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INTRODUCING THE AALL *UNIFORM CITATION GUIDE*

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Technology has vastly expanded access to legal information. Court decisions are available not only through commercial services such as Westlaw®, LEXIS-NEXIS®, and Loislaw.com, but also through Web sites operated by courts and law schools. The publication of both statutory materials and administrative codes through the Internet and other online services has made legislative and regulatory information available to people who previously had little or no access to it.

Citing primary materials that are consulted in diverse formats is a challenge for users of legal information. The rules for citation of these materials have not kept pace with the enhanced access made possible by technology. At least that was the case until 1999 when the American Association of Law Libraries (AALL) published its *Universal Citation Guide* (UCG).[1] The UCG sets forth rules for citing court decisions, statutory materials, constitutions, and administrative regulations whether the materials are found in a print source or in electronic form, such as an online service or a Web site. Accompanying the rules are explanatory materials describing the citation issues presented by each type of authority and how they are resolved by the UCG. In addition, each rule is followed by numerous examples illustrating its use. An extensive appendix includes a state-by-state set of model citations.

Already referred to in one review as the "Bluebook's new buddy,"[2] the UCG was developed to supplement to *The Bluebook*.[3] It

[1] Comm. on Citation Formats, Am. Ass'n of Law Libraries, *Universal Citation Guide* (1999). The UCG is distributed for AALL by the State Bar of Wisconsin. The cost is $15 plus shipping and handling. It may be ordered by calling (800) 728-7788.

[2] *Wisconsin Opinions*, June 2, 1999, at 7.

[3] *The Bluebook: A Uniform System of Citation* (16th ed. 1996).

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identifies the format used in states that have already adopted a universal citation system and recommends a format for states considering such a system. It provides guidance to researchers for problems created by new sources that are not resolved by current *Bluebook* rules. Following a brief history of the citation reform movement, this article describes the UCG's rules for citing cases, statutes, and administrative codes to illustrate their utility and importance in an environment increasingly dominated by the publication of legal information in electronic form.

Brief History of Universal Legal Citation

The need for citation forms that were independent of the vendor ("vendor-neutral") or the format ("medium-neutral") first became apparent as vendors disputed copyright claims to pagination of court opinions. If citations were dependent upon page numbers and page numbers were dependent upon a particular vendor's publication, then how could readers using different sources—particularly those online—make meaningful references to the cited authority?[4]

The history of the debate on the citation of court decisions is too long (and too dry) to be set forth here. Suffice it to say, the conclusion of debates by the American Bar Association (ABA), AALL,[5] and various state courts studying the issue was that a new citation method was needed. AALL appointed a Committee on Citation Formats in 1995. After four years of drafts,[6] comment periods, and revisions, the committee finally issued the UCG in the summer of 1999.

To date, 12 jurisdictions have adopted some form of universal citation.[7] Other states have added paragraph numbers to their opinions. The ABA House of Delegates approved its committee's report on universal citation, which had "recommended all jurisdictions adopt a system for citation to case reports that would be equally effective for printed case reports and for case reports electronically published on computer discs or network services."[8] And the Conference of Chief Justices issued a *Report of the Committee on Opinion Citations* that identifies a number of issues and options for states considering the adoption of universal citation.

UCG Rules for Citing Cases

Following the recommendation of the various organizations that studied judicial opinions, the UCG established the following format for citing cases: the name of the case, the year of its decision, an identifier for the jurisdiction, and a sequential number assigned to the decision. Pinpoint, or jump, citations are made to paragraph numbers. The portion of the citation that designates the court is constructed from separate elements. First is the two-letter abbreviation for the state (or the postal code). If it is a court of last resort, this abbreviation is all that is needed. However, for all other courts an additional abbreviation, based on the name of the specific court, is added. The UCG Appendix provides a table of abbreviations for all state and federal jurisdictions. The resultant citation eliminates the need to refer to any specific publication, volume number, or page number. The following examples illustrate the application of the UCG format for court decisions.

> **Jones v Smith, 1998 WI 453 ¶ 82:** In this example, the decision in Smith versus Jones was issued in 1998 by the highest court in Wisconsin, the Wisconsin Supreme Court. The opinion is the 453rd decision handed down

[4] For a discussion of "The Problem of Legal Citation in the Electronic Age," see *AALL Task Force on Citation Formats Report,* March 1, 1995, ¶¶ 27–44 (1995), *reprinted in* 87 L. Libr. J. 577, 590–95 (1995).

[5] *See Minutes of the AALL Executive Board*, July 13, 14, 18 and 20, at 2107–08 (on file at American Association of Law Libraries Headquarters, Chicago).

[6] *See The Universal Legal Citation Project: A Draft User Guide to the AALL Universal Case Citation*, 89 L. Libr. J. 7 (1997); *The Universal Legal Citation Project: A Draft User Guide to the AALL Universal Statutory Citation*, 90 L. Libr. J. 91 (1998); *The Universal Legal Citation Project: A Draft User Guide to the AALL Universal Regulatory Citation*, 90 L. Libr. J. 509 (1998).

[7] Louisiana, Maine, Mississippi, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, Wisconsin, the Superior Court of Pennsylvania, and Puerto Rico.

[8] *ABA Legal Technology Resource Center, Citations: History* (visited Feb. 1, 2000) <http://www.abanet.org/citation/history.html>. *See also ABA Legal Technology Resource Center, Citations: ABA Official Citation Resolutions* (Aug. 6, 1996) <http://www.abanet.org/citation/resolution.html>.

by that court in 1998. A specific reference is made to the 82nd paragraph of the opinion.

1999 CO App 100: This example represents the 100th decision issued in 1999 by the Court of Appeals in Colorado.

1999 US Dist (W MI) 57: This example represents the 57th decision issued by the federal district court for the Western District of Michigan.

In all jurisdictions, the use of the universal case citation has been adopted as a parallel citation. Nonetheless, pinpoint citations are generally to the paragraph, not the page number. As mentioned earlier, a paragraph number is used to cite specific text within the body of the court opinion. Because the court itself provides the paragraph numbers, the numbers will remain consistent regardless of how the opinion is "published": in print, online, on CD-ROM, or on the Internet. Obviously, the court provides the opinion number, so that number also remains constant.

The use of the UCG for case law is generally considered to be prospective only. However, in Oklahoma the official archive of court opinions is now what resides on the Oklahoma Supreme Court Network Web site.[9] Oklahoma has been successfully adding paragraph and opinion numbers retrospectively to all opinions on the site. It currently contains case decisions back to 1980.

UCG Rules for Citing Statutes

The standard elements in a statutory citation are already "universal." Title and section numbers are consistent, regardless of the source being used. References to particular publishers are not necessary (except for Michigan, which has different numbering schemes depending on the codifier).

The date used, however, is a problem for current statutory citation rules. Unlike court decisions that are generally static once they are issued, statutory codes are continually updated. Thus, the important date is not the date of issuance, but rather the date of the most recent codification of information into the source being used. *The Bluebook* uses the date of publication of the printed source whether it is a bound volume or another paper-based product such as a pocket part.[10] However, this date is not available in the online versions of statutory information. Moreover, the online version is often updated more frequently than the printed version. Consequently, *The Bluebook*'s rule does not work in the electronic environment.

The UCG has resolved this problem by adopting the use of a "current through" date, rather than a publication date. The currentness of a particular statute is better indicated by the most recent legislative event that could have affected it. Therefore, it makes sense for a citation to indicate the last legislative event covered by the source being used. Using a date such as "through 1998" tells the reader that the source consulted by the author incorporates all legislative activity through 1998.

How detailed the date must be depends upon the specific source used and how current it is. For instance, "IN Code §35-35-1-2 (1996 through Reg Sess)" indicates to the reader that the version being used by the writer included all legislative activity through the 1996 regular legislative session. A citation to "SD Codified L § 7-16-6 (through 1997)" incorporates all legislative activity through the calendar year 1997.

For the name of the statutory code itself, the UCG again uses the two-letter state abbreviation. The balance of the name of the code is abbreviated only to the point that it continues to be recognizable. The UCG Appendix provides a comprehensive list of abbreviations and examples for the user.

UCG Rules for Citing Administrative Regulations

Administrative regulations provide unique problems for law students and lawyers attempting to cite them. *The Bluebook* provides examples for federal regulations and indicates that the model should be used for all state administrative codes and regulations as well.[11] But the writer who sees a clear date printed on the spine of the *Code of Federal Regulations* is not provided the same type

"The UCG sets forth rules for citing court decisions, statutory materials, constitutions, and administrative regulations whether the materials are found in a print source or in electronic form."

[9] *The Oklahoma Supreme Court Network* (visited Jan. 25, 2000) <http://www.oscn.net>.

[10] *The Bluebook*, *supra* note 3, at 78 (Rule 12.3.2).

[11] *Id.* at 93 (Rule 14) ("Cite state materials by analogy to the federal examples given in this rule. For additional information regarding citation of the administrative and executive materials of the various states, see table T.1.").

"The resultant citation eliminates the need to refer to any specific publication, volume number, or page number."

of information when using a state administrative code.

The publication of state administrative codes is extraordinarily diverse. While the 50 state jurisdictions have remarkable similarity when it comes to publishing case decisions and statutory materials, there is little similarity among the states in either format or frequency for administrative codes and regulations. Some states publish them in looseleaf format while others only in pamphlets or bound volumes. Some states only maintain complete sets in the offices of the issuing state agency. And some states that had never previously published a formal printed code have now begun to publish codes and regulations online.

The date information the researcher finds may be the date that the regulation went into effect, the date that the looseleaf page was printed, or the date of an entire reprinted bound volume. Online versions may state that the code was complete as of a particular issue number of the state register. Even within a particular state, the book version and the online version of a code may provide inconsistent date information. The only "consistency" in the publication of state administrative codes is that there is no single type of date (e.g., effective date or date of publication) that is uniformly provided by all codes.

The UCG supplements *The Bluebook* by providing rules that describe the type of date information available and establishing an order of preference among the various types of date information that might be encountered. The key issue for an author is to provide the reader the most accurate information possible about the currentness of the version of the code that was used. Thus, the preferred date for an administrative code is the one that indicates the most recent codification of the code itself. An example of this type of date used in a UCG-recommended citation is "NJ Admin Code 5:30-2.8 (through 5/15/1995)." The least preferable choice, although one that is still frequently found, is the date that the regulation went into effect: "965 MA Admin Code 7.00 (effective 5/5/94)."

Another significant challenge in citing state administrative codes is the actual code abbreviation. Should one use *The Bluebook* format that may or may not accurately abbreviate the name of the code?[12] Or should the writer follow local custom for a given state? While the latter might seem to make sense, does it provide clear information to the reader? For example, "AAC" is the locally used abbreviation for the administrative codes for both Alaska and Alabama. "CMR" is the designation for the regulatory codes of both Maine and Massachusetts.

Following local rules may have worked when access to administrative codes and regulations was limited to the practitioners in a specific jurisdiction. But the rapid expansion of availability of state regulations, not only through Westlaw, LEXIS-NEXIS, and Loislaw.com, but also on state-sponsored Web sites, has changed the playing field. In creating designations for primary materials, the UCG takes the position that the abbreviation should be as consistent as possible from jurisdiction to jurisdiction, while still allowing for whatever variations are necessary because of differences in code names. Even so, the abbreviation for the code must be something that is identifiable both as an administrative code and as a code of a particular state.

The UCG rejects both local custom citations and *The Bluebook*'s less common abbreviations for the states. Following the pattern used for court and statutory designators, the abbreviation consists of the two-letter postal code for the state name followed by an abbreviated version of the balance of the code name. The name is shortened only to the extent that it can still be identified as an administrative code. The UCG's use of "AK Admin Code" for the Alaska Code and "AL Admin Code" for Alabama's code is much clearer than AAC. Users may need to consult the UCG's table of abbreviations or the Appendix listing examples for each state, but the construction of citations is consistent in its format and use of abbreviations.

Additional Legal Materials

The UCG also provides rules for constitutions, session laws, and administrative registers. Constitutions have always been cited in a medium-neutral form without reference to a particular publication. Session law citations

[12] The abbreviations are indicated in state-by-state listings in Table 1 (United States Jurisdictions) of *The Bluebook. Id.* at 165.

generally follow the format for statutory codes, although several additional elements are required to fully identify a complete or partial citation.

Because of rapid changes in administrative publishing, the UCG rules on administrative registers are still somewhat dependent on format. They may require the use of page numbers or issue numbers. Current changes in the publication of administrative regulations have created a moving target that is too unstable to codify by rules at the present time. Discussions with state officials give hope that the confusion identified by the AALL Committee on Citation Formats can be resolved as we work together on future revisions of the UCG.

Using the UCG Today

Today, the UCG has a diversified audience. Students, legal writing instructors, lawyers, and judges can all use it as a reference tool for those states that have already adopted citation requirements incorporating universal citations. In its Appendix, the UCG has included the requirements for these states. The UCG also provides guidance for all users for issues not adequately addressed by *The Bluebook*. These include the troublesome date requirements faced by users attempting to cite statutory and administrative codes.

It is also anticipated that the UCG will be used by courts and legislative agencies as they address the need for citation reform in their jurisdictions. At present, the commendable desire to publish legal materials on the Internet has not been accompanied by an equal commitment for providing consistent information that can be used to construct a citation to the information. As mentioned, this is most evident in the area of administrative regulations. The UCG provides the framework for publishers of this type of information, be they commercial or internal to a state. The UCG clearly delineates the elements that are needed to make citations of these legal resources meaningful and useful to the public.

The UCG is also an excellent tool for teaching students about the issues behind the citations they are constructing. Students generally spend more time figuring out which rule to use than understanding what the rule seeks to accomplish. The UCG can be used to explain and demonstrate the important elements of a case or code citation. As a supplement to *The Bluebook*, it fills a need to develop a greater awareness of the hows and whys of building clear and usable citations for primary source materials. Finally, the UCG serves as a model for the development of citation guidelines when new sources of legal information appear, be they in print or electronic format.

"The UCG is also an excellent tool for teaching students about the issues behind the citations they are constructing."

THE *ALWD CITATION MANUAL*—A PROFESSIONAL CITATION SYSTEM FOR THE LAW

BY STEVEN D. JAMAR[1]

Steven D. Jamar is Professor of Law and Director of the Legal Research and Writing Program at Howard University School of Law in Washington, D.C. He is Co-Chair of the ALWD Citation Manual *Oversight Committee.*

"One of the guiding ideas for the new manual was that it would be … a restatement of the rules of citation based on the citation form actually used by experts."

