal Profession* 17–23 (1995); Joseph M. Williams, *Style: Toward Clarity and Grace* 92–108 (1990).

There's a New Test in Town: Preparing Students for the MPT

BY NANCY L. SCHULTZ

Nancy L. Schultz is Professor of Law at Chapman University School of Law in Orange, California. She is the co-author of Legal Writing and Other Lawyering Skills *(3d. ed. 1998) and* Persuasive Writing for Lawyers and the Legal Profession *(1995) with Louis J. Sirico, Jr., a member of the* Perspectives *Editorial Board.*

"[T]he studies concluded that performance testing measures skills not tested by the multiple-choice or essay portions of the bar exam."

What Is the MPT?

For many years, California bar examinees have been challenged to demonstrate their prowess on a form of examination largely unknown to the rest of the country.[1] But times are changing and now more than 20 states have added or will soon add the performance examination to their bar examinations.[2] What exactly is the performance examination? The National Conference of Bar Examiners (NCBE) describes the new Multistate Performance Test (MPT) this way:

> The Multistate Performance Test is designed to test an applicant's ability to use fundamental lawyering skills in a realistic situation. ... The MPT requires applicants to (1) sort detailed factual materials and separate relevant from irrelevant facts; (2) analyze statutory, case, and administrative materials for principles of law; (3) apply the relevant law to the relevant facts in a manner likely to resolve a client's problem; (4) identify and resolve ethical dilemmas, when present; (5) communicate effectively in writing; (6) complete a lawyering task within time constraints.[3]

Examinees receive two types of materials during each 90-minute examination: a client file setting forth the facts of the matter they will be asked to discuss, and a library that contains the applicable law they will be asked to analyze. The file may include memos, transcripts, correspondence, background documents, and the like. The library may include relevant cases, statutes, rules, and regulations. Instructions regarding the specific type of document to be prepared are also included. The bar examiners do not restrict themselves in the types of documents that may be required. Examples of possible documents to be prepared include a memo, brief, discovery plan, client letter, trial plan, counseling plan, will, contract provision, closing argument, or settlement proposal.

Research conducted by the NCBE supports the reliability and validity of the test, and it looks like it is here to stay.[4] Among other findings, the studies concluded that performance testing measures skills not tested by the multiple-choice or essay portions of the bar exam, and that practicing lawyers do better on the performance tests than they do on other portions of the bar exam. Thus the test appears to be a step toward getting the bar exam closer to measuring skills that are relevant to lawyering.

Designing a Course to Prepare Students for the MPT

What can you do to prepare your students to succeed at the MPT? It is highly likely that you are already teaching many of these fundamental skills to your students in your legal writing classes. However, most of us do not present legal writing assignments with time constraints. At Chapman, we tried an experimental course, called "Advanced Legal Analysis and Writing," that was designed to give our students a head start in their preparation for the bar exam, while at the same time (we hoped) giving them additional practice at skills they would need for their entire lives in practice.

Here are the topics and assignments covered in the course:

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[1] New Jersey has also included a practice dimension in its bar examination for many years.

[2] Colorado, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Texas, and West Virginia. Nat'l Conference of Bar Examiners, *Multistate Examination Use* (visited Sept. 15, 1999) <http://www.ncbex.org/tests/testuse.htm>.

[3] Nat'l Conference of Bar Examiners, *The Multistate Performance Test: Introduction* (visited Sept. 15, 1999) <http://www.ncbex.org/tests/mpt.htm#Introduction>.

[4] *See, e.g.*, Stephen P. Klein, *The Costs and Benefits of Performance Testing on the Bar Examination*, The Bar Examiner, Aug. 1996, at 13; Marcia A. Kuechenmeister, *A Performance Test of Lawyering Skills: A Study of Content Validity*, The Bar Examiner, May 1995, at 23; Jane Peterson Smith, *The July 1993 Performance Test Research Project*, The Bar Examiner, May 1995, at 36.

TOPIC	ASSIGNMENT
Basic Legal Analysis; Outlining	In-class exercise
Understanding Rules	
Framing Issues	
Using Facts	
Analysis Review	Memo
Advocacy	
Objective v. Advocacy Writing (Summary)	Motion (no time pressure)
Jury Instructions	Jury instructions
Letters	Letter
Contracts	Contract (no time pressure)
	Two additional in-class exercises requiring students to analyze contract-related issues

All of the listed assignments, with the exception of the motion and the contract, were prepared by the students in class during a set time period. The class periods were only 75 minutes, so we had to design assignments that could reasonably be completed within that time frame. Since the MPT is a 90-minute exam, a slightly longer time period would more closely approximate the real thing. Sometimes we gave the students the law ahead of time and discussed it in class; other times they had to read the law for the first time during the preparation of the written product. We tended to require original reading as part of the assignment later in the semester rather than earlier.

All eight of the listed assignments were graded, though we did several other exercises throughout the semester that were not. Usually those exercises involved creating parts of larger documents, or providing an opportunity to practice the skills that would later be required on a graded assignment. For example, we asked the students to draft the fact section of a memo in class; we also gave them a chance to practice jury instructions for a problem other than the graded one, since that was a type of document they were unfamiliar with.

We had two goals in teaching the course. One was the previously stated goal of giving our students a head start on their preparation for the bar exam. But we also wanted to reinforce writing, analytical, and organizational skills that would be necessary long after they took the bar exam. Hence the two non-time-pressured assignments, which the students prepared outside of class and turned in typed and in final form.

Our focus in the course was on organization and structured analysis, clarity of expression, strategic thinking, and efficiency. During the class, we emphasized the need for outlining and gave the students plenty of opportunity to practice. We took sample problems from the text and prepared an outline of the required analysis on the board. The students were asked to suggest the appropriate order of analysis (usually based on elements of a tort or from a statute) and then analyze the problem from both sides and predict a likely conclusion. We did this in a discussion format before asking them to perform similar tasks in writing. We discovered that it was very difficult to get them to actually perform the analysis in the designated order—they kept wanting to jump to other elements, or to combine analysis on elements that seemed related or that used similar facts as the basis of the analysis.

We gave written feedback on every assignment, even the smaller in-class assignments that were not graded. We gave the students repeated opportunities to practice all skills, both in class discussion exercises and in written exercises. We deliberately chose to give exercises that would reinforce familiar skills, such as memos and briefs, along with others that would challenge the students to apply their analytical skills in unfamiliar contexts, such as jury instructions and contract drafting. We did this partly because the students will be expected to prepare new types of documents in practice, and partly because the bar examiners have given themselves such a wide range of options for the MPT.

We also talked about reading strategies—searching for information related to the goal of the assignment, identifying issues, and formulating tentative answers as the reading progressed. Students tend to read every word from beginning to end and then go back and look for relevant or important information. This may work fine for law school classes, but it will use up precious time in the examination process, and it is not how most of us read legal material when we are trying to solve a specific problem. We tend to scan a document for information that looks

"We deliberately chose to give exercises that would reinforce familiar skills, such as memos and briefs, along with others that would challenge the students to apply their analytical skills in unfamiliar contexts, such as jury instructions and contract drafting."

"One or two students reported that sitting for the [MPT] exam was 'just like being in class.'"

particularly helpful, then to go back and fill in gaps as needed. We tried to guide the students toward this more strategic and efficient approach to reading.

Assignments Used in the Course

We limited the substantive areas of law to basic topics: criminal law, contracts, and torts. All of the graded exercises revolved around three fact patterns. We gave several assignments for each fact pattern.

My co-teacher for the class, Michael Gennaco, is a U.S. attorney in Los Angeles who prosecutes criminal civil rights violations. At the time, he was working on a very interesting case involving hate speech over the Internet. We used this case as the basis for several exercises, some graded and some not. For each graded exercise, we would choose a particular legal issue to be analyzed and give the students two cases and any relevant statutes, as well as instructions regarding the document they were to prepare. We kept the amount of material to be read in class relatively small, since as mentioned previously the class period was only 75 minutes long.

Another case was a tort case involving issues of defamation and false imprisonment. It was a shoplifting case, which allowed us additional opportunity to focus on statutory analysis. Again, we limited the legal analysis for each exercise to one or two issues, to make it manageable. Our goal was not to see how many issues the students could spot and analyze at one time, but to focus on their ability to organize and communicate about each issue. The idea was that if we could get them into the habit of organizing and communicating clearly on one issue, maybe they could translate those skills to multiple-issue problems they might encounter on the bar exam. Also, it is likely that they will be required to do more in-depth analysis on fewer issues in the MPT than in other parts of the bar exam.