About three years ago, the Association of Legal Writing Directors (ALWD), an organization of more than 200 members representing approximately 150 law schools, undertook the ambitious project of developing and publishing a new legal citation manual. In early 2000 the years of work came to fruition when the *ALWD Citation Manual*[2] was published by Aspen Law & Business, a leading publisher of legal writing texts. This book, prepared by professionals for professionals, will, I believe, eventually displace *The Bluebook*.[3]

ALWD Citation Manual and *The Bluebook*

One of the guiding ideas for the new manual was that it would be, for the most part, a restatement of the rules of citation based on the citation form actually used by experts. As a result of this conservative approach, citation done in the ALWD format will be familiar to practitioners and scholars alike. As shown in the accompanying table of sample citations, there are a number of small changes, but the citations will be instantly understood by any lawyer who learned any one (or more) of the 16 different versions of citation promulgated by the 16 different editions of *The Bluebook*.[4]

Because the learning (and unlearning) to be done is minimal, it will be easy to adapt to either system and to move between them. Those who know *The Bluebook* will be able to adapt to the *ALWD Citation Manual* easily; those who learn the *ALWD Citation Manual* will be able to conform *ALWD*-compliant work to *Bluebook* requirements with relatively little additional specialized learning, especially for practitioner documents. Tables like the one below highlighting the changes will help make the transition even easier than the transition from one edition of *The Bluebook* to another has been in the past.

Sample Citations[5]

ALWD FORMAT	*BLUEBOOK* FORMAT (assume court document format)
Brown v. Bd. of Educ., 349 U.S. 294, 297 (1955).	*Brown v. Board of Educ.*, 349 U.S. 294, 297 (1955).
18 U.S.C. § 1965 (1994).	18 U.S.C. § 1965 (1994).
Michael J. Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis* 19 (Princeton U. Press 1996).	Michael J. Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis* 19 (1996).
L. Ray Patterson, *Legal Ethics and the Lawyer's Duty of Loyalty*, 29 Emory L.J. 909, 915 (1980).	L. Ray Patterson, *Legal Ethics and the Lawyer's Duty of Loyalty*, 29 Emory L.J. 909, 915 (1980).
Hope Viner Samborn, *Navigating Murky Waters*, 85 A.B.A. J. 28 (July 1998)	Hope Viner Samborn, *Navigating Murky Waters*, A.B.A.J., July 1998, at 28.

A Teaching Tool

The *ALWD Citation Manual* is not merely a reference book; it is also a teaching book. The attention paid to making the book much easier to teach from and learn from will make it particularly attractive to those who teach legal citation.

[1] I wish to thank my colleagues for their extremely prompt and insightful comments and suggestions for this piece: Darby Dickerson, Jan M. Levine, Susan P. Liemer, and Pamela Lysaght. Responsibility for any errors that remain is solely my own.

[2] Darby Dickerson, Ass'n of Legal Writing Directors, *ALWD Citation Manual: A Professional System of Citation* (2000).

[3] *The Bluebook: A Uniform System of Citation* (16th ed. 1996).

[4] The first edition of what is now *The Bluebook* was published by the Harvard Law Review Association in 1926 under the title *A Uniform System of Citation: Abbreviations and Form of Citation*. Unfortunately, over the succeeding years *The Bluebook* undermined the very standardization it sought to impose on legal citation by changing fundamental aspects of citation (such as the meaning of signals like *see*) with each new edition. *See infra* note 6 and accompanying text.

[5] This table was provided by Darby Dickerson, lead author of the *ALWD Citation Manual*.

Key features furthering this aim are the explicit articulation of a general rule of citation, numerous user-friendly examples of citations of each type of work, and design features that facilitate ease of reading and parsing rules. The book features two-color printing; "Sidebars" to explain matters related to citation that are not rules per se; and "Fast Formats," a collection of pages illustrating proper citation form for most types of works. This latter feature will be very useful for someone who knows the citation forms already but needs to double-check some detail. These fast formats will also provide students and teachers with a rich source of examples of how to apply the rules. Teaching of citation using local rules should be made easier by the extensive coverage of state sources. In addition, a Web site will be maintained to provide answers to frequently asked questions.

Goals and Features of the *ALWD Citation Manual*

ALWD had a number of aims in creating this citation manual: to simplify some of the rules, to reduce inconsistencies, to make the rules responsive to the needs of lawyers as well as scholars, and, over the long term, to provide stability and uniformity of citation rules.

Among the simplifications, two stand out most prominently. First, *how* you cite a source does not depend on *where* you cite it. Gone are the arcane differences that depended upon whether the case was cited in a brief to the court, in a footnote to the text in an academic journal, or in the text proper of a law review article. The citation form in each setting is now the same. The second major simplification is the elimination of the use of small caps in citations. There are now only two type styles: italics and regular type. If the portion of the citation is not in italics (such as signals and titles), then it is to be in regular type. The *ALWD Citation Manual* contains a simple list of what to set in italics; everything else is to be set in regular type.

The aim of reducing inconsistencies was largely accomplished. As noted, the inconsistency resulting from requiring different citation rules for citing sources in different types of legal documents has been eliminated. Another example is that the form for citing consecutively paginated journals and nonconsecutively paginated journals is now the same. Furthermore, abbreviations for journals are more consistent with each other and differences in abbreviations across categories (e.g., case titles, journal names) have, in general, been reduced.

Providing stability and uniformity of citation over the long term is important so that the scholars of tomorrow can understand the citations of today. Stability of citation form will also mean that what law students learn today will not be obsolete five years out of school. These goals, seemingly inherent in the very underpinnings of a system of citation, do not appear to have been sufficiently appreciated by the publishers of *The Bluebook*. Even as these goals were paid lip service—the subtitle of *The Bluebook* is *"A Uniform System of Citation"* after all—the achievement of both stability and uniformity has been frustrated by frequent changes in citation form wrought by the student publishers of *The Bluebook* over the years.

One of the main forces giving impetus to the creation of a professionally crafted manual was, ironically, the 16th edition of *The Bluebook* itself. As with prior editions, the editors did not content themselves with simply accounting for new technologies and updating statutory numbering schemes and journal lists. Instead, they, as had students before them, changed the meaning of citation signals, in particular the meaning of *see*, probably the most commonly used and important signal. Although, in the large scheme of things, this is truly a tempest in a teapot, the problems created by the changes in the 16th edition led directly to an AALS plenary resolution against *The Bluebook*'s change of the meaning of *see*.[6] Over the years the meanings of *accord, cf., but see*, and other signals have been changed so often that someone reading an article today from a previous decade cannot confidently interpret the extent to which the cited authority supports the material in the text. The meaning of the signals simply is not clear.

Frustrations with these problems were compounded by other problems—prepayment requirements, shipping delays, appearance, quality, teachability, and the like. Delayed shipment adversely affects legal research and writing

> "Providing stability and uniformity of citation over the long term is important so that the scholars of tomorrow can understand the citations of today."

[6] *See* A. Darby Dickerson, *Seeing Blue: Ten Notable Changes in the New Bluebook*, 6 Scribes J. Legal Writing 75 (1996–97) (detailing the AALS action on this matter).

(LRW) professionals and others who teach citation, as well as students who need to learn and use proper legal citation form. Problems with payment and shipping affect bookstores and students. The design of *The Bluebook* made it difficult to teach from,
to learn from, and to use even after it had been learned. This difficulty of use adversely affects all lawyers and law students. These problems should be dramatically reduced and in some cases nearly eliminated (e.g., availability and shipping and bookstore prepayment problems) because the *ALWD Citation Manual* is being published by a reputable law book publisher with a large presence in the industry rather than by a group of law journal editors.

Brief History of the *ALWD Citation Manual*

These frustrations led to building pressure to do something about them. One of the groups most directly and regularly affected by problems with *The Bluebook*—those charged with teaching citation, LRW professionals—decided to act.

The idea of ALWD publishing a professional citation manual appears to have been first voiced in a conversation between Richard K. Neumann, Jr., and Jan M. Levine at the American Association of Law Schools (AALS) conference in Washington, D.C., in January 1997. The idea was then brought before the board of directors of ALWD in July 1997, and the board approved the project. For the next two years a number of people invested a significant amount of time and energy into working on early drafts of the book (particularly the lead author, Darby Dickerson of Stetson University College of Law), shopping for a publisher (particularly Richard Neumann, Jr.), and doing initial marketing and investigative work on the approach to be taken in the book (including, among others, Jan M. Levine and me in my capacity at the time as president of ALWD's sister organization, the Legal Writing Institute).

ALWD selected Professor Dickerson as the lead author because she is the leading expert on legal citation in the country.[7] In working on the new guide, she consulted dozens of published sources, including style guides in other disciplines, and she sought feedback from LRW professionals. Not incidentally, she and others involved in the project kept track of the initiative of the American Association of Law Libraries (AALL) to create a vendor-neutral approach to citation.[8] In summer 1999 the ALWD board of directors created a Citation Manual Oversight Committee[9] to review the work as it moved to completion and to provide feedback to Dickerson. The Committee considered a variety of issues, including the direction the manual should take (i.e., a restatement of legal citation or a radical reform of it), the balance between its use as a reference book and an instructional book, how the book should be organized, and, in a few instances, particular citation form issues.

Conclusion

The *ALWD Citation Manual* is a welcome step forward. Nonetheless, there remain areas that need work. Foremost among these is the problem of integrating traditional citation rules that cover both older as well as current materials with the forward-looking, universal, vendor-neutral, document-centered citation forms like those developed by AALL.[10] Another significant problem to address is the citation of foreign and international materials in a sensible, uniform way. ALWD is already at work on these issues. As was done for each part of the book at each step along the way, experts in these fields are being consulted so that whatever rules are adopted will be sensible, workable, and durable.

[7] *See, e.g.*, A. Darby Dickerson, *An Un-Uniform System of Citation: Surviving with the New Bluebook* (*Including Compendia of State and Federal Court Rules Concerning Citation Form*), 26 Stetson L. Rev. 53 (1996); Dickerson, *supra* note 6.

[8] ALWD considers the AALL approach to be complementary to its project. ALWD was seeking to create more of a restatement of legal citation in a way that would work for all current and future sources, including universal citation or vendor-neutral citation proposals such as that of AALL. Indeed, the *ALWD Citation Manual* notes that AALL citation forms are permissible forms, especially for parallel citations. As the AALL proposal catches on, the *ALWD Citation Manual* will probably continue to be adapted to it.

[9] The co-chairs of this committee are Steven D. Jamar and Amy E. Sloan. Other committee members include Colleen M. Barger, Mary Beth Beazley, Maria Ciampi, Eric B. Easton, Jan M. Levine, Ruth Ann McKinney, Richard K. Neumann, Craig T. Smith, Marilyn Walter, Kathleen E. Vinson, and Ursula Weigold.

[10] *See* Comm. on Citation Formats, Am. Ass'n of Law Libraries, *Universal Citation Guide* (1999).

Creative Ideas and Techniques for Teaching Rule Synthesis[1]

BY CLIFFORD S. ZIMMERMAN[2]

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Traditional and nontraditional (otherwise termed creative) techniques exist for teaching nearly every subject and topic. One educator (presumably, but not necessarily, in elementary school) once said, "Give me a room full of children and a telephone book and I will teach them anything."[3] We can see creative approaches all around us. In physics, for instance, Alan Lightman's book *Einstein's Dreams*[4] explains the theory of relativity by sketching people's lives if time *were not* relative, and Fritjof Capra's book *The Tao of Physics*[5] relates many complex principles of physics to Taoist spirituality as a way to help readers understand them. The beauty of these methods is that they do not try to avoid the complexity in the original topic or simplify the matter to a checklist (both of which do occur in our society and are counterproductive), but rather they provide a bridge between the familiar and the unfamiliar so that anyone can cross over and feel comfortable exploring the other side.

I approach the teaching of legal synthesis, which I consider the backbone of basic legal analysis, with the same fervor and willingness to be creative. I have adopted a number of nontraditional techniques to bring my students from their lives over the bridge to understand legal analysis in general, and synthesizing rules in particular. I start with creative techniques and build up to very traditional ones, then go back to nontraditional techniques to underscore the importance of certain points and to build further bridges to assist the students in venturing into the next area of legal analysis: analogy and distinction.

I have found these tools to be very effective because they resonate with the students. Even after first semester, perhaps when they are writing their appellate briefs, they can relate a mistake to the beetles or to the fruit. Second- and third-year students fondly recall "the boat" analogy.[6] All of them remember the inequity in the law from the in-class parallel problem that I use. All of this makes me feel that I did find a tool that made their journey far easier than it otherwise would have been. This article will first discuss my perspective on this approach, then address the specifics of my methods for teaching rule synthesis.

My Perspective

When I teach rule synthesis, I employ six methods, four of which are nontraditional. My use of such a large number of nontraditional methods requires further explanation.

Rule synthesis is the foundation of legal analysis, and unless students have a firm understanding of this, they are likely to be helplessly lost at later stages in the legal analysis process. If a student is unable to fully develop rules, such that they are complete and completely defined in their terminology, then they will not have adequate parameters set for their analogy and distinction. They will not have a definitive benchmark against which to decide what facts are critical and what comparisons matter under the rubric of the rules. Simply, rule synthesis is critical to reading cases, discerning the law, and presenting

"The beauty of these methods is that they … provide a bridge between the familiar and the unfamiliar so that anyone can cross over and feel comfortable exploring the other side."

[1] This article is a revised version of material 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.

[2] My thanks to Jennifer M. Jendusa for her work on the footnotes.

[3] In fact, at one point in the year, I actually use a telephone book to introduce legal research.

[4] Alan P. Lightman, *Einstein's Dreams* (1993).

[5] Fritjof Capra, *The Tao of Physics: An Exploration of the Parallels Between Modern Physics and Eastern Mysticism* (1975).

[6] For the first several evaluated assignments, whether formally graded or not, I use a boat analogy to lessen the impact of the "first law school grades." I tell my students that the assignment is like trying to catch a boat at a pier. The high end (either a "_+" or a numerical grade range) means that you got on the boat, know where it is going and are comfortably sitting on the deck, perhaps eating or drinking something. The mid level (a "_" or a slightly lower numerical grade range) means that you got on the boat, but have that initial uneasy feeling that people have when they are uncertain that they have gotten onto the correct train, bus, etc. The low end (a "_-" or a lower numerical grade range) merely means that this time you missed the boat—either because you arrived too late or could not find the pier—but our goal is to make sure that you make the boat the next time.

"[A]s more and more students come from more and more diverse backgrounds, the way they learn or relate to a particular teaching method may vary considerably."

the law. Thus, it is essential that *every* student master rule synthesis. However, as more and more students come from more and more diverse backgrounds, the way they learn or relate to a particular teaching method may vary considerably. As teachers, we must be certain that we use methods that reach all of our students. With my six methods, I feel comfortable that I can and will reach *all* of my students.

Creative or nontraditional tools also fulfill basic pedagogical needs in the classroom. The literature is clear that students will learn more when they are interested and engaged in the process. They learn more by doing and they learn better when teaching techniques relate to their lives and bring their lives into the classroom.[7] I have tried to remain true to these methods.

For rule synthesis, I use four creative techniques that are integrated with two traditional tools. The accompanying chart summarizes all of the tools I use, and identifies their purpose or relation to rule synthesis. Each tool will be addressed in the context of a week-by-week discussion of how I use these tools.[8] One final note about these techniques. In addition to their great value in learning, they bring a tremendous amount of fun and joy into both teaching and learning in my class. They take the edge off difficult material, provide nice transitions after seemingly endless discussions of certain matters, and build a strong rapport between students and between the students and me. Finally, many allow us to laugh while we learn.

Creative Ideas and Techniques for Teaching Rule Synthesis
(*indicates creative/nontraditional tools)

Ideas and Techniques	Purpose/Relation to Synthesis
Nonlegal synthesis*	• Bridge gap from case brief to rule synthesis • Introduce creative techniques • Relate current work to not-so-distant past (high school) • Emphasize potential simplicity of task • Reinforce nontraditional pedagogy
Basic legal synthesis	• Continue work with simple rules • Emphasize basic consistency of skill • Continue transition
How to … essay *	• Bridge gap between real-world rules and legal rules • Show how rules are all around us • Begin to identify basics of good, clear, organized writing • Continue work on peer review
Beetles *	• Show the basic need for rules • Show the necessity of clear rules • Show the importance of clear communication • Introduce/work on group projects • Provide a visual aid to learning
Parallel (ungraded) synthesis problem	• Instill the skills/process of legal synthesis • Practice every graded assignment in advance, in a real context, with feedback, and without grading pressure • Work on peer review
Plastic fruit *	• Review rules • Make transition to analogy and distinction • Provide a visual aid to learning

[7] *See, e.g.,* Lilia I. Bartholome, *Beyond the Methods Fetish: Toward a Humanizing Pedagogy*, 64 Harv. Educ. Rev. 173 (1994) (involving students and their lives in teaching); Henry A. Giroux, *Teachers as Transformative Intellectuals*, Soc. Educ., May 1995, at 376 (getting to know students, working that into class, and doing so in a meaningful way); Luis C. Moll et al., *Funds of Knowledge for Teaching: Using a Qualitative Approach to Connect Homes and Classrooms*, 31 Theory Into Prac. 132 (1992) (understanding and incorporating students' cultural backgrounds into the classroom to maximize learning); Paul Skilton Sylvester, *Elementary School Curricula and Urban Transformation*, 64 Harv. Educ. Rev. 309 (1994) (actively engaging students).

[8] Anyone wanting copies of the materials I distribute in class can reach me by e-mail at **czimmerm@wppost.depaul.edu.**

Week 1—Case Briefing and Transition to Rule Synthesis

The Nonlegal Synthesis

During the first week of class,[9] after discussing case briefing ad nauseam, the nonlegal synthesis provides a wonderful segue into synthesizing rules from a variety of cases. The problem involves a high school student who wants to know the rules for how often he can go out and how late he can stay out at night.[10] Thus, the students have to provide counsel to a high school student who does not understand his parents' limitations on his social life. To do so, they are given five scenarios from the high school student's life, including how often and how late he went out and his parents' reactions. Marvelously, from the five scenarios the students can create a statement of rules off the tops of their heads. The rule synthesis created follows a clear pattern in which subsequent rules define terms in the previous rules.

This problem has several wonderful aspects. First, all students can relate to the experience, either because high school is not so distantly past for them or because they have children of their own. Next, this problem bridges case briefing and rule synthesis, moving the students gently into a very tough area. In this way, synthesis is identified early on as a manageable task. Finally, this builds their confidence in their analytical abilities as I inform them that they have now proven themselves ready to move on to rule synthesis. For the second week of class, the students must write a "How to" essay, basically explaining how to do something … anything.

Week 2—Rule Synthesis

In that next class,[11] the students first work alone or in groups on a basic legal synthesis problem involving vehicles in a park.[12] The problem involves a statute and four "case briefs" for which the students must generate a set of rules that covers and reconciles all five sources of law. Many of them find they are able to do this in their heads as well, but organizing and presenting the rules, as well as providing examples or explanations of the rules, is not as easy. The synthesis involves general rules and a purpose, as well as definitional rules and an exception. Once the syntheses are completed and discussed, I distribute a "good" and a "bad" sample rule synthesis.[13] We then discuss why they are labeled as such through the application of new sets of facts to the rules derived.

The Beetles

In that same class, I ask the students to divide into groups. I distribute one package of 12 beetles to each group of students.[14] These are Tessera ("The Perpetual Puzzle") beetles, which come in different shapes and colors.[15] I give them 90 seconds to "put the beetles together." Typically, the students find many different ways to put them together: some interlock them (connecting legs and antennae as the puzzle is intended to be constructed) and some construct three-dimensional shapes, while others sort them by traits (color, type, etc.). This provides us with a great opportunity to discuss what happens when rules are unclear, unrefined, and subject to the varied interpretation of others. We translate this into the legal context by considering an ill-defined rule that the reader interprets differently than the author and the consequences of continuing to read beyond a vague rule.

The beetles provide a straightforward visual way of showing the need for clarity in rules, in particular, and clarity in communication, in general. Little I could say focuses the potential for divergent interpretations as much as seeing that

"The beetles provide a straightforward visual way of showing the need for clarity in rules, in particular, and clarity in communication, in general."

[9] At DePaul, our first week of class is actually two one-hour sessions during orientation.

[10] The particular nonlegal synthesis that I use was adapted from the text discussion in Charles Calleros, *Legal Method and Writing* 52–53 (3d ed. 1998).

[11] At DePaul, Legal Writing I meets for 75 minutes per week. I inform my students in advance that the second and third class sessions, both addressing rule synthesis, will meet for an additional 30 minutes.

[12] This problem was provided to me, without attribution, when I started teaching in 1990.

[13] I tell my students that a "good" sample is not perfect and does not necessarily cover all possibilities or all permutations, particularly those that arise from class discussion. Rather, the good sample is structurally sound and shows good method in its presentation. A "bad" sample, on the other hand, is to be avoided like the plague.

[14] I first experienced the beetles in a different way at a presentation by Paula Lustbader at an Institute for Law Teaching conference in Spokane, Washington, in 1998. My thanks to her for the inspiration.

[15] I do not tell them they are called "Tessera" beetles, as the name would give too much direction.

another group put the beetles together differently. The students work in groups, see the results, and it sticks with them, providing a reference point for related discussion later in the year on rules in memoranda or briefs. Finally, this works well because it is just plain fun!

The "How to" Essay

Also in this second class, the students exchange their "How to" essays and review them. First we discuss whether the readers think they can do what is explained in the essay. Then we discuss what the essays are (essentially a set of instructions or rules) and why some are clearer than others. Finally, they produce, on the board, a list of the positive attributes of a clear essay (or what would make the unclear essay clear). This list they create includes the key foundations for clarity (and strength) in all writing. It typically includes the following:

– Clear and straightforward prose
– Definitions of all terms
– Logical organization of tasks and steps
– Reader's ability to visualize the task
– Ease of understanding
– Readability

The composition of this essay demonstrates to the students that rules are not unique to law school or problems that I present to them—they came up with these topics, many of which are everyday things (usually involving the preparation of food). This allows the students to learn the importance of rules in a context unique to them and of their choosing. This also brings their lives into the classroom as an important element of the process. Recent topics included how to acclimate marine fish into an aquarium; how to throw a right hook punch (from a female student); how to make guacamole; how to make Korean-style barbecued beef (Bulgogi); how to make a Chicago-style hot dog (a hometown favorite); how to make an Oreo cookie milkshake; how to wash an obese, elderly dog; and how to inject insulin. At the same time, the students learn about each other's life. I also learn a tremendous amount about them.[16] The process includes peer review and places it in a familiar context. Finally, I cannot overstate the impact of the list that we create. Typically, a hush comes over the class as they realize the valuable insights they found in their essays.

For the next week, the students must begin work on a parallel problem that mirrors, in advance by at least one week, their graded assignments. These four cases also raise critical issues of justice and fairness in society as a whole. The law relates to the Illinois Tort Immunity Act, which immunizes local governments from tort liability for the negligence of their employees. The cases outline the law for the sole exception to the immunity in a four-part test. The test, which requires that municipal officials "create or initiate a position of peril" for the victim, is very difficult to meet, resulting in troubling ramifications for societal expectations of the conduct and obligations of municipal officials in general, and for police and fire protection in particular.[17]

Week 3—More Rule Synthesis

For the third week of class, the students bring to class a rule synthesis for the parallel problem. These cases have a clear organizational pattern (a four-part test) but necessitate particular rule development within two of the four elements. In class, the students exchange, discuss, and critique these (more peer review). We then discuss the process by which students created them and the attributes of good ones, and, eventually, we produce the skeletal outlines of a good synthesis on the board. In the end, I provide them with a sample parallel problem synthesis.

Week 4—Transition to Analogy and Distinction

For the fourth week of class, the students must create a synthesis from the cases for the fall semester closed problem. As before, the students exchange and discuss these and we produce a skeletal outline of a good synthesis on the board.[18]

[16] The students submit two copies of the essay. One is redistributed to a peer; the other I retain and read after class.

[17] By this point in time, I have also distributed several handouts to the students: The Nature of Rules, Peer Review, and The Basic Structure of Legal Analysis.

[18] I do not provide my students with a sample of work when discussing cases or law that is the substance of a graded assignment. The only other textual material I use is David S. Romantz & Kathleen Elliott Vinson, *Legal Analysis: The Fundamental Skill* (1998).

The class ends with the transition from writing solely about rules to adding analogies and distinctions to the synthesis framework.

The Plastic Fruit

For this transition, I use plastic fruit, specifically a bunch of green grapes, a bunch of purple grapes, and a purple plum. First, we address the green grapes and the purple plum and discuss the importance of knowing why the green grapes are in one section and the purple plum is in another.[19] Was it color, type of fruit, size of the pit, or something else that led to this designation? Then we address where the purple grapes belong and how to explain why they belong there. We discuss the insufficiency of just saying grapes are grapes (if the rule is grapes vs. plums) or purple is purple (if the rule is green vs. purple). We address the subtlety of analogy if the rule is pit size. Finally, we discuss the relative ease of distinction (pushing facts apart) vs. analogy (pulling facts together). When I set a rule (the size of the seed or pit), the fruit provides a beautiful segue into analogy and distinction. I tell them that the purple grapes are the kind that have a bigger seed, the ones that some people spit out and others eat even if they do get caught in your teeth. We then discuss where the purple grapes go. There is no single correct answer, as this depends on whether the seeds are more like the small ones in the green grapes (that everyone eats) or like the big pit in the plum (that no one eats).[20]

The plastic fruit gives the students a nice review of rules and their importance and provides a clean and clear transition to analogy and distinction that links the two inextricably. Absent a clear rule, the analogy and distinction will be impossibly vague. The visual, both for rules and analogies, really stays with the students. Many students come back (even years later) to see the fruit sitting in a basket on my desk. The greatest advantage of this method is that it truly ingrains the need, when making an analogy or distinction, to explain in detail. As I often tell my students, "nothing is self-evident."

Conclusion

Not all creative methods are for everyone. However, everyone needs to find effective teaching methods to reach all our students. I developed, tested, and integrated this panoply of methods over several years. I stay with them because I find them to be extremely effective for me.

The nontraditional tools in this process—the nonlegal synthesis, the "How to" essay, the beetles, and the plastic fruit—are powerful tools. Much of their power comes from the rapport and atmosphere that they set in the class. This rapport includes starting cooperative and collaborative work in the classroom,[21] relating prior knowledge and experience to law school, establishing a comfort zone for learning, allowing us to have fun in the process, making difficult matters easy to understand and apply, and including the students and their lives. Further, the tools also directly address the particular skills at issue and facilitate the transition between legal skills. Finally, the tools resonate with the students for a long time after their use. All in all, these creative ideas and techniques for teaching rule synthesis enhance students' ability to understand, retain, and apply the critical analytical skills associated with rule synthesis.

"Much of [the] power [of nontraditional tools] comes from the rapport and atmosphere that they set in the class."

[19] Many others use plastic or real fruit in class, albeit in different ways. I have seen and heard different explanations, first by Jane Gionfreddo at an LWI Conference in Chicago and later by Charles Calleros at an LWI Conference in Ann Arbor.

[20] I explain that this is like a math problem, where it is most important to show your work leading up to the answer.

[21] *See* Clifford S. Zimmerman, *"Thinking Beyond My Own Interpretation": Reflections on Collaborative and Cooperative Theory in the Law School Curriculum*, 31 Ariz. St. L.J. 957 (2000).

What Is "Lecturing," Alex?

BY ALEX GLASHAUSSER

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"Whenever my abstract oral wisdom about the written word met with silence rather than with questions and reactions, I wondered whether the ideal of teaching legal writing as a traditional law school class might be a chimera."

A wise bumper sticker once stated that writing about music is like dancing about architecture. Is lecturing about legal writing similarly incongruous? At the beginning of this academic year, my first of full-time teaching, I had ample opportunity to ponder that conundrum. Whenever my abstract oral wisdom about the written word met with silence rather than with questions and reactions, I wondered whether the ideal of teaching legal writing as a traditional law school class might be a chimera.

As a law student, I longed to hear lectures about legal writing. Although I was enrolled in a legal writing class in conjunction with my property class, it was not taught in the normal sense; it existed only on paper. We read textbooks, we wrote memoranda and briefs, and we got grades, but we had no classroom time—unless we counted the occasional minute in property class when the professor would hand out the latest legal writing assignment. I read the books, worked hard on the assignments, and appreciated the professor's written feedback, but I missed the chance for any dialogue about legal writing with an experienced attorney. Because my classmates and I filled the void by trading legal writing myths among ourselves, an unhealthy portion of our legal writing education came from peers and therefore was about as reliable as old-fashioned sex education.

To channel my frustration over aspects of my education I found lacking, I compiled a list under the title "Glashausser Law School." Each dissatisfaction with my actual law school spawned a pedagogical principle for the mythical eponymous institution. From my legal writing experience was born a cornerstone of the apocryphal school: "Legal writing is taught as an actual class, with lectures and time for questions."

Complaining and dreaming are easy. Implementing my blueprint at a real law school, albeit one not bearing my name, at first proved more difficult. When I began teaching an "actual class" of legal writing, I soon convinced myself that the so-called doctrinal classes more naturally lend themselves to lectures and Socratic questioning. A torts professor can discourse on the "reasonable person" and a property professor on covenants, and although those concepts are foreign to first-years, students grasp them by considering common human conflicts that cry out for legal resolution. But while the average law student almost instinctively understands the process of drawing lines to determine people's rights and liabilities, that same student less easily fathoms how to express ideas and arguments in their most digestible written form.

In theory, the core concepts of legal writing should be easy to talk about because they are intuitive and uncontroversial to most lawyers: "use plain English," "provide helpful signposts to the reader," and so on. In fact, however, these platitudes are hard to teach. Because they are abstract, comprehension of them eludes those with little experience in reading and writing legal documents.

I did not want to squander my chance at penetrating my students' minds with lectures about abstract notions that are meaningless at this stage of their legal careers. Although I sprinkled my lectures with illustrative anecdotes from my past and we talked through written exercises in class, I worried that the essential points might not be sinking in and that a lecture format might not be conducive to active thought about legal writing. I questioned my basic belief: Could Glashausser Law School have been wrong?