The final series of assignments, involving a contract, required them to draft an employment contract, and then, in the last two classes, to analyze legal issues raised by the contract, including a covenant not to compete issue. For the last two classes, we repeated the process of giving the students two relevant cases, which they had to read during class time, and then asking them to answer a specific question related to the contract.

Evaluating the Course

How did we do? The overall bar pass rate of the students who took the course was not appreciably higher than the overall pass rate for the school, but students who took the course tended to do better on the written portions of the exam—the essays and the performance test. Those who did not pass failed on the multiple-choice portion of the test.[5] Students also reported feeling much more comfortable during the written portion of the exam because of the course. One or two students reported that sitting for the exam was "just like being in class." The students were grateful for the experience, and several of them suggested that the course be required. Overall evaluations for the course were extremely high.

We, on the other hand, frequently found the process frustrating. In the early weeks of the course, we were not seeing much reflection of the lessons we hoped we were teaching. Although some students did well on each exercise, we found disheartening amounts of disorganized writing and muddy thinking, which of course tend to go together. Even though we spent what seemed to be a disproportionate amount of class time emphasizing the need for structure, we saw very little of it in the written product. We even took a few classes to walk the students through the process of constructing a document, trying to give them formulas to use as starting points for developing their own writing styles. We discovered that it was particularly difficult for many students to prioritize their discussions of issues, and to stay on one issue until it was completed. As mentioned previously, they tended to want to wander off and discuss several issues at one time, and they frequently left thoughts unfinished.

However, our efforts did not go entirely unrewarded. Suddenly, when we got to the last two in-class graded assignments, more students were structuring their analyses, discussing

[5] This is anecdotal information, based on casual conversations with some of the students who took the course. We did not do a formal follow-up study.

relevant issues carefully and thoroughly, and communicating clearly and efficiently. We finally felt that we were getting through. This reinforced the need for practice and repetition. It also reminded us that teaching frequently requires a good deal of patience.

Conclusion

So, in the final analysis, what can you do to help your students prepare for the MPT? You do not have to create an entire course, although it is a worthwhile effort to do so.[6] If you do not have the time or resources for such a concentrated effort, you can draft an occasional time-pressured writing exercise. You can accomplish a lot if you spend just a class or two discussing the skills required for the MPT and giving students a chance to practice. Encourage your colleagues to do the same. Remember always that the key is repetition and practice. You cannot expect that your students will be ready for the MPT with only a single exercise, but if several members of the faculty commit to an exercise or two, the overall impact on the students' abilities should be immense.

With any luck, the existence of this exam will encourage many law professors, not just those who teach legal research and writing, to focus more on analytical and communications skills than they have previously. Legal writing teachers can be instrumental in this process. We have the experience with problem design and providing meaningful feedback on written work that many of our colleagues lack.

Perhaps ultimately students will get more opportunity to practice the fundamental lawyering skills of fact gathering and analysis, organization of material, and clear and cogent written presentation of legal analysis. These are obviously important not only to the MPT, but also to successful lawyering.

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"With any luck, the existence of this exam will encourage many law professors, not just those who teach legal research and writing, to focus more on analytical and communications skills than they have previously."

[6] For more information about the Chapman course, or for sample materials, feel free to contact me at **nschultz@chapman.edu**.

Holding a Citation Carnival[1]

BY TERRY JEAN SELIGMANN

Terry Jean Seligmann is Assistant Professor and Director of Legal Research and Writing at the University of Arkansas School of Law in Fayetteville.

"The goals were to consolidate students' knowledge of basic citation form, work in small groups, and have fun at the same time."

As a way to make learning citation form less deadly, I came up with the concept of a "Citation Carnival." The goals were to consolidate students' knowledge of basic citation form, work in small groups, and have fun at the same time. For those with similar goals, I'm happy to share the steps I follow on the one day each year I convert the classroom into a four-ring circus.

Setting the Stage

To ensure that the goal of having fun is achieved on this day, I dress up like a carnival ringmaster and play circus music as the students enter the room. I have already decorated the room with stuffed animals for a midway milieu. Students are assigned to teams, each named for famous (or infamous) attorneys. During the carnival, I signal the teams to move from station to station by starting up the music again (just like the childhood game of "musical chairs"). Finally, you can't have a carnival without prizes, so the big winners get Cracker Jack while there is consolation Halloween-sized candy for everyone else.

A Carnival Step-by-Step

1. Tell your students to bring their copies of the *Bluebook* to class. But don't tell them anything else. (Not letting the cat out of the bag is half the fun.)

2. Before class, set up the room with marked stations (e.g., A, B, C, D) and display a large, carnival-style stuffed animal at each. At each station, place one citation exercise set that asks which citations are correct, which are incorrect, and why. (Examples of the exercises I've used—covering case names, state court citations, federal court citations, and selected secondary sources—are included in the appendix.) At each station, place as many copies of the exercise set as there are students in the class.

3. As students enter the room, assign them to a team and direct them to their first station. (I do this by having them draw slips of paper that have the team name and the starting station on them.) Tell them to put everything other than their *Bluebook* and a writing implement at the side of the room, and to take a seat at their station. The circus music is continuously played during this time.

4. Give the teams a set period of time to work on the exercise at their station as a group. (I give them about five to seven minutes per station.) At the end of this period, when the music starts up again, students move as a team to the next station (A to B, etc., with the last moving to A), bringing their answer sheets with them. This process continues until all teams have completed all the exercises.

5. When the teams have rotated through all the stations, start scoring by calling on each team in turn for the answers to each question. I award one point for a correct answer, and two points if they can also provide the reason and *Bluebook* reference for the answer. I ask a student to keep score on the blackboard. (Originally, I did the scoring myself, but the "thrill of the competition" led students to protest my "arbitrary" scoring, so now I let a student handle that task.) Where questions are grouped, I handle a group as one question for scoring purposes.

6. After going through all the exercises, the team with the most points is declared the winner of the Citation Carnival. I give prizes to the winning team, and to everyone else too. As noted, the carnival usually falls near Halloween, so it's snack-sized candy for the runners-up and Cracker Jack for the winners.

Conclusion

The teaching goals of the Citation Carnival seem to work—using the small groups as teams, there is usually at least one student per team who by the time the class is scheduled has become

[1] This article is revised from the author's earlier version that appeared in *Second Draft*, published by the Legal Writing Institute. Terry Jean Seligmann, *Citation Carnival*, Second Draft, Nov. 1997, at 22. The material, in its revised form, was presented by the author at the Central Region LRW/Lawyering Skills Conference, "Hands-On: Teaching LRW and Lawyering Skills in the First Year," held in Kansas City, Missouri, on September 24–25, 1999.

familiar with the *Bluebook*. The others see that the *Bluebook* is not so impenetrable as to be beyond student use. The students learn that they can recognize and verify correct citation form, and that they can learn to use the *Bluebook*. Seeing their classmates do so is better reinforcement than my telling them. And, best to my way of thinking, they explain and argue about the rules with each other instead of listening to me drone on in dull lecture. Finally, they usually never make errors in these types of citations again. (Unfortunately, they do make them in others.)

The trappings of the Citation Carnival are for fun. When I first came up with the idea, I was worried that my students would react negatively or think the carnival was childish. But one of my colleagues said, "If you believe in it, it will work." (Sort of like clapping for Tinker Bell.) So far it has.

Appendix:

Sample Exercises Used in Citation Carnival [2]

SET A — Case Names

For each problem, determine which citation is correct. Be prepared to explain your answers with reference to the *Bluebook* if necessary.

1. a. Good Hope Industries, Inc. & Others v. Ryder Scott Company
   b. Good Hope Industries, Inc. v. Ryder Scott Co.
   c. Good Hope Industries, Inc. v. Ryder Scott Co.
   d. Good Hope Indus. v. Ryder Scott Co.

2. a. Bethel School District No. 403 et al., petitioners v. Matthew N. Fraser, a minor and E.L. Fraser, guardian ad litem
   b. Bethel School Dist. v. Fraser
   c. Bethel School Dist. No. 403 v. Fraser
   d. Bethel School District No. 403 v. Fraser

3. a. DiMarzo v. American Mutual Life Insurance Company
   b. DiMarzo v. Am. Mut. Life Ins. Co.
   c. DiMarzo v. American Mut. Life Ins. Co.

SET B — State Case Reports

For each problem, determine which citations are correct and which are incorrect and why. There may be more than one correct citation in each problem. Be prepared to explain your answers with reference to the *Bluebook* if necessary.

MASSACHUSETTS CASES

1. a. Cleary v. Cardullo's, Inc., 347 Mass. 337, 198 N.E.2d 281 (1964).
   b. Cleary v. Cardullo's, Inc., 198 N.E. 2d 281 (Mass. 1964).
   c. Cleary v. Cardullo's, Inc., 347 Mass. 337, 198 N.E.2d 281 (Mass. 1964).
   d. Cleary v. Cardullo's, Inc., 198 N.E.2d 281 (Mass. 1964).

2. a. Baker v. Katz, 33 N.E.2d 222 (Mass. App. Ct. 1985).
   b. Baker v. Katz, 24 Mass. App. Ct. 221 (1985).

[2] These exercises are adapted from some I was given by Davalene Cooper, now at New England School of Law, when we both taught at Suffolk University School of Law. You can create your own variations, including incorporating a citation that was troublesome in an earlier assignment or is about to be used in the students' next memoranda.

c. Baker v. Katz, 24 Mass. App. Ct. 221, 33 N.E.2d 222 (1985).
d. Baker v. Katz, 24 Mass. App. 221 (1985).

OTHER STATES

3. a. Kirksey v. Jernigan, 45 So.2d 188 (1980).
b. Kirksey v. Jernigan, 45 So. 2d 188 (1980).
c. Kirksey v. Jernigan, 45 So. 2d 188 (Fla. 1980).
d. Kirksey v. Jernigan, 45 So. 2d 188 (Fla. Sup. Ct. 1980).

SET C — Federal Case Reports

For each problem, determine which citations are correct and which are incorrect and why. There may be more than one correct citation in each problem. Be prepared to explain your answers with reference to the *Bluebook* if necessary.

UNITED STATES SUPREME COURT

1. a. Udall v. Tallman, 380 U.S. 1, 410 S. Ct. 25 (1964).
b. Udall v. Tallman, 380 U.S. 1 (1964).
c. Roe v. Wade, 410 U.S. 113, 92 S.Ct. 703, 35 L. Ed. 2d 147 (1964).

OTHER FEDERAL CASES

2. a. Deppe v. Lufkin, 116 F. 2d 483 (1 Cir. 1940).
b. Deppe v. Lufkin, 116 F. 2d 483 (First Cir. 1940).
c. Deppe v. Lufkin, 116 F.2d 482 (CA 1 1940).
d. Deppe v. Lufkin, 116 F.2d 482 (1st Cir. 1940).

3. a. Rogers v. Okin, 478 F. Supp. 1342 (D. Mass. 1979).
b. Byrum v. United States, 311 F. Supp. 892 (S.D. Ohio).
c. Byrum v. United States, 311 F. Supp. 892 (S.D. Ohio 1970).

SET D — ALR and Secondary Sources

For each problem, determine which citations are correct and which are incorrect and why. There may be more than one correct citation in each problem. Be prepared to explain your answers with reference to the *Bluebook* if necessary.

1. a. 6A C.J.S. Arson § 22 (1975).
b. 6A C.J.S. Arson § 22 (1975).
c. Restatement 2d of Torts § 46 .
d. Restatement (Second) of Torts § 46.
e. Restatement (Second) of Torts § 46 (1965).

2. a. Annotation, Modern Status of Intentional Infliction of Mental Distress as Independent Tort; "Outrage", 38 A.L.R.4th 998 (1985).
b. Georgie M. Porgie, Annotation, Modern Status of Intentional Infliction of Mental Distress as Independent Tort; "Outrage", 38 A.L.R.4th 998 (1985).
c. Gorbachev v. Yeltsin, 22 Criminal L. Reporter. 1064 (4th Cir. 1993).
d. Gorbachev v. Yeltsin, 22 Criminal L. Reporter. (BNA) 1064 (4th Cir. Jan. 21, 1993).

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HIGH-TECH LAW STUDENTS: WHEN TO TRAIN THEM ON CALR

BY FRITZ SNYDER

Fritz Snyder is Law Librarian at the William J. Jameson Law Library of the University of Montana School of Law in Missoula.

"Each law school has three Legal Research and Writing courses: the one they had last year, the one they have this year, and the one they will have next year."

– Old adage, recently unearthed by Nickie Singleton, Director and Associate Professor of Law, University of Oklahoma Law Library

The Traditional Approach

At one time, perhaps 10 to 15 years ago, there was fairly strong agreement that students should be trained on computer-assisted legal research (CALR) systems—LEXIS® and Westlaw®—after they had been introduced to print materials. Usually print materials would be taught in the first semester of the first year, and CALR training would not be conducted until the second semester. (It was possible to train students on CALR in the last part of the first semester, after they were trained on print materials, but this seemed too much to cram into a single semester.)

The traditional approach was based, in part, on the view that simultaneously teaching LEXIS and Westlaw and print materials would add to the confusion that many law students already feel when introduced to the complexities of legal research. (This situation later was exacerbated by the introduction of natural language searching on CALR, which is particularly problematic for first-years since any fool can write a natural language search and automatically, with the default, get 25 or 30 cases, many of them worthless. Unfortunately, the student doesn't realize the poor quality of such a result.) And, conceptually, it seemed to work much better for students to actually use the print materials a good deal *before* moving to LEXIS and Westlaw. For example, the thinking went, it has to be difficult for students who have never used key numbers in a print digest to understand key number searching on Westlaw. CALR simply had to be easier to comprehend *after* students understood the makeup and use of print materials.

Is the Tide Turning?

Today, however, law students are much more electronically adept than they were in 1985. Moreover, Westlaw and LEXIS now are much more widely available to legal practitioners. Flat-rate pricing has made CALR more affordable, even for small firms and solo attorneys.

Given this situation, I was curious to see whether the traditional approach to the timing of CALR training was still followed in law schools today. Using two prominent law library electronic discussion lists,[1] I conducted an informal poll to investigate the question.[2] I first asked whether a school now incorporated CALR training into the basic legal research course. I next asked whether a school conducted CALR training during the second semester of the first year, while keeping the basic legal research course in the first semester. A few schools answered yes to both questions, but, for the most part, if the answer was yes to the first question, it was no to the second, or vice versa.

While the results of my survey are certainly not conclusive, the tide may be turning. A slight majority of the law schools that responded (21 of the 38) offer CALR training during the *same* semester as training in the print materials. (Five other law schools couldn't really be categorized.) It should be noted that this is not necessarily *simultaneous* training, integrating print and electronic resources in a single functional introduction to legal research. Some of the 21 schools that teach CALR and print during the same semester begin with the print materials and only provide CALR training *after* students have received training on traditional legal research tools. Nevertheless, large holes have been punched in the "print first, CALR second" dike. Among the reasons mentioned by respondents were the following:

"The traditional approach was based ... on the view that simultaneously teaching LEXIS and Westlaw and print materials would add to the confusion that many law students already feel when introduced to the complexities of legal research."

[1] The discussion lists I used were law-lib (**law-lib@ucdavis.edu**) and the academic law library directors list (**lawlibdir-l@lawlib.wuacc.edu**).

[2] *See* Frederick R. Snyder, fritz@selway.umt.edu, *Lexis/Westlaw Training*, Aug. 12, 1999, **lawlibdir-l@lawlib.wuacc.edu.**

- KeyCite® is only available electronically.
- Passwords are available that limit students to using Shepard's or KeyCite, and the Find and LEXSEE features, thus allowing a more reasonably paced introduction to the CALR systems.
- The increasing availability of LEXIS Academic Universe and the use of LEXIS by debate teams have made new law students more aware of CALR and impatient to use it.
- Finally, it is difficult to ignore the electronic generation of law students and their clarion call: "Computers are our God-given right."

Beyond numbers, there are other signs of the crumbling walls: Southern Illinois University School of Law, something of a leader in the teaching of legal research as a distinct course, reported: "We do not [yet] incorporate training in LEXIS and Westlaw with the basic legal research course, although this is something we are rethinking." And the University of Kentucky echoed: "While Westlaw and LEXIS are mentioned as resources in our fall legal research presentations, we do not integrate the materials. I am not sure how long we will be able to maintain this stance." One law firm librarian said: "If the law school has only one whack at teaching legal research [during the first year] why not teach the [print and CALR] skills side-by-side?"

Tim Kearley, law librarian and professor at the University of Wyoming, reported that he uses *The Process of Legal Research*[3] as a text and brings in online research when the book does, which works out to be the sixth and seventh week of the course. At that point, he figures students have become reasonably library-oriented and so won't be too taken by online research. He is reasonably satisfied with the results.

Jalen O'Neil, who teaches the research and writing course at Washburn, said:

> Although most of us very much understand and agree with the reasons for delaying LEXIS and Westlaw training, we have concluded that we will teach it in the first semester. ... The reasons for this conclusion are just as you state: the times are not with us. ... We plan to allow CALR access from the first day. ... Eventually we hope to develop a good set of problems that proves to the students that they are foolish to rely only on LEXIS and Westlaw. ... It is absolutely true that this will be more confusing and time-consuming for the students.