One month into the semester, I stopped questioning. I attended the first biennial Central Region LRW/Lawyering Skills conference, co-hosted by the Southern Illinois University School of Law and the University of Missouri–Kansas City School of Law. From the first morning session, the methods of "lecturing" opened my eyes.[1] The presentations succeeded on two levels:

[1] *Editor's Note:* Several of the programs from this conference are described in the Fall 1999 and Winter 2000 issues of *Perspectives: Teaching Legal Research and Writing*. *See* Leslie Larkin Cooney & Judith Karp, *Ten Magic Tricks for an Interactive Classroom*, 8 Perspectives: Teaching Legal Res. & Writing 1 (1999); Terry Jean Seligmann, *Holding a Citation Carnival*, 8 Perspectives: Teaching Legal Res. & Writing 18 (1999); Clifford S. Zimmerman, *Creative Ideas and Techniques for Teaching Rule Synthesis*, 8 Perspectives: Teaching Legal Res. & Writing 68 (2000); Sue Liemer, *Memo Structure for the Left and Right Brain*, 8 Perspectives: Teaching Legal Res. & Writing 95 (2000).

not only did their substance directly impart useful information, but even better, their process showed how many ways a lecture can get a large group of people to think about legal writing. One presenter used videos. Another projected computer screens. Another broke the audience into groups and organized interactive sessions that required us to talk to each other about our ideas. As a reward at the end of the day, one presenter[2] mimicked Alex Trebek and hosted a rollicking game of "Legal Writing Jeopardy," complete with musical accompaniment. Although I have yet to see the $400 I have coming for correctly answering "What is U.S.C.S.?" to an obscure question from the Research category, I enjoyed myself and learned more than a thing or two.

Learning a thing or two, of course, is what I would like my students to do. The conference reminded me that a "lecture" need not be limited to lecturing. I have access to my students' attention for 75 minutes at a time; how I choose to reach them during that time is up to me and is limited only by my imagination. We have not yet played Jeopardy—I will wait until later in the year to spoil them—but I have now used plenty of videos, interactive handouts, and group exercises that require the students to write and to discuss issues among themselves. The students' reactions show that they enjoy the different teaching styles and that, more important, they learn from them.

My lectures are no longer stuck in a rut of lecturing. Instead, I keep in mind that varying my style makes students more attentive and therefore more receptive to learning. The best way to learn to write will always be to write, and the abstract nature of the substance of a legal writing course will never disappear, but having the students engaged makes that substance easier to convey in the classroom. I may have to update the blueprint for Glashausser Law School to read: "Legal writing is taught as an actual class, with lectures and time for questions, *and with simulated game shows*." And maybe one day we will even dance about writing.

"I have access to my students' attention for 75 minutes at a time; how I choose to reach them during that time is up to me and is limited only by my imagination."

[2] Andrea Coles-Bjerre of the University of Illinois College of Law.

BRUTAL CHOICES IN CURRICULAR DESIGN...

THE CLASS LISTSERV: PROFESSOR'S PODIUM OR STUDENTS' FORUM?

BY PETER B. FRIEDMAN

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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.

"[T]he drastically different role the professor plays in each type of listserv means that the professor … must make a conscious and deliberate decision as to which values the forum is intended to advance."

In the classroom, professors rule. The first-year subject matter is so difficult, and your years of experience so valuable, that your students are likely to view your voice as the only reliable one in your classroom. Think, however, of your days as a student or young lawyer beyond the earshot of your professors or the more senior lawyers. Wasn't one of your first impulses in wrestling with a new problem to discuss it with a colleague? Weren't some of your most valuable learning experiences long discussions full of trial and error with someone as ignorant of the subject matter as you? Would those discussions have had the same vitality if an authority on the subject matter had taken part? Think of the way you hashed out your questions and difficulties on a new assignment with an office mate. You never would have had that type of discussion with the partner who had given you the assignment. Now, however, you are the professor, the authority. Now, you can encourage such discussion between your students —and even listen in—without their getting together in the cafeteria or student lounge. But, if in fact the discussion you want to encourage is the kind that takes place among novices cooperating among themselves to master new material, you must obey one rule: don't butt in.

We are all familiar by now with the power of e-mail. It is easy. It allows the correspondent the chance to deliberate, yet at the same time offers an informality that liberates the writer from the pressure for technical perfection required by, for example, legal writing assignments. In short, it offers a wonderful blend of the spontaneity of speech and the depth of writing. Furthermore, a classroom teacher cannot help but be dazzled at the ease with which a group can communicate via a listserv.[1] What could possibly be more useful to the professor or the student of legal writing? Such group discussion, conducted among members of a class, practically defines the professor's ideal of extending the classroom beyond its physical walls.

Unsurprisingly, however, the professor who uses a class listserv first must decide what type of discussion should take place on it. A professor cannot expect students to use this medium productively simply by telling them to "write whatever you wish to the group." Rather, based on my three years of experience in managing class listservs for first-year LRW classes, the professor must make a choice: use the listserv *either* as a podium from which the professor makes announcements and answers student questions, *or* as a forum within which students, uninterrupted by the professor, conduct a discussion among themselves. Both functions—listserv as Professor's Podium and listserv as Students' Forum—have real value. Nevertheless, they are distinctly different values. In addition, the drastically different role the professor plays in each type of listserv means that the professor, before establishing the listserv, must make a conscious and deliberate decision as to which values the forum is intended to advance.

[1] Listservs, or e-mail discussion lists, provide two basic functions: (1) the ability to distribute a message to a group of people by sending it to a single, central address, and (2) the ability to quietly add members to or subtract members from the list at any time. One can operate a "moderated" listserv, in which each message is filtered through a particular person (such as the legal writing professor), or an "unmoderated" one, in which a message sent to the "listname address" automatically is sent to each of the listserv's subscribers. The listservs I operate in my classes are all unmoderated. For the technicalities of setting up and managing a listserv and using one of the most common listserv computer programs, see James Milles, *Discussion Lists: Mailing List Manager Commands* (Oct. 26, 1997) <http://lawwww.cwru.edu/cwrulaw/faculty/milles/mailser.html>.

Motivating Listserv Participation

Before addressing the experiences I have had under both types of listservs, I must add one point on motivation. Even under the best of circumstances, I have found that simply *encouraging* students to contribute messages to a listserv results in an electronic silence. Consequently, I have in the past two years instituted a tiny but negative incentive. For each written assignment my students are required to hand in, they must post to the class listserv at least a minimum number of messages (one in previous years; two this year) that bear "some reasonable relationship" to the assignment. I emphasize that as long as the "reasonable relationship" standard is satisfied, the message can take *any* form—whether it is a complex question about the substantive essence of the problem or niggling over the proper use of the citation signal *see*, whether it is praise or complaint over my teaching, whether it is a profound utterance or a stab-in-the-dark attempt to answer another's question. If a student does not comply with this requirement, he or she is penalized a specific amount of the grade.[2] In addition, under either use of a class listserv, the professor must consciously decide how to coordinate the online discussion with any noncooperation or plagiarism policies otherwise in effect.[3]

As Professor's Podium

The listserv as Professor's Podium is the instinctive initial choice of most professors. First, the convenience and theoretical speed with which a professor can reach an entire class with a single message makes a listserv a natural substitute for class announcements, signs posted on bulletin boards, and memos distributed to student mail folders. Nevertheless, I question the real value to be gained in using a listserv as an announcement list. Most important, the old ways work well. If, as I propose, there is a better use for a listserv, why should you waste the medium on something you already do well? Furthermore, while e-mail provides some speed and efficiency not previously available, these gains may not be as dramatic as they first appear. The convenience and frequency with which students obtain access to their e-mail vary enormously from student to student (and from school to school). Furthermore, the communications pipelines carrying e-mail are not 100 percent reliable. Certainly a professor cannot assume that every student instantaneously receives every message sent to the list. Thus, I am not convinced that e-mail is sufficiently more efficient than the old ways to justify its use simply as an announcement list.[4]

In addition to providing a means of getting announcements out, using a listserv as Professor's Podium gives the professor another way to answer questions (whether they have been raised in class, in the office, by e-mail, or by any other means) in a thoughtful and deliberate way rarely attained in the classroom. Not only do you have the opportunity, never available in class, to go back and check your sources, you also have the opportunity to craft your response in a way that will make it most useful to your students. This opportunity is especially attractive to those of us who, as we walk back to our offices after class, are plagued by the feeling that we have sputtered and fumbled away the answers to excellent student questions.

Using the listserv as Professor's Podium *does* "extend the classroom walls" to the extent that it provides a place in which *students' questions* and the *professor's answers to those questions* can be shared outside the classroom. Nevertheless, because the professor's voice is the authoritative one, as long as you as professor answer questions

"[B]ecause the professor's voice is the authoritative one, as long as you as professor answer questions on the listserv, you will wait in vain for any but the most assertive students even to attempt to answer other students' questions."

[2] The penalty I have imposed constitutes one-tenth of 1 percent of the defaulting student's final grade for the entire course. While this penalty has always turned out to be immaterial with respect to the outcome of the final grade, it was sufficient to provoke participation on the listserv by more than 95 percent of my 1L students last year (a total of 47 students).

[3] My course policies explicitly state: "Use on a [Research, Analysis & Writing] assignment by any student of the contents of any message posted to the [class listserv] does *not* violate CWRU's policy on improper cooperation." In other words, as I also explain to my students orally, anything posted to the listserv becomes the property of the entire class, to be used by any member of the class in whatever way he or she sees fit to use it.

[4] Indeed, while I have in the past used my class listserv as, among other things, an announcement board, I always felt compelled, in order to reach all of the students soon enough, to repeat the message through one or more other media, including handouts to student mailboxes, signs posted on law school bulletin boards, and in-class announcements. At the same time, I had no doubt that since some of my students seem almost to live online, e-mail started the word on its way through the student grapevine more quickly than ever before possible.

"While an e-mail discussion group can provide us as teachers with an additional forum in which to convey our wisdom and experience, using one to send *our* messages deprives students of a valuable opportunity to develop *their* voices."

on the listserv, you will wait in vain for any but the most assertive students even to attempt to answer other students' questions. In other words, except for student questions, the listserv used as Professor's Podium will, in essence, be a place for the professor to talk to the students. It will not be a place where students talk among themselves or, except in the form of questions, to the professor.

As Students' Forum

Two years of conducting class listservs in the Professor's Podium mode left me extremely frustrated at my inability to tap into what I consider the greatest potential for a class listserv—serving as a place for students to discuss *among themselves* the problems with which they are wrestling. I finally decided to do what I had once heard suggested but never had had the nerve to implement—*I would stay out of the discussion entirely*. I would not send *any* messages to the listserv. If I had information I needed to get to my class, I would employ the means always available to me—in-class announcements or, if time was of the essence, memos to the students' mail folders.

The results were astounding. While initial student messages to the listserv consisted of the less profound types of questions I expected, the students quickly realized that no one else knew anything more than each of them did. This realization soon led to amazingly varied and productive conversation. The listserv had become the kind of discussion forum anyone struggling with intellectual problems is desperate for. Rather than walking down the hall to knock on a classmate's apartment door or waiting until enough classmates gathered in the student lounge, each student could go online at any time and join a discussion in progress.

Upon reflection, the results were perhaps not so surprising. We teach advocacy. Learning to be an advocate requires finding your own voice. E-mail discussion groups are unusually well suited to allowing our students to develop their own voices. It is a medium with several liberating qualities. An e-mail message has an element of spontaneity missing from a brief that has been drafted, redrafted, spell-checked, and grammar-checked. At the same time, it permits the student an opportunity to deliberate and craft a message in a way classroom give-and-take never could. It removes visual cues that, without our realizing it, make it far less likely a given student will speak up in class. How much easier is it just to keep one's mouth shut, for example, if you have a quiet voice and sit in a back corner of the classroom? Online, everyone's voice is the same volume.

While an e-mail discussion group can provide us as teachers with an additional forum in which to convey our wisdom and experience, using one to send *our* messages deprives students of a valuable opportunity to develop *their* voices. We should not need nearly as much help in liberating our voices as does the typical first-year law student. Nothing we do can completely remove the bare fact that as teachers we dominate the classroom. In addition, our very wisdom and experience mean that we have an inherent advantage in discussing the subject matter we teach. We can and perhaps too often do anticipate the course of discussion, encapsulating argument, counterargument, reply, and sur-reply in a single speech. In short, the ways in which we as "alpha dogs" unavoidably dominate the classroom "pack" cause our voices to kill most give-and-take discussion.

Silence Is Not Easy

Nevertheless, staying out of an e-mail discussion going on among your students takes an enormous amount of self-restraint. Your calling as a teacher is likely to include, in no small part, a compulsion to be helpful. You want to correct your students' blunders so that they do not humiliate themselves at the hands of the local version of Professor Kingsfield. Moreover, your training as a lawyer makes it difficult to shut up. You are eager to use every available means to make your voice heard. If the court will take a reply brief, you owe it to your client's cause to state again its argument. Maybe this time the court will get it. Maybe this time that one new point will make all the difference. Maybe the simple cumulative effect of reading the same argument again and again will sway the judge. In fact, we teach our students exactly this—if you have a chance to make your point known, seize that chance.

In addition, it is sorely tempting to feel that you can make one little point that will seem trivial among the screensfull some of your students

transmit and quickly right a discussion veering off course. One little trim of the sail and your students will be cruising. In my experience, there are two primary reasons to avoid falling for this temptation. The first is that you underestimate the dominance of your own voice. The second is that you underestimate the abilities of your students. Typically, the discussion will not sail its course as quickly or efficiently as it would with you at the helm, but it will get to where it ought to be in a reasonable amount of time.

Another reason it is so difficult to stay silent is the fear that doing so is a disservice to your students and even, perhaps, betrays your duties as a teacher. What if the things they are writing one another are wrong? In my experience, there has been nothing in the listservs I have managed that has been so wrong that I did not feel it was a tolerable part of the educational process. While I am not certain why discussions have not veered so far into dangerous waters that they require the rescue of my own voice, I suspect it is for reasons other than that my students are more intelligent than yours. First, while we pay lip service to the concept, it rarely is made as clear as in online discussion that it is difficult, if not impossible, to characterize a given legal argument as simply and entirely wrong. Second, our students are capable of recognizing and responding to those aspects of an argument that are wrong. Finally, what is so intolerable about a little error? We have plenty of opportunity (in class, in office meetings, in handouts sent to mail folders) to correct error. Even so, some errors might creep through into graded product. One wrongheaded student might, through the powers of his or her online persuasion, lead a number of other students into committing some legal writing "sin" we are somehow unable to keep out of their briefs. Yet any student who is *that* persuasive cannot be entirely wrong. Finally, I have yet to grade even a final, end-of-the-year brief that does not contain errors I would not want to correct in practice. We are never going to eliminate our students' errors. Nevertheless, I believe that by allowing them the leeway to try their errors out on one another, we will more quickly make them better writers.

TECHNOLOGY FOR TEACHING...

CALR Training in a Networked Classroom

BY JUDITH ROSENBAUM[1]

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Technology for Teaching *... is a regular feature of* Perspectives, *designed to introduce and describe the ways in which teachers of legal research and writing are using technology to enhance their teaching. Readers are invited to submit their own "technological solutions" to the editor of the column:* Christopher Simoni, Associate Dean for Library & Information Services and Professor of Law, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611-3069, phone: (312) 503-0295, fax: (312) 503-9230, e-mail: **csimoni@nwu.edu**.