Doubts Remain

Charles Dyer, now director of the San Diego County Public Law Library but formerly law library director at the UMKC Law School, noted that the advantage of print sources is that editors have created good indexes for their tools. With CALR, however, key word searching amounts to doing your own indexing: "If you do enough secondary source work to understand the topic adequately, you can do better on an individual query. The issue is the same as it has always been: teaching law students to be thorough, rather than lazy."

John Edwards, director of the law library and professor of law at Drake University, argued that students need to learn the books first to appreciate what CALR can and cannot do. "Too many think everything they need can be found on the computer." Lynn Connor Merring, director of Library Services at Paul Hastings Janofsky & Walker in Costa Mesa, California, noted that some clients just will not pay for CALR, so associates might be forced to research the old-fashioned way. Bob Hughes, another law firm librarian, added that some questions, specifically statutory ones, do not lend themselves to initial computer searching since the question may depend upon context: "There's great value in a table of contents and an index when the specific statutory term alludes even the experienced practitioner." Carol Barra, librarian at Whitman, Breed, Abbott & Morgan in New York City, said that some of the partners in her firm complain that new lawyers really don't know how to do thorough research anymore:

> The new lawyers think that if they jump onto LEXIS or Westlaw they will find their answer quickly and will be doing a thorough job of researching an issue. Our partners are concerned that students are losing the ability to think and reason on their own. Also, whatever happened to starting with a treatise, a CCH looseleaf service, or C.J.S.® or Am Jur® 2d to get some background on a particular subject before jumping into case law? I think LEXIS and Westlaw are great resources, but they should be approached with more intelligence than I see from the younger attorneys.

Joan Pedzich, librarian at Harris, Beach & Wilcox in Rochester, New York, said that the

[3] Christina L. Kunz et al., *The Process of Legal Research* (4th ed. 1996).

students she gets as summer associates and permanent hires have almost no manual research skills. When they are using CALR as a sole source, they sometimes do not understand what they have found when they see it online: "They don't know the difference between a statute and a regulation, for example." According to Pedzich, the visual, physical presence of the print version helps to draw some distinctions about what the sources are and what they are used for.

Finally, there is the note of exasperation voiced by some academic law librarians but felt, no doubt, by many, many more. Lamar Woodard, law librarian and director of Information Services at Stetson University College of Law: "For the most part, teaching first-year students the intricacies of the CFR and *Federal Register*, legislative history, and looseleaf services is like teaching a pig to sing—the pig doesn't do it very well and certainly doesn't appreciate the lesson." Mary Brandt Jensen, director of the law library and assistant professor of law at the University of Mississippi: "I've tried situations where we gave them full-blown passwords at the beginning of the fall semester. It doesn't work. I've tried situations where they got no passwords until the spring semester. But there is no way we can teach citators properly now without exposing them to KeyCite." Penny Hazelton, law librarian and professor of law at the University of Washington School of Law: "The students will use CALR whether they know how or why or not. ... The truth is, they don't care if they do good searching online." She thinks the most viable solution is to have good advanced legal research courses that teach print sources, among other things, to second- and third-year students who, by then, know that they need to know how to do print research.

Conclusion

Of course, to some degree, it all goes back to first-year students. They're such a pain. They don't know anything except computers and the Internet. They complain about civil procedure; they complain about legal research exercises; they want to reform legal education. Still, I like 1Ls. They are fresh and enthusiastic. So what's the answer? Probably there isn't one, at least not a good one. A few of us teach graded legal research (not legal research *and* writing) courses and think this approach emphasizes legal research properly. But at most schools, the approach appears to be to use the more traditional legal research and writing course, taught by adjuncts or teachers on term contracts, with legal research somewhat de-emphasized. And, let's face it, lawyers seem to muddle by. Maybe the decision when to teach CALR is more a matter of personal preference, and it actually doesn't make too much difference what you do.

The nagging doubt still persists for me, however. If students are not forced to used the print digests, the print ALR, or the print encyclopedias, how can they properly appreciate them on LEXIS or Westlaw? So for my two-credit, graded legal research course, which I teach in the fall with no lectures and no hunt-and-peck library exercises, using 12 teaching assistants who each have six or seven students and grading based on casefinders and pathfinders that I alone review, I'll stick to having CALR training in the spring. Just too much stuff, otherwise.

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WRITING TIPS...

Never Use a Preposition to End a Sentence With

BY MARTHA FAULK

Martha Faulk is a former practicing lawyer and English instructor who teaches legal writing seminars through The Professional Education Group, Inc. She is co-author with Irving Mehler of The Elements of Legal Writing *(Macmillan Publishing Co., 1994). She is a regular contributor to the* **Writing Tips** *column that appears in each issue of* Perspectives.

"This fear of the stranded preposition seems to be unjustified based on modern grammatical advice."

As the title statement of the "rule" about prepositions illustrates, using a preposition can be a tricky proposition. Most English speakers do, at least occasionally, use a preposition "to end a sentence with." But most careful writers—especially legal writers—worry about blundering into what might be perceived as an egregious grammatical error.

To Err or Not to Err

As a teacher of legal writing for many years, I'm always surprised by writers' concern for this relatively small grammatical matter. My focus as an instructor is always upon larger impediments to effective legal writing, such as poor organization, long sentences, overuse of legal jargon, and true grammatical errors. Class participants, however, are usually concerned about prepositions at the end of a sentence, and they are often confounded to learn that such prepositional constructions are not grammatical errors.

Wayward Prepositions

Writers' concern and confusion about the wayward preposition—also called the "stranded," "delayed," or "postponed" preposition—is certainly well founded. Legal writers, charged with vigorous representation of the interests of their clients, do not want to appear to be careless or unlearned. Thus, many writers prefer authoritative *proscriptive* rules that state usage to be avoided as well as *prescriptive* rules that tell us what to follow. Because *plain meaning* and *clear meaning* are important concepts in interpretation of the law, legal writers need rules to live by. (Consider, for example, that this sentence could be rephrased as "rules by which to live," but then some of the emphasis would be lost.)

Fear and Uncertainty

So, it's fear, then, or at least uncertainty, that makes writers avoid the preposition at the end of a sentence. This fear of the stranded preposition seems to be unjustified based on modern grammatical advice. In its survey of preposition usage, *The New Fowler's Modern English Usage* says, "One of the most persistent myths about prepositions in English is that they properly belong before the word or words they govern and should not be placed at the end of a clause or sentence."[1] Similarly, *Webster's Dictionary of English Usage* asserts that the "preposition at the end has always been an idiomatic feature of English."[2]

John Dryden's Legacy

Where did these myths and misapprehensions come from? (Incidentally, you might note the naturalness of the wording in this question. A rearrangement of words to avoid using the preposition at the end would read awkwardly like this: From whence did these myths and misapprehensions come?) To answer the question, scholars agree that the 17th-century English poet and essayist John Dryden originated the myth in his essay on literary criticism titled *Defence of the Epilogue* (1672).[3] Although we can't be certain why Dryden developed the idea that the terminal preposition is an error, we can speculate that he was influenced by his knowledge of Latin grammar. In Latin, the preposition usually precedes its complement, typically a noun or pronoun.[4]

Dryden seems to have had an inordinate influence upon later grammarians. Noah Webster, in his 1784 grammar, reflected the view of his contemporaries by strongly disapproving of the terminal preposition.[5] Working against this proscriptive notion, however, is evidence that the postponed preposition has been a regular feature of some constructions since Old English. "Evidently, the whole notion of its being wrong is Dryden's invention," according to modern grammarians.[6]

[1] H.W. Fowler, *The New Fowler's Modern English Usage* 617 (R.W. Burchfield ed., 3d ed. 1996).

[2] *Webster's Dictionary of English Usage* 765 (1989).

[3] *See* Fowler, *supra* note 1, at 617.

[4] *See Webster's Dictionary of English Usage*, *supra* note 2, at 764.

[5] *See id.*

[6] *Id.*

Typical Use of Prepositions

Usually, the preposition (*pre-position* meaning "placing before") comes before its object in a phrase. Most often that object is a noun phrase or a pronoun. The preposition connects words together to show the relationship between words. Some examples of the regular use of the preposition in its usual place are as follows:

Here is a difficult issue *for you*.
Unfortunately, I left my umbrella *in the closet*.
She directed her attention *to the witness*.

Prepositions at the End

In some constructions, however, we place the prepositional object at or near the beginning of a clause.[7] In the examples below, the preposition stays together with the verb, adjective, or noun with which it is associated:

"Wh" questions:
Who's the envelope *for*?
What are you getting *at*?