Looking Back

A little over 25 years ago, when LEXIS was in its infancy and Westlaw was still in its developmental stage, the main issue regarding incorporating training on these computer-assisted legal research (CALR) services into the legal research and writing curriculum was whether they would be taught at all. Both services required the use of large, clumsy dedicated terminals.[2] Printing was done on slow, dot matrix printers, which produced full pages of undifferentiated, single-spaced type on sheaves of continuous-feed paper. Furthermore, academic researchers were restricted from going online during "peak" hours, which meant that academic usage was not allowed during afternoon hours, when law firm usage was typically the highest.

In these circumstances, it made perfect sense to limit or restrict first-year training on LEXIS and Westlaw. Additionally, the entire law school community shared a single terminal, which was not available during some hours of the day. And most legal educators had limited or no experience with computer technology.[3] Our notion of a computer was a large mainframe fed by stacks of punch cards.[4] We had never heard of PCs, let alone notebook computers or networked classrooms. Thus, at the beginning, there was little rush to introduce LEXIS and Westlaw training into the legal research curriculum, and in the very first years of their existence in the late 1970s and early 1980s, LEXIS and Westlaw were taught mainly to students on journals. Even as training gradually began to be introduced into the first-year legal research and writing curriculum, there was widespread agreement that any training offered be deferred until second semester.[5]

The Present

Fast-forwarding to the present, the world now is a very different place. Legal researchers can have their own personal access to LEXIS and Westlaw and are able to use these services from any computer with an Internet connection.[6] Speedy laser printers can print cases in a dual-column format that looks almost identical to the appearance of cases in a print reporter. Furthermore, researchers are not limited to printing their search results. They can now download the results or send them by e-mail or fax to designated recipients. Beyond the capabilities of the hardware, available databases

[1] I would like to thank three people who critiqued this draft and provided valuable backup to my memory of when many of the events described in this article occurred: Steven R. Miller, Reference Librarian at Pritzker Legal Research Center of Northwestern University School of Law; Helene S. Shapo, Director of Legal Writing at Northwestern University School of Law; and Christopher Simoni, Associate Dean for Library and Information Services at Pritzker Legal Research Center of Northwestern University School of Law. Two other people deserve special thanks as well: Lisa Pearl, a member of the legal writing faculty at Northwestern University School of Law, for her work in turning the 1998 PowerPoint slides into the self-guided exercises used in the training described in this article; and Marni Goodman, a student in my class during the 1998–99 academic year, for the suggestion that inspired me to develop the training described in this article.

[2] *See* Robert C. Berring, *Full-Text Databases and Legal Research: Backing into the Future*, 1 High Tech. L.J. 27, 52 (1986); William G. Harrington, *A Brief History of Computer-Assisted Legal Research*, 77 L. Libr. J. 543 (1985).

[3] *See* Marilyn R. Walter, *Retaking Control Over Teaching Research*, 43 J. Legal Educ. 569, 569 (1993).

[4] *See* Harrington, *supra* note 2, at 544.

[5] *See* Fritz Snyder, *High Tech Law Students: When to Train Them on CALR*, 8 Perspectives: Teaching Legal Res. & Writing 21, 21 (1999).

[6] *See* Robert C. Berring, *The Shifting Universe of Legal Information, in The National Conference on Legal Information Issues: Selected Essays* 26 (Timothy L. Coggins ed., 1996); Michael A. Geist, *Where Can You Go Today?: The Computerization of Legal Education from Workbooks to the Web*, 11 Harv. J.L. & Tech. 141, 149 (1997).

and search options have increased exponentially.[7] Thus, as we enter the 21st century, LEXIS and Westlaw are no longer frills to be used if a researcher is fortunate enough to be trained and to have access to a terminal. Rather, they are integral parts of the legal research landscape.

Implications for CALR Training

These changes have had important implications for legal research training in law schools. We have had to adapt our curricula to ensure that students have enough training to understand how to use LEXIS and Westlaw efficiently and effectively.[8] On the other hand, we have also had to dispel the student illusion that computers can do everything books can do, only better,[9] because we know that information on computers, like that in books, is not necessarily accurate, up-to-date, or complete. We also know that both law firms and clients frown on and may refuse to pay for indiscriminate and inappropriate use of computers to do research that can be done more comprehensively, accurately, and expeditiously in books.[10]

In contrast to the early days of LEXIS and Westlaw, when there was substantial agreement on what should be taught and when it should be taught, today there is considerable debate in the legal research and writing community about what and when to teach students about both these services.[11] Part of the problem is that even though today's youth have grown up with computers and know how to research using sources available on the Internet or on CD-ROM,[12] they do not know how to use LEXIS or Westlaw. Legal research and writing (LRW) teachers thus have to balance the benefits and drawbacks of early LEXIS and Westlaw training. The argument for delaying it is that students cannot design effective Boolean searches until they gain some basic familiarity with the tools of legal research and with concepts in the legal lexicon. The argument for introducing it quickly is to dispel the myth that if we refuse to provide students immediately with their passwords to LEXIS and Westlaw, we must be hiding something.

Thus today, schools vary quite a bit in both when and how they offer LEXIS and Westlaw training to their students.[13] While it is probably fair to say that in all law schools, the legal research and writing courses introduce students to LEXIS and Westlaw in the first year, some schools defer all training until second semester, and some introduce full training early in the first semester, alongside training in print research. Still other schools find that an appropriate compromise between these two options is to introduce limited-function passwords in the first semester and full Boolean (and natural language) training in the second semester.[14]

A new variable has also come up. During the 1990s, LEXIS and Westlaw have released new versions of their software at least annually and sometimes more often.[15] Changes in the software have taken place so quickly that many in the legal research and writing community have not been able to keep pace. The combination of frequent software changes and staffing constraints has led a number of schools to allow the vendors to conduct the training on their respective services. Thus, law schools vary not just in how much LEXIS and Westlaw training they offer and when they offer it, but also in who does the training.[16]

> "The argument for introducing it quickly is to dispel the myth that if we refuse to provide students immediately with their passwords to LEXIS and Westlaw, we must be hiding something."

[7] *See* Robert Berring, *Chaos, Cyberspace and Tradition: Legal Information Transmogrified*, 12 Berkeley Tech. L.J. 189, 197–99 (1997).

[8] *See* Donald J. Dunn, *Why Legal Research Skills Declined, or When Two Rights Make a Wrong*, 85 L. Libr. J. 49, 58–61 (1993).

[9] One student mentioned to one of our reference librarians that "someday they'll put a torch to these books," as if books had already outlived their usefulness.

[10] *See generally* Joan S. Howland & Nancy J. Lewis, *The Effectiveness of Law School Legal Research Training Programs*, 40 J. Legal Educ. 381 (1990); Nancy McMurrer, *Butterflies Are Free—But Should CALR Printing Be?* 8 Perspectives: Teaching Legal Res. & Writing 89 (2000).

[11] *See* Snyder, *supra* note 5, at 21–23.

[12] *See* Geist, *supra* note 6, at 143.

[13] *See* Penny A. Hazelton, *Integrating Manual and Computer Legal Research, in The Spirit of Law Librarianship: A Reader* 226 (Roy M. Mersky & Richard A. Leiter eds., 1991).

[14] *See* Snyder, *supra* note 5, at 21–23.

[15] In the single year between the summer of 1998 and the summer of 1999, West Group made Westlaw available on the Web via New westlaw.com™, which co-exists with its earlier Web product, westlaw.com, as well as version 7.21 of its proprietary software, WestMate®, which completely revamped the product that had been released the year before.

[16] While there has been some recognition that training should be done by the legal research and writing professionals who teach the courses (*see generally* Walter, *supra* note 3) many schools have neither the staff nor the lab equipment to conduct the training without the help of outside vendors.

Northwestern's Experiments in the Nineties

At the beginning of the past decade the legal writing course at Northwestern University School of Law deferred all LEXIS and Westlaw training until the second semester of the first year. At that time, the librarians taught LEXIS and Westlaw on a number of extra terminals on loan from the vendors.[17] By the mid 1990s, however, as a result of some staffing changes in the library and the movement of LEXIS and Westlaw from dedicated terminals to PCs, which enabled more individualized instruction than we had typically done on the loaned terminals, we had relinquished most of the LEXIS and Westlaw training to the vendors. Once LEXIS and Westlaw could be accessed from home without a special trip to the law library, we noticed that students were increasingly viewing print research as the "vegetables" they had to endure in order to get to the "dessert"—the computers. After they received their LEXIS and Westlaw training at the beginning of their second semester, large numbers of them abandoned print research and relied exclusively on the computer, no matter how inefficient or unproductive it was for a given objective.[18]

To counter this situation, we decided to integrate some LEXIS and Westlaw training into our first-semester instruction in print research, hoping that students would decide that we were not saving the "best" for last. In addition, we thought that we could cover more material overall. By starting in the fall with several basic functions, instruction in the second semester could cover more new ground and perhaps teach students how to develop efficient research strategies for using both print and online media. At the same time, we also thought that by "taking control"[19] of some of the CALR training ourselves, we could provide students with a more objective assessment of the respective services than could the vendors, who had a particular product to promote.

Thus, for the last half of the decade, the legal research and writing faculty has been responsible for introducing students to LEXIS and Westlaw in the first semester. As part of that training, students have been instructed on the functions that can be performed on limited passwords: retrieving documents; using citator services; and browsing methods to use in conjunction with both of these.

We began by teaching these sessions in large classrooms, which could hold most of our first-year class at the same time. At first, we used a "smart" classroom near a phone line and dialed directly into each service through a modem. We projected our live online research session on the screen in the classroom and explained the software as we ran our searches. Last year, having lost the smart classroom due to construction, we did the training in a large auditorium through an elaborate PowerPoint presentation.[20] The reason we used these large classrooms and taught the students *en masse* is that our library did not have a networked computer lab until 1995, and although we now have three, the largest lab seats only 15 people.[21]

Staffing constraints also contributed to our decision to train as many students as possible in a large classroom. Since we were attempting to coordinate the computer training with instruction in print sources, we wanted to schedule the computer sessions alongside the introduction to print research. The period that we cover legal research, however, is the busiest period of the fall semester. During this narrow window, the legal writing faculty are conducting conferences on rewrites of the first memo assignment; the students are beginning their research to find materials for writing their first research memo; and the librarians are occupied with trying to staff the library adequately in order to handle the

[17] The use of loaned terminals, called "temporary learning centers," was a common practice when LEXIS and Westlaw were in their early stages of development and could be accessed only from dedicated terminals. *See* David A. Thomas, *Training American Law Students in Computer-Assisted Legal Research*, 19 Law Librarian 59, 61 (1988). S*ee also* Berring, *supra* note 2, at 51 n.76.

[18] This phenomenon was not unique to Northwestern. A number of others have observed the same trends at other schools. *See, e.g.,* Dunn, *supra* note 8, at 59; Howland & Lewis, *supra* note 10, at 384–88; Walter, *supra* note 3, at 569–72, 580–81.

[19] Walter, *supra* note 3, at 580–81.

[20] After the presentation, we uploaded the file onto our school intranet.

[21] From the late 1980s our library did have two six-station labs, one for LEXIS and one for Westlaw. Our law librarians used these labs for LEXIS and Westlaw training when they were the primary trainers in the late 1980s and early 1990s.

research questions of approximately 200 first-year students.[22]

Our use of the large classrooms as a substitute for individual at-terminal training, though well intentioned and focused on relatively simple tasks, was not particularly successful. Students sitting in a classroom away from a computer terminal could not absorb such a large amount of detailed information. Furthermore, when the classroom was darkened so that the projection on the screen could be seen more easily, many students dozed through the presentation. We also experienced various technical difficulties when servers or routers at one end or the other went down at precisely the wrong time. When we learned that the vendors, who were still doing the second-semester training, were repeating everything that we had covered during the first semester, we decided to rethink our entire approach.

Success At Last

By the time we began to rethink our approach, we were able to draw on lessons learned from an advanced legal research course that was added to the curriculum in spring 1998.[23] Since that course had a relatively small enrollment, all the CALR training, including LEXIS and Westlaw, could be done at individual terminals in the computer lab. The learning curve in that course was extremely short and the feedback about the CALR training was very positive. We concluded that students had to be at their own terminals in order for training to be effective. But here we faced several dilemmas. The first was our inability to staff the training when the legal writing faculty and the law librarians were at the busiest point in the semester. Yet we had already successfully taken control of this part of our LEXIS and Westlaw training and did not want to turn it back to the vendors.

In addition to this logistical problem, we also faced a substantive problem. All the second- and third-year students in the advanced legal research course began that course with a roughly comparable foundation: first-year LEXIS and Westlaw training and some work experience. In contrast, students in the first-year course had widely different backgrounds. Some had been paralegals and had extensive experience on one or both of the proprietary services. The vast majority of students had no experience with LEXIS or Westlaw but had varying levels of skill with a computer. We were concerned that if we used the computer lab to instruct the students step-by-step in various commands, the lecture would not be able to reach all ability levels equally. If we went through the material quickly, we risked losing the slower students who needed time to absorb the lecture, but if we went more slowly for the students who needed more time, we risked boring the students who could move more quickly.

Fortunately, some new technology became available to us as we pondered this dilemma. Over the summer of 1998, one of our medium-sized classrooms, seating about 60 students, was wired onto the network at each desk. In addition, the school was strongly encouraging, though not requiring, every entering student to own a laptop computer.[24] We realized that if the students brought their laptop computers to the networked classroom, we could, in effect, create a computer lab with 60 individual workstations. This plan would solve the staffing difficulties we would have had if we had tried to conduct 14 to 15 separate training sessions in the library computer lab. However, we also realized that trying to train 60 students at once would exacerbate any problems caused by the students' differing levels of computer expertise.

Our solution to this dilemma was to divide the previous year's PowerPoint presentation into two parts. The first half of the presentation had compared the strengths and weaknesses of books

"We realized that if the students brought their laptop computers to the networked classroom, we could, in effect, create a computer lab with 60 individual workstations."

22 The first assignment is a closed-universe assignment. The students write one draft, which is graded. Then they completely rewrite the memo. Immediately after they hand in the rewrite, we begin instruction in print research. Once we have introduced students to the materials in the library, they begin work on a guided research exercise, which leads them to the primary materials they will need to write their next memo assignment. We wanted to conduct the CALR training immediately after the students turned in their answers to the research exercise, which was just over a week before their memos based on that research were due.

23 This course has been team-taught by the law librarians, with an occasional guest speaker.

24 When we surveyed the first-year class, we learned that roughly 85 percent of the students owned a laptop fitted with an Ethernet card that could connect them to the network.