"Wh" clauses:
These are people whom you would like to be associated *with*.
I wish I knew what you were thinking *of*.

Restrictive clauses introduced by "that":
Here is the error [that] I told you *about*.
Surely it's the verdict that he's so angry *at*.

Infinitive structures:
Their last child was difficult to find a name *for*.
Some people find suburbia a boring place to live *in*.
The airport isn't an easy place to get *to*.

Passive voice verbs:
In some families, money is never spoken *about*.
Yesterday, the plaintiff was operated *on*.
We all hate being laughed *at*.

Prescriptive Attitudes

It's precisely because "we all hate being laughed at" that we often find ourselves rewriting sentences ending with prepositions. David Crystal, in *The Cambridge Encyclopedia of the English Language*, discusses the prevalence of prescriptive attitudes toward language. "Prescriptivism," he says, "is the view that one variety of a language has an inherently higher value than others, and that this ought to be imposed on the whole of the speech community."[8] Legal writers, especially, are concerned about correctness in language so as to avoid misunderstanding and misinterpretation.

That same concern, however, could lead to a rigid conformity to linguistic propriety and result in a turgid style. In the case of prepositions, a natural-sounding question such as "Who is the envelope for?" becomes the more formally correct "For whom is the envelope?" In addition to substituting the grammatically correct objective case *whom* for the nominative case *who*, we have repositioned the preposition to the beginning of the clause. Thus we have achieved more formality but lost the natural word flow, and, most of us would agree, produced a more turgid style.

Churchill's Advice

Should we let formality be our guide? *Fowler's Modern English Usage* recommends that "[i]n most circumstances, especially in formal writing, it is desirable to avoid placing a preposition at the end of a clause or sentence where it has the appearance of being stranded."[9] Legal writers may justifiably be as concerned about the appearance of grammatical impropriety as they are about the appearance of other kinds of impropriety.

If, however, this concern for grammatical rectitude results in an unnaturally twisted construction, then the writer should rewrite for naturalness. Winston Churchill, reacting to a sentence in a government report that clumsily avoided a prepositional ending, is said to have made this marginal comment: "This is the sort of bloody nonsense up with which I will not put."[10]

Still, we are left with those constructions where prepositions may or even must be placed at the end of the sentence, as the above examples illustrate. In those circumstances, common sense dictates that we avoid twisting our thoughts into unnatural utterances just for the sake of avoiding the stranded preposition. Churchill's admonition gives us just the advice we are looking for.

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> "[C]ommon sense dictates that we avoid twisting our thoughts into unnatural utterances just for the sake of avoiding the stranded preposition."

[7] *See* Michael Swan, *Practical English Usage* 440 (2d ed. 1995).

[8] David Crystal, *The Cambridge Encyclopedia of the English Language* 366 (1995).

[9] Fowler, *supra* note 1, at 619.

[10] *The Oxford Companion to the English Language* 802 (Tom McArthur ed. 1992)

Nonlegal Analogies in the LRW Classroom

BY BRUCE CHING[1]

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"The familiar content allowed my students to recognize more easily the steps involved in analysis and argument."

Because they are frequently unfamiliar with the specific law at issue in their assigned memoranda and briefs, first-year students may become frustrated even when applying analytical processes that are similar to what they have already learned. In successive memorandum assignments, many of my students found it difficult to generalize from analysis of one legal problem to analysis of a different type of legal problem, as if they were unable to distinguish between content (which differed between the assignments) and analytical process (which should have been similar for both assignments). In response, I began to use analogies to familiar situations outside the legal context to explain processes of legal analysis; a little later, I used the same method to illustrate legal argument. The familiar content allowed my students to recognize more easily the steps involved in analysis and argument.[2] In this article I present some of the analogies that have worked well in my classes.

Grouping Stars into a Constellation (To Illustrate Rule Synthesis)

I assigned a set of four cases dealing with the First Amendment free speech rights of high school students, which we used as a base to discuss synthesizing a legal rule.[3] After this class, a student told me that she still was not confident of her ability to synthesize a rule from several sources, and asked for more explanation. At the beginning of our next class session, I summarized orally, as well as on the chalkboard,[4] students' observations about each of the four cases and their suggestions for legal rules that would incorporate the holdings of all of those cases. I then asserted that "the law" that applies to a particular problem is often not something found in any one source, and that the applicable law is often more like a constellation. At that moment, I turned to the student who had requested clarification of rule synthesis, and asked, "What is a constellation?" She immediately saw the point and explained that a constellation is a group of stars that the viewer connects into a coherent pattern.

I then illustrated her explanation by drawing a few dots on the chalkboard and showing different patterns into which they could be connected, saying to my class, "Your job is to show why a particular pattern is the one that applies to your situation." Drawing an additional dot on the board, I also explained that when a landmark case is decided, an additional star is added to the constellation, and the viewer must reconnect the lines into a new pattern, in effect

[1] This article is based on my classroom experiences as a legal research and writing (LRW) instructor for two years at the University of Cincinnati College of Law.

[2] I tried to set the stage for this early in the semester. After we covered a topic, I asked students how they would explain the same topic to someone who was not a law student or a lawyer. After a couple of minutes of being prodded to simplify their statements and to fill in background assumptions, they explained things at a level that was appropriate for attentive laypersons. However, I suspect that some students never understood why I asked for such explanations. This year I asked students to explain why I asked such questions. Collectively, they correctly noted that they would have to explain things in nonlegal terms to clients, juries, and themselves.

[3] The cases are *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503 (1969); *Guzik v. Drebus*, 431 F.2d 594 (6th Cir. 1970); *Melton v. Young*, 465 F.2d 1332 (6th Cir. 1972); and *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986).

As a device to teach part of the basic research and citation skills, I also used the assignment to illustrate that cases often can be found even if information is incomplete, and that certain parts of the case citations are essential for the reader to be able to find the cases. On the assignment I listed the last three cases as: ___, 431 F.2d 594 (__ Cir. 19 __); Melton v. ___, 465 F.2d __ (__ Cir. 19 __); and Bethel School District v. ___, __ U.S. __ (1986) (full opinion, not just an order granting certiorari).

After we discussed the cases in class, I distributed a few pages of facts regarding a high school student who alleged that the school administration had impermissibly infringed upon his free speech rights, and gave my students an assignment to write a short analysis (five pages or fewer), which I marked but did not grade. This gave me a chance to diagnose and address major analytical problems before students wrote their first graded memorandum.

[4] That particular class session was observed by Professor David Naylor of the University of Cincinnati School of Education, who later pointed out to me that if I wrote the case summaries on a poster-sized sheet of paper, then I could tape it to the wall for all of my sections rather than have to rewrite the summaries in different rooms at the beginning of classes when dealing with different sections. (I previously considered doing something similar with overhead projector transparencies, but the layout of one of the classrooms did not permit simultaneous use of the overhead screen and the chalkboard.)

finding a new legal rule. Erasing another dot, I stated that sometimes a court decision overturns a previous rule, in effect simultaneously adding one star to the pattern while deleting another.

In reading students' subsequent memos, I noticed that they did not over-rely on any one source of law, and did well in synthesizing legal sources to address the full scope of the issue that they were assigned.

Teen Drivers (To Illustrate Precedent Distinctions, Equity and Policy Arguments, and Mandatory and Persuasive Authority)

When I was a first-year law student, the LRW class used an advocacy exercise in which some students role-played a teenage driver trying to persuade her parents to let her use the family car, while others role-played the parents responding to the teen's arguments.[5] As a new LRW teacher, I remembered that although the exercise worked well in reminding students that the goal of argument is persuasion, it tended to elicit only policy arguments. I decided to appropriate the exercise and expand on it. I listed on the chalkboard the types of bases used in legal argument: "facts," "law" (divided into "enacted law" and "case law," and "mandatory" and "persuasive"), "equity," and "policy." Gesturing across the board, I said, "We've previously talked about these; now let's see how they work together."

I first wanted to emphasize the importance of working with facts, and decided that having students make factual distinctions would be a good way to do it: "I'm going to have you regress back to when you were teenagers and you wanted to borrow the family car. Unfortunately, your older brother wrecked the car a few months ago. The car has been repaired, but your brother's experience is adverse precedent. What facts, if you had them, would you use to distinguish your situation from his?"

A student suggested pointing out that his grades were better than those of his brother. I wrote "grades" on the chalkboard and asked, "Why does that matter?" The student said that his better grades showed that he was more attentive and more responsible. Other students suggested that facts such as weather conditions, times of day or night, and absence of alcohol use would also make a difference. Writing each response on the board, I had to prod the first few students to explain why the factual differences should be persuasive, but the last few spontaneously gave both a factual difference and the reason that it should distinguish the student's case from that of his or her brother. In summarizing, I noted that when they distinguished cases, they would have to both present factual differences and explain why the factual differences should (or should not) result in different outcomes.