"Students were able to learn at their own pace, generally on the same computers that they would be using to research from home."

as research tools with the strengths and weaknesses of computers as research tools. We retained these slides in their PowerPoint format and used them at the beginning of the training as a 15-minute overview of the benefits and pitfalls of online research.[25] The second half of the presentation had explained how to retrieve documents using the citation, how to browse documents, and how to use citators. We turned this part of the presentation into a hard-copy, self-guided exercise for students to work through at their own pace. In addition to distributing hard copies of the exercise in the training class, we uploaded it onto the Web so that students who either missed the training or lost their copy of the exercise could have ready access to it for review and practice. The exercise covered Get a Document, Find, Shepard's® and KeyCite®.[26] It had step-by-step instructions on how to perform each function, along with copies of screen captures showing what the screen would look like as each function was performed. The exercise permitted computer-savvy students to work quickly without getting bored while allowing students with less computer experience to work at their own pace without getting lost or discouraged.[27] To provide individualized attention to any student needing assistance, in addition to the person giving the PowerPoint presentation, we staffed the classroom with at least one member of the legal writing faculty or one reference librarian, as well as a representative from each vendor.[28]

Since the classroom held 60 students, we were able to complete the training with three sessions in the classroom, plus two additional sessions in the library's computer lab for the small number of students who did not own a network-ready laptop. The entire training took about one-fourth of the time that we would have needed to train all the first-year students in the lab. Furthermore, we were able to provide all the training within the single optimal week of the fall semester, which was the week after the students had been introduced to book research. This was far enough ahead of the due date of their research memorandum that they could use their limited LEXIS and Westlaw passwords to do research for the memorandum as well as the small new issue that would later be added to the rewrite of that memo. Thus, the students had two assignments for which the majority of their research still had to be done in books, but they could still practice and hone their newly acquired but still limited research skills on LEXIS and Westlaw.

After a decade of experimenting with ways to integrate print and computer research, we had finally found a method that worked. Students were able to learn at their own pace, generally on the same computers that they would be using to research from home. We had no technical difficulties, even with close to 60 students simultaneously connected to the network. We had none of the bandwidth bottlenecks that had plagued previous training attempts. No hub or router went down, and no laptop computer crashed. For the first time, the student feedback was positive, rather than lukewarm or negative. In fact, one particularly computer-literate student said that although she generally found most computer training to be extremely frustrating, because there was too much dead time while much of the class waited for everyone else to follow the trainer's instructions, this session was the first computer instruction in which she had felt fully engaged throughout the training session.

[25] The basic content of this part of the class was taken from a lecture that I used to give to the entire first-year class in the spring semester. For a description of this lecture, see David L. Lee, *Best of Both Worlds: Computerized and Manual Research*, 9 CBA Rec. 50 (1995).

[26] We taught LEXIS through the Web, because LEXIS is no longer distributing its software. We taught the 7.2 version of the WestMate software. There were several reasons that we taught the software instead of either of the two Web versions of Westlaw. First, the software is very fast and easy to use. Second, New westlaw.com had been very slow up to the point we made the training decision, and we did not want to bog down the training sessions with slow Internet response time. Finally, we thought that students would not have much difficulty using Westlaw on the Web (via either westlaw.com or New westlaw.com) if they started with the software, but that they might have some difficulty using the software if they had started on the Web. We will probably continue this practice until there is a more substantial shift toward exclusive use of the Web among law firms.

[27] To help us ensure that the exercise was clear to the students who were not comfortable with computers, we tested it on our own faculty, all of whom had very different levels of expertise on each of the two systems.

[28] One indication of either the quality of the exercise or the computer skills of today's students is that the faculty members present were not asked for very much assistance.

The Future

Although we were able to train a large number of students very effectively within a very short time frame, these training sessions required extensive preparation. We first had to identify the topics that we wanted to cover for each of the two services and the order in which we wanted to cover them. We then had to devise a variety of illustrative searches that could be used as examples of the techniques that we were introducing. Next, we had to write out step-by-step instructions for each task and obtain the screen captures that would serve as the visual teaching aids. Finally, the instructions had to be typed and the screen captures had to be photocopied and reduced for the printed version of the exercise. Even more time was required to crop, add graphics to, and edit the screen captures so that they could be uploaded to the Web.[29] Between late October and early January of this academic year we did not have enough time to script out and compile the exercises that we would need in order to give the students self-guided exercises on Boolean search techniques. Thus, as in the past, next semester we will again rely on vendors for the second-semester training.

We hope, however, that this year will be the last time we have to rely on the vendors for training. Our plan is to prepare training scripts and self-guided exercises about Boolean search techniques so that each student will have an hour and a half of training on LEXIS and another hour and a half on Westlaw. The vendors, of course, will be invited to attend, just as they were in this fall's training, but the training will be designed and conducted by Northwestern's legal research and writing faculty. We hope that our success in taking back control of what is logically our domain offers a useful model to other schools.

[29] Although cutting and pasting allowed us to reduce the size of the screen pictures to a fairly small size to avoid an overly long document, the resolution on the pictures was poor. A much better version was obtained by printing the document that was eventually uploaded to the Web. Since the Web version is in color, with good resolution, it is tempting to skip the paper version altogether and allow the students to work through the exercises exclusively from the Web site.

WHO SHOULD TEACH CALR—VENDORS, LIBRARIANS, OR BOTH?

BY PAULINE M. ARANAS

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Since the very advent of computer-assisted legal research (CALR) in the early 1970s, a debate has been waged over who should provide CALR instruction in the law school setting: product vendors or law librarians. We have come a long way from the late 1970s and early 1980s when schools provided instruction in a "primitive" environment, often limited to a single dedicated terminal with one password for the entire school.[1] By the late 1980s and early 1990s, product enhancement (e.g., database and interface expansion, multiple passwords) and student demand led to such expanded training programs[2] that today CALR training is an integral part of the first-year legal writing and research curriculum. Nevertheless, questions about how to teach CALR continue to generate controversy.[3] In particular, the debate over *who* should teach it is alive and well.

Why Vendors Should Train

Those who support CALR training by vendors point to their expertise with the product as the primary benefit. The vendors "more fully understand the features, benefits and methods of using the tools."[4] Most librarians recognize the difficulty in keeping abreast of new LEXIS-NEXIS and Westlaw developments. Every year, new databases (both legal and nonlegal) and new features are added to the systems. Now subscribers even have their choice of interface: proprietary software or Web-based versions. The vendors recognize the need to keep librarians up-to-date and have added another level of support: library relations representatives whose primary responsibility is to respond to librarians' concerns.[5] They provide information and counsel on the systems' vast array of products.

Another reason that vendor representatives may be the ones best qualified to show students how to achieve cost-effective electronic research is their familiarity with the variable pricing structures available to law firms and legal practitioners. Finally, online training is a very labor-intensive endeavor, and vendors are prepared to provide the staffing needed for CALR training that at least some law schools simply do not have at their disposal. Usually training sessions take place in small groups for a concentrated period of time. For many schools, the issue of staff resources is a critical factor in deciding who should provide CALR training. Schools with large student populations, for example, may lack sufficient staff to provide effective training.

Why Librarians Should Train

In law school, students develop their skills of critical analysis. Students need to apply these skills not only in analyzing law but also in assessing research resources. Given the vast array of legal information and, in particular, the depth of information available in electronic products, students need unbiased guidance in evaluating these resources. The primary argument against CALR training by vendors is the perception that a vendor presentation on these resources will be more sales-oriented than neutral instruction. By

"Another reason that vendor representatives may be the ones best qualified to show students how to achieve cost-effective electronic research is their familiarity with the variable pricing structures available to law firms and legal practitioners."

[1] *See* John R. Johnson & Jo McDermott, *Days of Miracle and Wonder: A Retrospective and Future Look at Computer-Assisted Legal Research,* 19 W. St. U. L. Rev. 525, 528 (1992).

[2] *See* Donald J. Dunn, *Why Legal Research Skills Declined, or When Two Rights Make a Wrong*, 85 L. Libr. J. 49, 60 (1993).

[3] *See, e.g.,* Frank Houdek, *Our Question—Your Answers*, 3 Perspectives: Teaching Legal Res. & Writing 80 (1995) (discussing the question of "whether vendor representatives [should] be used to teach computer-assisted legal research, or other aspects of legal research"); Dunn, *supra* note 2, at 66 n.72 (discussing use of student representatives by vendors to handle various aspects of CALR in law schools); Marilyn R. Walter, *Retaking Control Over Teaching Research*, 43 J. Legal Educ. 569, 581 (1993); Dan J. Freehling, *Problems and Solutions in Teaching Computer-Assisted Legal Research*, Integrated Legal Res., Winter & Spring 1989, at 9 (discussing such issues as permanent learning centers, when CALR training should occur, and how to get faculty to integrate CALR into substantive courses).

[4] Houdek, *supra* note 3, at 81 (quoting Joe Gornick, Knowledge Team Leader, CCH Incorporated).

[5] *See* Librarian Relations Group, LEXIS Publishing, *InfoPro for Legal Information Professionals* (visited Jan. 27, 2000) <http://infopro.lexis.com/home.htm>; Librarian Relations, West Group, *Law Librarians and West Group: Key Relationships* (visited Jan. 27, 2000) <http://www.westgroup.com/librarians/infshare.htm>.

definition, the vendors' goal is to tout their product. They will emphasize their system's strengths and downplay its weaknesses. It has been said that vendors use the training sessions "as a forum for marketing their product or criticizing their competitors."[6] This approach to instruction is likely to conflict with the academic mission of the law school.

In an academic environment, students need a more objective approach. Training by vendors often gives the impression that CALR can be used for any research problem and can locate any legal authority. An article discussing CALR manuals produced by vendors noted that these manuals deliberately make CALR appear simple to use. "CALR appears to be nothing more than a series of simple commands and functions by which users can locate exactly what it is they are looking for. … These guides never discuss online research in the context of realistic, complex legal issues, nor do they teach users how to combine the innumerable features of the databases to formulate effective searches."[7]

For most who oppose training by vendors, the key concern relates to the educator's responsibility for curriculum content. As one commentator has noted, "teachers have to help students deal with two conflicting messages: the possibilities of technology and its limitations."[8] These teachers can highlight the ways in which print and electronic research tools complement each other, can integrate the processes of analysis, research, and writing, and can focus a student's "technical mastery into overall problem-solving skills."[9]

Other benefits relate to the role librarians play in the educational process. Taking responsibility for CALR training reinforces the role of librarian as teacher and knowledgeable researcher. This is especially important to librarians with faculty status. Having librarians conduct CALR training provides the "opportunity to meet and interact with students in a professional, teaching type of situation and to reinforce the library's ability to offer assistance with all types of research."[10]

A Hybrid Approach

Which teaching methodology works best? Although there is probably no definitive answer, it seems clear that educators must consider the school's pedagogical goals, the structure of the legal research and writing curriculum, and the resources allocated for this part of the curriculum.

My personal choice is to use a hybrid method. I strongly believe that librarians should take responsibility for the first-year legal research curriculum, including CALR training, for the reasons stated above. It is especially critical in a school that has an integrated legal writing and research course. In such a program, faculty control of CALR content ensures that it will relate to the program's overall pedagogical concepts and assignments. However, I also feel that we can partner with vendors to provide advanced and specialized training for upper-division students. At that level, schools can take advantage of vendor expertise to provide specialized sessions targeted for students involved in the law school's journals or focused on specialized topical or practice areas, such as tax, securities, and labor law.

The Vanderbilt Experience

At Vanderbilt University Law School, librarians provide CALR training for first-year students as part of the school's year-long integrated legal writing course. "Legal Writing," coordinated by a director of legal writing and team-taught by part-time legal writing instructors paired with law librarians, is presented in eight sections, with approximately 24 students in each. The research component develops the basic skills students need to complete the graded writing assignments. Research assignments are topically related to the writing assignments. The fall semester focuses on the core research materials: secondary sources, case and state statutory research, citators, and research methodology. The spring semester examines federal statutes, administrative law, and practice-oriented secondary sources. Currently, seven librarians,

"For most who oppose training by vendors, the key concern relates to the educator's responsibility for curriculum content."

[6] Freehling, *supra* note 3, at 10.

[7] Linda M. Ryan, *Designing a Program to Teach CALR to Law Students*, 4 Perspectives: Teaching Legal Res. & Writing 53, 56 (1996).

[8] Walter, *supra* note 3, at 570.

[9] *Id.* at 572.

[10] Houdek, *supra* note 3, at 80 (quoting Gary Bravy, Georgetown University).

"By having the tutorial depict as many features as possible, we are able to focus on what we think are critical concepts during the online sessions."

including me, participate in the program.[11] Six are teamed with the legal writing instructors, and the computer services librarian has primary responsibility for the CALR lecture and online training sessions described below.

In designing the CALR portion of the curriculum, we acknowledge the high level of computer literacy students possess. We assume students are proficient using a Windows-based platform. We allocate three 50-minute class periods in the fall semester for CALR instruction, consisting of an overview lecture and two online sessions. For the spring semester, we allocate one online session. In designing the CALR curriculum, we make sure to follow the content covered in the prior research lectures and to link CALR assignments to upcoming writing assignments.

The lecture provides a general overview of CALR. Students are assigned an excellent article to read by Penny Hazelton that articulates the basic principles of CALR and clearly sets out the advantages and disadvantages of print and electronic research.[12] The lecture reinforces these principles and illustrates basic CALR concepts, such as Boolean searching.

The online sessions are scheduled for the following two weeks.[13] Half the class is assigned to learn LEXIS-NEXIS, the other half learns Westlaw. At the CALR lecture, we distribute passwords, vendor manuals, and an online tutorial. Students are required to complete this tutorial before the first session. The tutorial, designed by the computer services librarian, is a critical part of the instructional process. Because of the high degree of computer literacy of our students, we let them use the tutorial to learn the basic system features at their own pace. The tutorial introduces the sign-on process, database selection, Boolean connectors, display formats, citator service, navigational features, and unique components of the system (e.g., the Westlaw topic and key number feature). Students work through a sample Boolean search, then analyze a hypothetical research issue and execute a search. They also review a second hypothetical and prepare a search query that is discussed during the first online session. By having the tutorial depict as many features as possible, we are able to focus on what we think are critical concepts during the online sessions.

The first session concentrates on developing search strategy skills. We review the hypothetical problem and work through the search query process as a group. This process, which usually takes half the class time, includes issue and fact analysis, search term selection, Boolean connectors, and segment or field search structure. Students then execute their search query. Reviewing the results offers an opportunity to highlight display options and other system features. We distribute a homework assignment to reinforce what they have learned about effective search formulation. Since CALR training occurs shortly before students receive their open research memorandum assignment, we often include a question or two that relates to the memo assignment. We may ask students to locate specific information critical for the memo assignment or to use a database they will need in their research. All this is done in coordination with the writing instructors.

The second hands-on session focuses on citator services. Students learn the citator services offered by both systems: The Shepard's service on LEXIS-NEXIS and the KeyCite service on Westlaw. The students assigned to learn LEXIS-NEXIS also receive a limited Westlaw password and vice versa. During this session, we distribute another homework assignment that provides more search formulation practice and reinforcement.

We complete the research portion of the legal writing course by the eighth or ninth week of class. Thereafter, students receive their open-research office memorandum assignment. At that point they have been exposed to a wide range of research sources, both print and electronic, and can determine their own research methodology. We impose two research restrictions: students may only use the system on which they were

[11] The law faculty has long recognized the librarians' research expertise and has supported a teaching role for the dual-degreed librarians. Faculty confer a lecturer-in-law appointment for those librarians teaching in the legal writing program.

[12] Penny A. Hazelton, *Integrating Manual and Computer Legal Research, in The Spirit of Law Librarianship: A Reader* 225 (Roy M. Mersky & Richard A. Leiter eds., 1991).

[13] Currently, three of the seven law librarians participate in the training sessions. Training sessions are held in the computer classroom, which has 12 workstations. Given the eight legal writing sessions with approximately 24 students in each section, we schedule 16 sessions each week.

trained, and they are limited to four or six hours (including print commands) of CALR time. With these restrictions we hope to prevent excessive dependence on CALR for the memo assignment.

In the spring semester, students switch CALR systems. We schedule only one online session early in the semester. In this semester, legal writing focuses on advocacy writing, and two advocacy pieces are assigned: a trial brief and an appellate brief. We coordinate the online training session schedule with distribution of the trial brief assignment. As in the fall semester, the online session content emulates the topical coverage in the research lectures. Prior to the online session, students receive vendor manuals and another online tutorial. The spring tutorial assumes familiarity with CALR systems, omitting the discussion on issue and fact analysis and Boolean connector descriptions. It emphasizes sign-on procedures, unique system features, citator services, and navigational functions. Students work through a sample search and prepare and analyze a hypothetical problem for the online session.

We take a comparative approach with the online session, examining the differences and similarities between the systems, and continuing to focus on search formulation strategies since past experience indicates that the most glaring weakness students have in electronic research is poor search query formulation. For the trial brief assignment, we impose the same restrictions as in the fall semester, thereby forcing students to use the "other" system.

As noted earlier, I don't support an "either/or" approach to CALR instruction in law schools. Developing instructional partnerships with the vendors can enhance and benefit the law school's research offerings. The partnership can work on several levels. We depend on vendor representatives to help keep us abreast of new system features and developments. Since we devote significant staff time to the first-year research curriculum, we welcome the assistance of vendors in providing CALR instruction to upper-division students. This includes vendor-provided training for career services, student publications, and moot court teams. Last year, vendors offered specialized topical sessions (i.e., tax and labor law) with some success and will do so again this year.

Conclusion

At Vanderbilt, we have devised a successful means to effectively teach students CALR without unduly burdening staff resources. In the first-year program, we provide critical guidance for students to help them understand the vast array of legal information sources, regardless of format. We take our educational role seriously and feel it is important for us not to delegate that responsibility, especially in the first-year curriculum. For upper-level students, we partner with vendor representatives to focus on the students' specific electronic research needs. In our region, the vendor representatives also train in law firms and this experience adds a "real life" component to their topical or specialized training sessions. Just as there is no "right" way to research, there is no "right" way to teach CALR. Each school must balance its programmatic needs and institutional resources. The Vanderbilt program offers a model for those who seek to balance these concerns.

"[P]ast experience indicates that the most glaring weakness students have in electronic research is poor search query formulation."

Butterflies Are Free—But Should CALR Printing Be?

BY NANCY McMURRER

Nancy McMurrer is Reference Librarian at the Marian Gould Gallagher Law Library, University of Washington School of Law, in Seattle.

> "The library has purchased Westlaw and LEXIS-NEXIS as *research* tools, but many students use them only as free *photocopy* machines."

This fall our law school began charging students to print. Unlimited printing could no longer be supported in an era of increasingly tight budgets. The decision was not unusual; many law schools now require students to pay to print documents in school computer labs.[1]

An additional step we considered, however, was not so common: to remove the LEXIS-NEXIS and Westlaw stand-alone printers and require students also to pay for documents from those services that they choose to print. While we are not the only law library that has debated this issue or that has actually taken this step,[2] most schools have retained free printing for students using CALR services.

Reasons to Charge

Why charge for printing from LEXIS-NEXIS and Westlaw? Here are a dozen reasons.

- Free printing wastes natural resources; stacks of printouts never picked up by students are a common sight.
- Free printing encourages sloppy research habits. Why, for instance, should students bother to limit their Shepard's or KeyCite results to the issues and courts in which they were interested? If printing is free, it does not matter whether they print three pages or 50 pages.
- Free printing discourages students from carefully analyzing their project *before* starting research. Instead, it is easier *first* to jump online to Westlaw or LEXIS-NEXIS with a very general search, print everything, and then analyze the project based on the printed results. More precise online searches can always be done later. At best, this process merely wastes the researcher's time; at worst, it results in important points being overlooked.
- Increasing numbers of electronic research tools are becoming available. If free printing is available only for LEXIS-NEXIS and Westlaw, students may be less inclined to investigate other alternatives: either free resources on the Internet or other subscription products purchased by the library.
- Students are sometimes overwhelmed by the materials they print. Students with stacks of printouts that they could not reasonably be expected to read and digest are a common sight.
- Free printing leads to too many instances in which a student who wants a copy of one document not in the library is frustrated because other students have tied up the printers with requests for printouts of multiple documents that are easily found in the library.
- Students also tie up the printers by sending multiple print requests for the same document or documents. With free printing, they have no incentive to check first, then resend the request only if necessary.
- The library has purchased Westlaw and LEXIS-NEXIS as *research* tools, but many students use them only as free *photocopy* machines.
- Removing the stand-alone printers frees space for additional computers in the computer lab.
- The LEXIS-NEXIS and Westlaw printers require constant maintenance by the lab staff, which takes time away from their other duties. (Although the student representatives are conscientious about their jobs, they only work part time and often are not there to load paper, change toner cartridges, fix paper jams, etc.)
- The possibility exists that saving the vendors the costs of maintaining the stand-alone printers will help avoid future price increases for the services themselves. In the past, for instance, we avoided price hikes in our LEXIS-NEXIS subscription by ensuring that our students connected to LEXIS-NEXIS via the Internet.

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[1] *See* Univ. of Richmond William Taylor Muse Law Library, *Law School Printing Survey* (visited Jan. 14, 2000) <http://law.richmond.edu/general/printsurvey.htm>. Joyce Manna Janto, Deputy Director of the Law Library, is conducting an ongoing survey to identify those law schools that charge students for laser printing in library or law school computer labs. The survey does not necessarily include printing done on attached printers for Westlaw or LEXIS-NEXIS. Janto acknowledges that "[w]hile some schools have begun charging for this type of printing, many have not." *Id.*

[2] At least 15 law schools that charge for Westlaw and LEXIS-NEXIS printing have been identified: Boston University, Chicago-Kent, University of Florida, Florida State University, Harvard, University of Illinois, University of North Carolina, University of North Dakota, University of Pennsylvania, Roger Williams, St. John's University, Stetson, Thomas Cooley, University of Utah, and Washington and Lee.

- Reports from the "real world"—where our graduates hope to practice—indicate that summer clerks and new associates are not learning how to use LEXIS-NEXIS and Westlaw in a cost-effective manner.

Printing in the "Real World"

Before making a decision about imposing charges for CALR printing, we decided to investigate the degree to which judicious printing is indeed a concern in the real world of law practice. I posted three questions to discussion lists for law librarians in firm, corporate, government, and court law libraries. Here is a summary of the 25 responses.

1. Do you restrict printing from any electronic research resources (including, but not limited to, LEXIS-NEXIS and Westlaw)?

The answer was an overwhelming NO. Printing is not restricted in most firms, courts, and legal departments. There are, however, exceptions. One response, for example, described a LEXIS-NEXIS feature that permits limits to be established on a client-by-client basis. If a researcher wishes to exceed the limit, say, for the number of documents that can be printed, he or she must get permission of the billing attorney and then contact LEXIS-NEXIS to set up an override. A few respondents stated that their organizations require some types of projects (e.g., nonbillable research, use of databases not covered in flat-rate contracts) to be approved in advance. Another librarian said that access as well as printing is restricted; one commented that summer clerks are not given passwords or IDs.

2. If you do not restrict printing, what, if any, action is taken in cases of excessive printing?

Some librarians reported that careful printing is just part of their organizational cultures. One corporate librarian stated that "it is understood in our corporate legal department that you only print what is actually needed" and that she rarely needs to mention a printing problem to anyone. A firm librarian stated that, although attorneys in his firm print many documents, he believes they "by and large use what they print." Another commented that "researchers are not particularly anxious to print excessively because they know they'll have to read all they print!"

Most respondents described a range of actions that are taken in cases of printing misuse. Typically, the librarian talks with the offender, described by one librarian as providing "gentle advice" and by another as having a "nice sit-down." One East Coast librarian emphasizes to associates the need to justify to her and to the billing partner why they needed to spend so much. She assures them, however, that "if they feel confident that they wrote out the search first, consulted the guides (to choose files and databases accurately), contacted the 800 numbers if stuck, and printed just as many pages as were necessary," then the cost of their research will be "OK."

A common theme of these conversations about printing misuse is an explanation about the cost of online research and printing. One Midwestern firm librarian described his use of "the appropriate sense of humor and eye contact" as he asks the associate to picture the billing attorney explaining to the client why the online charges are so high, or the client reviewing the bill in detail before authorizing a check. A couple of librarians point out to the abuser that using the books in the library or photocopying may be a cost-effective alternative to printing, though another response suggested that the time it takes to photocopy may make printing less expensive to the client. Each situation, she believes, requires a "judgment call" to limit costs.

Those who print excessively may find that other attorneys in the organization will speak with them, perhaps in increasingly serious steps. In one office, the librarian has found that comments from colleagues who find the printer tied up by large print jobs rein in excesses most effectively. Usually, however, supervisory or billing attorneys are the ones most likely to have some formal contact with lawyers who have run up large research and printing bills.

Several responses from firms highlighted the unpleasant choice facing the billing attorney when high print charges are involved. Should the cost be passed on to the client, who may well complain about the firm's inefficiency, or absorbed by the firm, thereby decreasing profitability? The problem, as described by one Southwestern firm librarian, is that new associates do not know how much online research costs and "don't know diddly about how we handle billing." According to a number of respondents, researchers are often called in by billing attorneys to explain unreasonable online research and printing costs. Excesses by summer associates were mentioned as a reason not to "invite them back."

"Those who print excessively may find that other attorneys in the organization will speak with them, perhaps in increasingly serious steps."

"Many of the respondents coupled concern about printing misuse with the larger problem of the generally poor online research skills of summer clerks and new associates."

The problems created by printing misuse are even worse in those organizations that cannot pass on costs to a client. Concomitantly, the actions taken by supervisors may be more severe. In one government legal department, any attorney who runs up more than $1,000 (online time and printing) in one month receives a letter from one of the senior supervisory lawyers. If the offender is a summer intern, the misuse is passed on to the hiring director. As the librarian phrased it, "since competition for a job here is so tight, the director is glad to have the additional information." A court librarian reported that online usage and printing is monitored on a weekly basis to control costs and she "cancels passwords of people who do not get the message."

Whatever other actions are taken when excessive printing is noted, many legal organizations rely on training to get the word across to new law school graduates and summer clerks. "Invariably," one librarian stated, "they have to be 're-educated' or educated on the cost of Westlaw, LEXIS-NEXIS, printing, etc." Several organizations sponsor specific training sessions about costs and billing. These sessions may be a formal part of orientation or folded into the Westlaw and LEXIS-NEXIS training conducted by the librarians. Even classes presented by LEXIS-NEXIS and Westlaw representatives, several librarians reported, emphasize cost. Some organizations require additional follow-up training classes focusing on cost-saving alternatives for those users who incur high research and printing charges.

3. Do you hear complaints from supervisory and billing attorneys about excessive printing?

Most librarians had heard complaints linked to misuse of printing. Many had tales to share, some of which seemed to have become legends in their organizations. One librarian wondered if the story of the summer associate who ran up $25,000 worth of online charges on his last day "just fooling around" was true or apocryphal; nevertheless, he continued, "there is a long institutional memory of the SAs [summer associates] who set new records." A government legal department with several locations budgets a fixed amount for online research each year. The fiscal year was just under way when the librarian had to call one office with the unpleasant message that it had already spent over one-third of its entire research budget for printing.

A librarian in a West Coast law firm found the printer overflowing one afternoon. She called the new associate to ask whether he realized "what an incredibly large print job he had … and by the way, … did he really want to print all of a statute from the USCA?" Another firm librarian tried to warn one clerk about the amount he was printing. Ignoring her, he ran up a total online research bill of $4,000 for a bankruptcy client and was "severely reprimanded." An intern in a Northeastern government office "ran amok" and printed more than 27,000 lines, about a ream of paper; the office's online research bill that month jumped to more than $800. A librarian in one Midwestern firm said the problem seems to crop up every year. "They run up *huge* bills. Five thousand dollars a month? We have one every year!"

Many of those responding to the survey supported a decision to remove the Westlaw and LEXIS-NEXIS stand-alone printers in the law school setting. One thought such a move would be a "great heads-up to the students about real-world costs." Two agreed that having to pay for printouts would help force students "to focus their thinking and analysis" and "learn to keep what is relevant" only. Another said it was "great to see someone in academia expressing concerns about indiscriminate usage of LEXIS and Westlaw. … It would be wonderful if training in law school was similar to training in the firms, instead of the students' 'blank check' attitude." Still another requested: "The message I would like to see trickle into law schools is that you will be held accountable for your actions when you are employed by a firm. So you better think before you act."

Many of the respondents coupled concern about printing misuse with the larger problem of the generally poor online research skills of summer clerks and new associates. A librarian in a Midwest firm paraphrased comments by the attorney in charge of her library: "Why do these young attorneys think they have to have copies of every case remotely involved in an action? It usually comes down to several cases that are on point. It's [copying every case] a waste of time. They really should try to hone their research skills and develop better research habits." Some librarians stated that too much online time and too many searches were greater problems than excessive printing. One firm's librarians, however, sounded this cautionary note: "Remember that these are students and may need more leeway in this area as part of their

learning process. First-year students, like first-year associates, don't always know what is relevant and what they may need at first, so they may as well print more than they'll need."

In organizations with flat-rate contracts that include printing, misuse of printing is less often viewed as a problem. One librarian, in fact, stated that printing is a nonissue: "Printing was an issue only when [the vendor] … made it a special part of law firm contracts. In a pay-as-you-go firm, printing costs do matter, as does use of [the service] itself, but how many of them are left? Law schools set many bad examples for students who go to work in firms without flat rates. But in a flat-rate firm, printing only mattered when the contracts said it did. I don't think you should police printing at your school with the expectation that you are doing us a favor."

Some flat-rate contracts do not include printing, which is then charged either on a page-by-page or on a per-document basis. An East Coast librarian with per-document fees stated: "In some cases (law reviews, periodicals, out-of-state materials), we encourage online retrieval because it's cheaper than document delivery costs." Organizations with inclusive contracts often track only the printing from databases not covered in their contracts. A few librarians with inclusive flat-rate contracts described their contracts as including "free printing." Several others, however, commented that they worry that increased printing under flat-rate contracts will result in big increases when the next contract is negotiated. One firm librarian stated that several firms in her area "have abandoned flat rates because the use jumped so much that the cost for subsequent years was prohibitive."