I moved to the section of the chalkboard titled "law," and asked for an example of enacted "law" in our hypothetical. A student suggested "No use of the car without permission." "OK, if the parents sit down with the kids and announce it ahead of time, then it's enacted law," I replied. I also suggested that individual rulings on the use of the car in particular circumstances would be "case law," and that these "cases" would have a stare decisis effect on future "cases."

Moving to "equity" on the chalkboard, I called on another student to remind us about equity types of arguments. After eliciting an answer that centered around the idea of fairness, I asked for equity arguments in the teenage driver hypothetical. Students volunteered answers along the lines of "It's not fair to penalize me for my brother's mistake." Again, I wrote each answer on the board.

Walking to the section of the chalkboard titled "policy," I called on another student to explain policy types of arguments to us; the answer involved effects on future parties' conduct. When I asked for policy arguments for our teen driver situation, students responded that by being entrusted with responsibility, they would learn to be responsible, and that their being able to drive would relieve parents of the burden of having to drive them around. The answers were recorded on the board.

Moving back to the heading of "law," I said that we had previously discussed the distinction between mandatory authority and persuasive authority. I then reversed the students' role in the

[5] The exercise was introduced to our class by Mary White, who at that time directed the LRW program at the University of Michigan. No specific factual background was given beyond that of a teenager trying to persuade her parents to let her use the car.

"I reminded students that they needed to address both favorable and unfavorable precedents, analogizing to favorable cases and distinguishing unfavorable ones."

teen driver hypothetical to illustrate the difference between mandatory and persuasive authorities: "OK, now you're the parents of the teenager who wants to borrow the car. As parents, what sort of persuasive authority do you *know your child* will cite to show that you should let him or her drive the car?" The class erupted with answers along the lines of, "The *other kids* are allowed to drive by *their* parents." "And as parents, what is your response?" I asked. Students gave answers of "So what," "You're not their child," and so on. "Right," I said, and restated their answers as "You don't live in *that* jurisdiction; you live in *this* jurisdiction. And as long as you live in this jurisdiction, you'll follow the law of this jurisdiction." In summary, I reminded my students that they should always begin their analysis with mandatory authority, and that they must always justify any use of persuasive authority.

This exercise has worked well when used a couple of weeks before memos or briefs are due. When used earlier than two weeks before the assignments were due, however, some students forgot large parts of the point of the exercise. For my future classes, I intend to experiment with referring back to the points of the exercise along with representative answers that the students had given during the exercise, about a week before each major writing assignment is due.

Paired Policies (To Illustrate Insufficiency of Relying on a Single Policy Argument)

While coaching oral arguments, I noticed that a number of my students would invoke one policy argument in support of their position but were unprepared to address questions invoking a countervailing policy. In our next class session, I reminded students that they needed to address both favorable and unfavorable precedents, analogizing to favorable cases and distinguishing unfavorable ones. Then I suggested that something similar might have to be done with policy arguments, because there are often contradictory policies on the same topic.

To help them understand what I meant, I again sought familiar examples outside the legal context. I first wrote on the chalkboard, "Absence makes the heart grow fonder," and asked for an opposite and equally well known statement regarding absence. "Absence makes the heart go wander," said a couple of renegade students; "Something more widely known," I responded. "Out of sight, out of mind," said one of my students, and I wrote it on the board.

Next, I announced a shift to tax policy, then stated aloud and wrote on the chalkboard two competing policies: "People want more money, so government should reduce taxes," and "People want more public services, so government should raise taxes to fund more services."[6]

Finally I went back to the teenage driver hypothetical and asked students to name a policy that the teenager would cite in support of the argument for using the car. "By driving the car I'll learn to be responsible," said one student. I asked for a policy that parents would cite against the teen's use of the car. "We don't want to take too many chances with the car," said another student. I prodded a little more, and elicited the addition of "We don't want you to die." I wrote the policies on the board.

Then we reexamined each pair of policies. For "Absence makes the heart grow fonder" and "Out of sight, out of mind," I suggested that both could not be true at the same time, and that the students' job in such a situation was to explain to the judge why one policy applied rather than the other. Next, I turned to "People want more money, so government should reduce taxes," and "People want more public services, so government should raise taxes to fund more services." I stated that although the underlying policies of people wanting more money and people wanting more public services could both be true, the *implementation* of those policies could not occur simultaneously because the net level of taxes could not be raised *and* lowered at the same time.[7] I then suggested

[6] I acknowledge that the topic borders on law, coming close to contradicting the topic of this article. Nevertheless, first-year students are familiar enough with taxes to allow productive "general"— i.e., not specifically "legal"—discussion.

[7] In one section, I got into trouble by asking whether the net amount of taxes could simultaneously be raised and lowered. A couple of students thought that I was using the term "amount" to refer to both tax rates and net amounts of revenue, and after a minute of discussion clarified that they believed lower tax rates could result in increased government revenue. Notwithstanding my skepticism about the argument, I later decided that it was easiest to present my point as an assertion rather than as a question, so in my other section I explained that by "amount" I really did mean amount. I also realized that I had relearned the perils of words carrying double meanings for some speakers.

that in such a situation, my students' job was to explain to the judge why one policy outweighed the other. Finally, comparing "By driving the car I'll learn to be responsible" with "We don't want to take too many chances with the car, or with your life," I suggested that this was a situation in which a proposed course of action could accommodate both policies. I used an overhead transparency of the parent-teen "Contract for Life,"[8] drafted by the group Students Against Destructive Decisions,[9] to illustrate an attempt at such an accommodation. I further suggested that my students' job under such circumstances was to explain how a ruling in favor of their client would satisfy the objectives of both policies.

Empirically, I do not have enough information to know how well this presentation "stuck" with my classes. But several of my students incorporated the distinctions of the exercise into their practice and graded oral arguments.

Conclusion

The use of analogies to nonlegal situations seems to remove one layer of difficulty in students' learning the processes of legal analysis and argument. Mindful that the audience of *Perspectives* includes teachers who are much more experienced than I, I offer this description of analogies used in my classroom in the spirit of another analogy I heard in my study of the martial arts: "I throw down my brick to entice others to reveal their jade."

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[8] *See* Students Against Destructive Decisions!, *Contract for Life* (visited Sept. 19, 1999) <http://www.nat-sadd.org/contract.htm>.

[9] Formerly known as Students Against Driving Drunk. See Students Against Destructive Decisions!, *Why We Changed Our Name* (visited Sept. 19, 1999) <http://www.nat-sadd.org/main-about.htm#whywechangedourname>.

HOW TO . . .

Structure Your Legal Memorandum

BY MARK GANNAGE[1]

Mark Gannage is a lawyer at Goodman Phillips & Vineberg in Toronto, Ontario, head of Legal Research of the Law Society of Upper Canada's Bar Admission Course, recent Adjunct Professor at the University of Toronto Law School, and former Lecturer at Monash University Law School.

"The legal memorandum is the most formal, polished, and comprehensive written document for reporting the results of your legal research."

This article suggests one possible approach to structuring your legal memorandum. Some inexperienced legal researchers frequently spend considerable time and effort finding the law relevant to a particular practical problem, only to founder when reporting in writing their research results. The deficiency is often poor organisation. Like other legal skills, organising and writing memoranda is an art that can be honed with practice.

The legal memorandum is the most formal, polished, and comprehensive written document for reporting the results of your legal research. It summarises and analyses the relevant law and applies it to a particular fact situation. In practice, the memorandum can be a crucial document to a case or file. The memorandum might be sent directly to the client or be the basis of other written work, such as a factum, opinion letter, pleading, legal instrument, or judgment.

Accordingly, given its importance and potential uses, your memorandum should adhere to the hallmarks of excellent legal writing, including organisation. A well-organised memorandum conveys a lucid, methodical way of thinking about the problem. When structuring your memorandum, you should adhere to the canon that, to the extent that the written word is capable, your writing is and should be a transparent window into your thoughts.

There is no one right way to organise a memorandum. You can appropriately structure your memorandum in many different ways. The variable structure might depend on such factors as the memorandum's purpose, your instructions, your reader's needs, the nature of the problem, your legal findings, the logic of the subject, the scope of your research, and any standard approach adopted by your law office. These factors might require you to be flexible and to structure your memorandum creatively and idiosyncratically.

This article focuses on organization. It suggests how to partition your memorandum (exemplifying the recommended form) and what to address in each part.[2] Some of the following suggestions might help you to craft a suitable, effective, and time-efficient format for reporting the results of your research and analysis.

In practice, your arduous legal research and analysis can be immeasurably valuable. Its value will be enriched if its written communication is coherent, focused, and orderly. Adopting these recommendations for structuring your legal memorandum could enhance its clarity, potency, and usefulness.

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[1] I am grateful to my colleague Susan C. Zimmerman for her helpful comments.

[2] An examination of such other specific and important presentation elements as style, usage, syntax, citation, footnotation, quotation, grammar, punctuation, and spelling can be found in the extensive literature on legal writing and is beyond the scope of this article.

MEMORANDUM

TO: [reader] (e.g., instructing lawyer, client, judge)
FROM: [your full name]
DATE: [date of submission]
FILE: [file number; client/matter]
SUBJECT: [topic] (describe precisely)

TABLE OF CONTENTS [optional]

- It's an outline for your reader—a snapshot of your structure, approach, and analysis. It helps your reader quickly find specific parts.
- It's appropriate if the memorandum is long (e.g., exceeds 10 single-spaced pages) and covers several issues.
- It can easily be generated automatically by computer to comprise numbered or lettered headings and subheadings, and page references.

I. BACKGROUND (or PURPOSE OF MEMORANDUM) [optional]

- Describe the context. State briefly what you have been asked to do and why (e.g., upcoming court appearance, client seeking legal opinion, legal question arising from draft agreement, proposed legislation, bench memo for a pending case).
- Identify scope of instructions and research.

II. FACTS

- This part ensures that you and your reader are starting with the same information. It tells your reader the genesis of your research and analysis and the basis of your conclusion. It permits your memorandum to stand on its own.
- Summarise all legally relevant facts as you understand them. If appropriate, do so in a chart, table, or diagram. In any case, be concise and precise.
- Identify your sources. Some possible sources are your reader; the client (if he or she is not your reader); the file; your own investigation.
- Chronological order is often most helpful (unless another order seems more logical and makes the information more clear, such as grouping sets of facts that raise separate issues). Separating and numbering the facts might make them more understandable.
- If there is some disagreement or uncertainty about the facts, say so and state both sides.
- A summary of the facts might instead come *after* the issue/question and conclusion/answer parts in some circumstances, particularly where these parts are straightforward and simple.

III. ASSUMPTIONS [optional]

- If you have legally relevant, unanswered questions, you might have to make certain assumptions.
- Identify them either in a separate section or by including them in the above section retitled "FACTS AND ASSUMPTIONS."

IV. ISSUE(S)

- State the legal question(s) asked or the issue(s) considered in the memorandum. They map your approach to the problem.
- Articulate briefly, clearly, simply, concisely, precisely, and accurately.
- Break down each question into all relevant sub-issues.
- Present separately issues and sub-issues as questions.
- Deal with pivotal issues first. List issues and related sub-issues in a logical order. Number them.

V. CONCLUSION(S)

- This part is a terse summary of your answers to the issues you've identified above based on your assessment of the *likely* application of the law to your case. It's an abbreviated statement of that which you analyse in detail in your discussion below.
- Write this part last but present it first (i.e., before your detailed discussion) so that your reader knows quickly the bottom line before reading about how you got there. Remember: you're not writing a suspense thriller or a murder mystery.
- Answer the question(s). Be direct, clear, and complete. Don't be indecisive, hesitant, or inconclusive. Take a stand. Identify any doubts about the outcome. Any qualifications of your opinion should be based on reason and supported by the law.
- Don't reiterate your legal analysis.
- Don't introduce "new" information (i.e., information that does not appear in your discussion).
- Number each conclusion to correspond with each issue. Clone the wording of the issues as closely as possible.
- This part may also be relied on as a summary for other uses (e.g., for the firm's information retrieval system or memo bank).

VI. LEGISLATION [optional]

- Set out verbatim if critical to your conclusion.
- If longer than a page, consider paraphrasing and appending a highlighted, tabbed photocopy or printout.

VII. DISCUSSION (or ANALYSIS)

- Describe the relevant law (e.g., legislation, cases) and commentary on the law (e.g., texts, encyclopedias, policy statements), then apply them to the facts of your case. Either integrate the description and the application, or adopt a sequential two-step approach for each issue.
- Predict how a court would *likely* resolve the issue(s) and apply the law to your specific facts.
- Group similar cases. Summarise any common facts and principles that emerge from relevant cases.
- Describe the significant components, including the essential, germane facts and key issue(s), of the cases you've reviewed. This lets your reader assess how similar, different, or applicable each case is to your specific facts. Where appropriate, distinguish cases and draw inferences. Assess where your problem fits into the range of fact situations of the pertinent cases.
- Extract and apply the principles from the leading cases. Use these principles as premises in your legal argument (i.e., a conclusion supported by reasons). Identify any trends in the case law.
- Address fairly any arguments on *both* sides of an issue. Anticipate what positions and counterarguments might be advanced by the opposing side.
- Don't ignore or conceal any uncertainties, inconsistencies, ambiguities, conflicts, gaps, or confusion in the law. Explicitly identify them.
- Don't mislead your reader about the current state of the law. Don't be inaccurately one-sided or deceptively optimistic or pessimistic. Don't let wishful thinking cloud your reasoning. Give both the "good news" and "bad news," if any, of your research results.
- Give an opinion on the strengths and weaknesses of your position. Present persuasively the best arguments based on any relevant legislation and common law principles.
- Show your reasoning. Reach a conclusion. Ensure that it's supported by the law.
- Make any suitable recommendations about a course of action. Be creative. Think strategically. Focus on getting results.
- Analyse each issue separately. Show your reasoning, using a step-by-step approach.
- Use headings corresponding to each issue and sub-issue so that the discussion is easy to follow ("signposting"). Number them.

- Ensure that the hierarchy of headings is logical and consistent.
- Make the language of each heading correspond to the language of each issue or conclusion (i.e., be consistent in the words you use).
- Start each paragraph with a topic sentence (indented) to focus the discussion.
- If time, logistical, or other practical constraints force you to rely solely on secondary sources, say so.
- Identify any pertinent missing information and potentially outstanding issues.

VIII. SOURCES CONSULTED (or RESEARCH CHECKLIST)

- Either list the authorities you reviewed, starting on a new page, or append a completed standard checklist of sources consulted.
- Include full, accurate citations for cases and secondary sources for current and future reference.
- Specify the exact search terms used in any electronic research, the databases searched, and the number of cases, records, or "hits."
- Identify any helpful Web sites visited.
- List your sources in a logical order (e.g., reverse chronology, most to least germane or authoritative) under subheadings (e.g., cases, secondary sources). Identify this order for your reader.

IX. APPENDIXES [optional]

- Examples include leading cases, relevant legislation, or previous relevant memoranda that you've updated.
- Identify, organise, highlight, and tab them for your reader.

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LEGAL RESEARCH AND WRITING RESOURCES: RECENT PUBLICATIONS

COMPILED BY DONALD J. DUNN

Donald J. Dunn is Dean and Professor of Law at Western New England College. 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.

Rose-Marie Belle Antoine, *Commonwealth Caribbean Law and Legal Systems* (1999). [London: Cavandish Publishing, 346 p.]

Discusses in detail the 12 independent countries and six territories that remain dependencies of Great Britain. The book places the various legal institutions of Commonwealth of the Caribbean in their historical and social contexts.

John R. Austin, *The Law of Electronic Commerce and Digital Signatures: An Annotated Bibliography*, 17 J. Marshall J. Computer & Info. L. 1043 (1999).

"This bibliography consists of annotated references to periodical articles, books and book chapters, World Wide Web sites, and government documents that examine the law of electronic commerce and digital signatures." *Id*. Sources are grouped under five major subject headings.

Thomas E. Baker, *Federal Court Practice and Procedure: A Third Branch Bibliography*, 30 Tex. Tech. L. Rev. 909 (1999).

This extensive bibliography of approximately 225 pages consists of books and articles relating to the federal courts and federal court procedure. Consists of seven major topics and numerous subtopics. Although the sources are not annotated, each subtopic begins with a description of the coverage therein.

Black's Law Dictionary®, Bryan A. Garner, Editor in Chief (7th ed. 1999). [Eagan, MN: West Group, 1738 p.]

First published in 1891, this new edition under the editorship of one of the preeminent experts on good legal writing contains more than 4,500 new terms and more definitions than any other legal dictionary. Over time, *Black's* has become the leading authority for legal definitions. This edition, for the first time, includes quotations from scholarly sources to show the context of terms and exemplify their usage.

Ruth Bohill, *Electronic Citation Guide for Legal Materials*, 8 J.L. & Info. Sci. 210 (1997).

The University of New England Department of Law developed this guide to provide uniformity in electronic citations. Includes a discussion of attempts in the United States and Australia to develop medium-neutral citation guides.

Cynthia Grant Bowman, *Bibliographical Essay: Women and the Legal Profession*, 7 Am. U. J. Gender Soc. Pol'y & L. 149 (1999).

There is ample evidence in various gender bias studies and related reports that women are frequently mistreated in the legal profession. This essay first discusses these sources and then concludes with assessments of attempts of feminist theory to come to grips with the situation and how entry of women into the profession may help transform it.

Ralph S. Brown: A Selected Bibliography, 108 Yale L.J. 1483 (1999).

This bibliography collects the works of noted intellectual property expert Ralph Sharp Brown as part of a tribute issue of the *Yale Law Journal*.

Jonathan A. Bush, *Telford Taylor: A Bibliography* [Telford Taylor], 37 Colum. J. Transnat'l L. 1015 (1999).

This entire issue is devoted to "Essays on the Law of War and War Crimes Tribunals in Honor of Telford Taylor." The concluding bibliography "attempts to enumerate Telford Taylor's published writings from 1932 to the mid-1990's, as well as a few categories of unpublished writings." *Id*.

Julianne Claydon, *Select Bibliography of 1997 Great Lakes' Literature: An Environmental, Economic, and International View*, 1998 Toledo J. Great Lakes' L. Sci. & Pol'y 179.

This unannotated bibliography, arranged by subject, includes only sources published in 1997.

Thomas M. Clyde, *Plain Language Turns the Corner: New SEC Rules for Prospectuses*, Clarity, Sept. 1998, no. 42 at 9.

Describes the new rules of the Securities and Exchange Commission calling for plain English in prospectuses.

A. Darby Dickerson, *Florida Legal Research: Sources, Process, and Analysis*, 26 Fla. St. U. L. Rev. 1177 (1999).

A review of *Florida Legal Research* (1998) by Suzanne E. Rowe, Barbara J. Busharis and Lisa Kuhlman Tietig that examines the book's organization and content and compares it with other books on Florida legal research.

Dictionary of Law [P. H. Collin, ed.] (2d ed. 1999). [Chicago, IL: Fitzroy Dearborn, 258 p.]

A dictionary of terms and phrases of primarily English law.

Nancy Eagan, *The Police Response to Spouse Abuse: A Selective, Annotated Bibliography*, 91 L. Libr. J. 499 (1999).

"Background on the traditional governmental responses to spouse abuse and brief periods of reform, as well as the rationale for a bibliography annotating materials concerning the police response to spouse abuse, are provided. The bibliography is arranged in four sections: (1) empirical research, (2) criminal justice commentary, (3) feminist commentary, and (4) legal commentary." *Id.* Abstract.

G. LeGrande Fletcher, *Nevada Practice Materials: A Selective Annotated Bibliography*, 91 Law Libr. J. 313 (1999).

"The author provides a selective listing of primary and secondary legal materials useful for the practice of law in Nevada, including general publications, periodicals, electronic sources, and treatises." *Id.*

Bryan A. Garner, *The Substance of Style in Federal Rules*, Clarity, Sept. 1998, no. 42 at 35.

Describes the revamped and rewritten set of rules for the federal appellate courts, the sole purpose of which was to improve their style.

Pearl Goldman, *A Guide to Researching Bankruptcy Law on the Internet*, 8 J. Bankr. L. & Prac. 499 (1999).

Provides references to Web sites that are useful in researching bankruptcy law.

Clyde H. Hamilton, *Effective Appellate Brief Writing*, 50 S.C. L. Rev. 581 (1999).

"The purpose of this Article is to offer practical advice from the perspective of one federal appellate judge regarding how to draft effectively the seven components constituting the heart of the appellate brief." *Id.*

Margaret Kerr, *Legal Research: Step by Step* (1998). [Toronto: Montgomery Publications, Ltd., 184 p.]

Deals with the law in Canada and provides course coverage for college legal and public administration program courses.

Leonard E. Klein, *The War Powers Resolution: A Bibliography*, 2 J. Nat'l Security L. 191 (1998).

Lists books, articles and essays, dissertations, congressional hearings, and legal opinions relating to legal and political science literature on the War Powers Resolution, 50 U.S.C. §§ 1541–1548.

Ilhyung Lee, *The Rookie Season*, 39 Santa Clara L. Rev. 473 (1999).

The author recounts his own experiences as a legal research and writing instructor, including what he views as his second-class status. He argues for improved institutional respect for both the subject and teachers.

Legal Writing: The Journal of the Legal Writing Institute (Volume 5, 1999).

Once again this annual volume contains some terrific articles on legal writing, too many to annotate. For subscription information, contact Editor, *Legal Writing*, Seattle University School of Law, 950 Broadway Plaza, Tacoma, WA 98402.

Myres S. McDougal: A Selected Bibliography, 108 Yale L.J. 961 (1999).

This bibliography collects the works of noted

international law expert Myres S. McDougal as part of a tribute issue of the *Yale Law Journal*.

Maureen Bonace McMahon, *Legislative History in Ohio: Myths and Realities*, 46 Clev. St. L. Rev. 49 (1998).

Legislative history in Ohio is often considered sketchy and elusive and perhaps even nonexistent. This article attempts to show that indeed there are sources for legislative history in Ohio.

Robert W. Peterson, *The Bard and the Bench: An Opinion and Brief Writer's Guide to Shakespeare*, 39 Santa Clara L. Rev. 789 (1998).

With more than 800 citations to William Shakespeare in published opinions, it is common to use and misuse the famous Bard. This essay collects the author's favorite sources. A Web-based site contains most of the attributed references to Shakespeare in court opinions.

Ellen J. Platt & Mary J. Koshollek, *Wisconsin Practice Materials: A Selective, Annotated Bibliography* (1999). [Buffalo, NY: William S. Hein, 169 p.]

A bibliography of primary, secondary, and reference materials pertaining to the practice of law in Wisconsin. Arranged by topic and subtopics.

Deborah L. Rhode, *Annotated Bibliography of Educational Materials on Legal Ethics*, 11 Geo. J. Legal Ethics 1029 (1998).

Compiled by one of the leading authorities on legal ethics, "[t]his annotated bibliography includes references to written and audiovisual materials for professional responsibility courses and curricular integration projects. Its objective is to identify innovative materials that can enrich legal instruction." *Id.*

Kenneth F. Ripple, *Legal Writing in the New Millennium: Lessons from a Special Teacher and a Special "Classroom,"* 74 Notre Dame L. Rev. 925 (1999).

The author, a federal appeals court judge and a former law clerk to Chief Justice Warren Burger, discusses what he learned about legal writing during his clerkship years.

Deborah A. Schmedemann & Christina L. Kunz, *Synthesis: Legal Reading, Reasoning, and Writing* (1999). [New York, NY: Aspen Law & Business, 550 p.]

Explains the process of reading and synthesizing cases, reading and interpreting statutes, and reading commentary; explores techniques of deductive reasoning, reasoning by example, and policy analysis; provides chapters on the office memo; explains how to draft advice letters; and examines the uses of written and oral advocacy.

Kennard R. Strutin, *Writing Practical Articles*, 45 Prac. Law. 41 (1999).

This article provides advice to lawyers interested in how to write articles of practical use to other lawyers.

Symposium [Law Reviews], 26 Fla. St. U. L. Rev. 813 (1999).

Contains four interesting and well-researched articles on empirical evaluation of specialized law reviews, ranking specialized law reviews, ranking journals, and author prominence.

Larry L. Teply, *Legal Research and Citation* (5th ed. 1999). [Eagan, MN: West Group, 461 p.]

Like the prior editions, this volume is designed to introduce students to legal research and citation. Emphasis is on how legal research is conducted. *Legal Citation Exercises* and *Legal Research Process Exercises* accompany the text.

Suzanne Thorpe & Laura J. Cooper, *Researching Labor Arbitration and Alternative Dispute Resolution in Employment*, 91 Law Libr. J. 367 (1999).

"The authors list and describe the sources that may be used to research arbitration and other means of employment dispute resolution in unionized and nonunionized settings. Both print and electronic works are included." *Id.* Abstract.

John Trone, *Electronic Sources of Asian Laws*, 8 J.L. & Info. Sci. 264 (1997).

This paper provides some general observations about electronic sources for Asian laws, discusses sources relating to particular countries, and examines sources relating to particular subject areas. *Id.* at 265.

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PREPARED BY FRANK G. HOUDEK

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