Conclusion

As is evident from the variety of the comments, excessive printing from Westlaw and LEXIS-NEXIS is not viewed as the universal problem in firms, courts, and other legal departments that it once was. However, those in the real world without flat-rate contracts that include printing are still quite interested in increasing students' awareness of online research and printing costs. In addition, even librarians with inclusive flat-rate contracts worry that misuse now will lead to soaring costs for future contracts.

Many more of the respondents mentioned their concern with the ineffective and inefficient online research skills they continue to see among summer clerks and new associates. We have hypothesized that being forced to pay for printing would be an incentive for students to analyze their legal issues more carefully and plan their online research strategy more fully. Moreover, we also see a growing number of online research alternatives available to our students, a very different situation from just a few years ago when "computer-assisted legal research" meant only Westlaw and LEXIS-NEXIS. We want to encourage our students to explore a range of online resources. Does our acceptance of printing support from the two vendors in effect mean that we are endorsing them over other alternatives for which no free printing is offered?

On the other hand, the great advantage of the academic contracts that law school libraries have with LEXIS-NEXIS and Westlaw is that they permit students to explore those services without financial penalties for the mistakes they make while learning how to use these systems. Even those law students who eventually work in offices without either service benefit from having used them in law school; exposure to any electronic research tool helps them use other electronic research tools more effectively. In addition, of course, printing is already included in the contract price; we do not know that either vendor will offer us a price break if we save them money.

A decision to require students to pay for LEXIS-NEXIS and Westlaw printing is not easy and straightforward. Students know that free printing is part of the vendors' contracts. They see free printing as an entitlement. Many students are already incurring huge debts to attend law school and they do not wish to add to that burden. The message from legal departments in government and corporations, courts, and firms is mixed. Finally, several of the reasons listed earlier for considering pay-for-print have anecdotal rather than empirical support.

The printing support law libraries receive from Westlaw and LEXIS-NEXIS is an issue law school libraries should explore. But more information would be welcome. We need the input of those law schools that require students to pay for LEXIS-NEXIS and Westlaw printing. Why did those libraries take that step? What did they hope to gain? Have the students' online research habits changed? What benefits and disadvantages for the students have resulted from their decisions? Another survey, anyone?

"A decision to require students to pay for LEXIS-NEXIS and Westlaw printing is not easy and straightforward."

TEACHABLE MOMENTS FOR STUDENTS ...

"How Can I Tell the Effective Date of a Federal Statute?"

BY BARBARA BINTLIFF[1]

Barbara Bintliff is Director of the Law Library and Associate Professor of Law at the University of Colorado School of Law in Boulder.

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

"The date of enactment is most easily located by consulting the parenthetical information provided after every statutory section."

It happens all the time. A legal researcher finds the perfect federal statute and needs to know if it was in effect when a certain cause of action arose.[2] And thus the question becomes: when did the statute go into effect?

The generally applicable rule is easy to state: a federal statute usually takes effect on the date of its enactment,[3] which is itself determined by when the last step necessary for the statute's enactment occurred. Most of the time the last step in the enactment process is the president's signature, and this date, therefore, becomes the date of effectiveness for most federal statutes. However, there are exceptions to the general rule. For instance, sometimes the last step occurs when Congress overrides the president's veto, or when the bill is allowed to become law without a presidential signature. And sometimes a later date is specified by the terms of the statute itself. However it is determined, the fact that a cause of action can arise immediately after a statute becomes effective can make finding the effective date crucial in a legal action.[4]

Using the "Credit"

The date of enactment is most easily located by consulting the parenthetical information provided after every statutory section included in the print and online versions of the *United States Code* (USC), the *United States Code Annotated*® (USCA®), and the *United States Code Service* (USCS).[5] The parenthetical is variously called a "source note," "statutory authority," "statutory history," "history," "source credit," or "credit."[6] For ease of use, it will be referred to as the "credit" in this article. In the print versions, the parenthetical follows the statutory section with nothing in between the statutory text and the source note. In the primary online versions, it is labeled "credit" (in USCA on Westlaw) or "history" (in USCS on LEXIS-NEXIS).

The credit has been included with federal statutes since they were first codified in the *Revised Statutes of 1874* and is an official part of the statute. In addition to the date of enactment, you will find several other pieces of useful information in the credit that will allow

[1] I would like to thank Therese Clark and Jane Thompson of the University of Colorado Law Library Faculty for their assistance in researching this article.

[2] The date of effectiveness of state statutes varies from state to state. Approximately 30 states have constitutional provisions defining the date a statute takes effect. Most of the states without constitutional provisions set the time by statute, although some rely on the principles used by the federal government. *See* 2 Norman J. Singer, *Sutherland Statutes and Statutory Construction* § 33.02 (5th ed. 1993). Researchers should check the state's constitution, statutes, or both when considering the date of effectiveness of a state statute.

[3] *See* Gozlon-Peretz v. United States, 498 U.S. 395, 404 (1991) (citations omitted) ("It is well established that, absent a clear direction by Congress to the contrary, a law takes effect on the date of its enactment.").

[4] The actual time a federal statute is signed is generally not recorded, although it is noted for some appropriations bills.

[5] In recent years this information also has been included in the slip laws and the *United States Statutes at Large*. It can also be found in Table II in the various forms of the *United States Code*.

[6] There is no official name for the parenthetical. It is usually referred to as the "source credit" or "credit" by the Office of the Law Revision Counsel. Telephone interview with Peter LeFevre, U.S. Office of the Law Revision Counsel (Dec. 1, 1999).

you to see the statutory section in its context as originally written, to compile a legislative history, and to track amendments to the statutory text.

As an example, let's look at the credit for 7 U.S.C. § 6104. This is the section of the "Mushroom Promotion, Research, and Consumer Information Act of 1990" that, among other things, establishes the Mushroom Council.[7] The credit reads:

> (Pub.L. 101-624, Title XIX, § 1925, Nov. 28, 1990, 104 Stat. 3857; Pub.L. 102-237, Title VIII, § 803(1), Dec. 13, 1991, 105 Stat. 1882.)

Two dates in this credit are relevant to our quest for the effective date of the statute: November 28, 1990, and December 13, 1991. These are the dates that the bills creating the statute and later amending it, respectively, were signed by the president. These are the statute's and amendment's enactment dates, and therefore their dates of effectiveness, unless otherwise noted.[8]

Effectiveness Other Than Enactment Date

There are several places to look for the date of effectiveness for a statute that did not become effective upon enactment, or for a statute for which portions take effect at different times. The primary versions of the federal statutes generally have clear notices of any variation on the date of effectiveness. In the USCA, this information may be in an italicized paragraph following the credit or it may be included in the "historical and statutory notes" or the "amendment history" section. In the USCS, it may appear as a boldface "caution" following the statutory section's caption or in the "history; ancillary laws and directives" section. The USC includes the information in a section labeled "amendments." Editorial policy may dictate a change in labeling or the exact location of the information, but it will be included with the text of the statutes.

An example of this is the "Homeowners Protection Act of 1998." Enacted as Pub. L. No. 105–216 on July 29, 1998, sections 2 through 11 were codified in 12 U.S.C.A. §§ 4901–4910. Section 13 of Pub. L. No. 105–216, captioned "Effective Date," states, "This Act, other than section 14, shall become effective one year after the date of enactment of this Act." The USC, USCA, and USCS clearly note this at each codified section, and USCA also includes a note at 12 U.S.C.A. ch. 49.

Section 14 of Pub. L. No. 105–216 abolishes the Thrift Depositor Protection Oversight Board of the Federal Home Loan Bank and transfers the duties of the Board to the Secretary of the Treasury, effective three months after the date of enactment of the statute. The Board's demise, and the effective date of the transfer of its duties, is duly recorded in the various versions of the *United States Code* in the notes following the statutory section.

Another place to check for the date of effectiveness of a federal statute is in its slip or session law publication forms. If the statute as enacted specified a date of effectiveness, the slip law—available in print and online versions from the Government Printing Office and in the *U.S.Code Congressional & Administrative News*® and *U.S.C.S. Advance*—and the online and print versions of the *United States Statutes at Large* will include the appropriate statutory section.

Conclusion

Statutory research isn't complete without checking the date of effectiveness of the statutory sections you have identified. You should keep in mind the general rule that a statute becomes effective upon enactment, and be alert for possible exceptions.

"There are several places to look for the date of effectiveness for a statute that did not become effective upon enactment, or for a statute for which portions take effect at different times."

[7] While some may question the importance of the Mushroom Council to our federal government, millions of pizza lovers and vegetarians would rise to its defense.

[8] The other information in the credit gives the public law citation (that is, the slip law citation) for the statute, pinpointing the exact section in the public law where the language you have can be located. In this case, 7 U.S.C. § 6104 was created by § 1925 of Pub. L. No. 101–624. Title XIX refers to the internal organization of Pub. L. No. 101–624; it was divided into at least 19 titles, or subchapters. Similarly, the statute was amended by § 803(1), of Title VIII, of Pub. L. No. 102–237. Knowing this, the legal researcher can locate the enacted form of the legislation, read the statutory section in its original context, and locate related sections, regardless of where they were eventually codified. The public law citation is also a starting point for legislative history research. The source note also gives the *United States Statutes at Large* citation for the statutory section. In many instances, the *Statutes at Large* will be the positive law source for a federal statute.

TEACHABLE MOMENTS FOR TEACHERS ...

MEMO STRUCTURE FOR THE LEFT AND RIGHT BRAIN[1]

BY SUE LIEMER

Sue Liemer is the Director of Legal Writing at the University of Mississippi School of Law in University. She is also the president of the Association of Legal Writing Directors.

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

If you teach legal writing to first-year law students, chances are at some point you put an outline on the board that looks like this:

TO:
FROM:
RE:
DATE:

Question Presented
Brief Answer
Statement of Facts
Discussion
  Thesis section
  I
  R
  A
  C
  I
  R
  A
  C
  Conclusion

Some legal research and writing (LRW) professors put the facts section first.[2] Some use a variation on the IRAC structure.[3] Some use a different name for the thesis section.[4] With minor variations, however, the basic outline of an intra-office, objective legal memorandum is standardized enough to be one of the basic conventions of legal writing taught in American law schools.[5]

As I explain this outline to my class, I begin to feel a bit like a football coach chalking out game day plays. I circle the "I" of each IRAC, and draw an arrow from it to the thesis section, explaining the connection as I do so. I circle the "C" of each IRAC, and draw an arrow from it to the overall conclusion. I add lines to indicate a breakout section and embellish one IRAC to look like this:

I — Issue
R — Rule
A — Application
C — Conclusion

and then I proceed to review each section of an IRAC.

The second year I taught legal writing, as I was updating a lesson plan on basic memo structure, a minor epiphany struck. I realized that there was another way to show basic memo structure on the chalkboard that might be more helpful to some students. It looked like this:

[1] The material in this article 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.

[2] Some lawyers start memos with the Question Presented, some with a Statement of Facts. Because it is harder to write a Question Presented and Brief Answer that a reader unfamiliar with the facts will understand, I have my students learn to write a memo that way, so they will be well prepared to start a memo either way when they practice law.

[3] The benefits and drawbacks of using IRAC, as well as several variations on the IRAC structure, are discussed in *Point/Counterpoint: Use of IRAC-type Formulas—Desirable or Dangerous?,* The Second Draft, Nov. 1995, at 1.

[4] For example, Linda H. Edwards, *Legal Writing, Process, Analysis, and Organization* 138–139 (2d ed. 1999), uses the term "umbrella section" instead.

[5] *See* Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass'n, *Sourcebook on Legal Writing Programs* 12–19 (1997), explains the typical writing assignments of first-year legal writing courses.

Question Presented	thesis section	Issue	topic sentence
rest of memo	rest of discussion	Rule Application Conclusion	rest of paragraph

As I put this approach on the board, I do not feel like a football coach. I do not end up with arrows and chalk dust everywhere. I feel more like a child playing with a Russian matryoshka (or nesting) doll. Each time I open up the head and base, there is a smaller-scale version of the same thing inside. Each head and base fits together to form a whole that can stand on its own. Yet I can always work backward again and see how each smaller version fits back neatly into its next larger example. Just as a child will focus on both the individual dolls and how one fits inside the other, I encourage my students to understand first each full square, and then how the same relationship exists within their memos' structure on different scales.

To help the students remember and to keep the class fun, I actually bring a matryoshka doll to class.[6] I ask for a volunteer to open it, reconstruct each doll inside, and line them up on the desk. Later I ask another volunteer to come forward and reconstruct the whole.

Of course the standard memo outline needs to be explained first. Most of the class will find it easy enough to follow. Many students who are linear, algebraic thinkers will come to understand it fairly quickly as they practice applying it. Without the benefit of a science degree, I call these my left-brain thinkers.[7] Every law school class, however, has right-brain thinkers, too. These students think more spatially and geometrically.[8] The building block diagram and matryoshka doll help many of them see the big picture more easily.[9]

With the second approach on the board, you can underscore several important points for the whole class. At each level, the header in the top box must be carefully drafted. Since it announces the topic to come, its focus will determine the focus of everything that follows it in the lower box. Likewise, everything in the lower box must relate directly back to the announced topic in the top box. These boxes also make it easy to show a student who has wandered off topic that a particular sentence or rule belongs in a different paragraph or IRAC, a different box at the same level.

Memo structure can be one of the drier subjects in a first-year legal writing course. Try appealing to both the left and right brain, playing with dolls, and making it a little more fun.

[6] I am grateful to my friend Nina Ruzumnaya Hoff for the gift of a genuine matryoshka doll.

[7] *See* Sally P. Springer & Georg Deutsch, *Left Brain/Right Brain* 54–55 (3d ed. 1989); James F. Iaccino, *Left Brain-Right Brain Differences: Inquiries, Evidence, and New Approaches* 29–33 (1993).

[8] *See* Springer & Deutsch, *supra* note 7, at 54–55, Iaccino, *supra* note 7, at 29–33.

[9] Of course, the left-brain/right-brain dichotomy is only one way to account for different learning styles. *See generally* Howard Gardner, *Frames of Mind: The Theory of Multiple Intelligences* (2d ed. 1993).

Consequences of Ineffective Writing[1]

BY WENDY B. DAVIS

Wendy B. Davis is an instructor in the Legal Practice Skills program at Suffolk University Law School in Boston, Massachusetts.

"Poor writing by an attorney can result in … the court sanctioning the attorney; the client losing his or her legal claim; or the client becoming involved in unnecessary litigation."

Daniel Webster said, "The power of a clear statement is the great power at the bar."[2] Writing clearly and concisely is not only good business practice but also an aspect of the competence in legal skills that is an ethical obligation of all attorneys.[3] Law school legal writing courses attempt to teach students effective writing. Courts have reinforced the need for effective writing by imposing sanctions for verbosity, lack of organization, and grammar and citation errors.[4]

There was a time when legal writing was intentionally verbose and obscure, to distinguish lawyers from nonlawyers. Only another lawyer could understand the lengthy documents filled with Latin and legalese, thereby ensuring that all parties would seek legal counsel. Courts now demand brevity, and clients demand plain English. Courts have commended parties for clear and concise writing. For example, a Massachusetts judge favorably quoted an appellate procedure textbook that stated: "An attorney should not prejudice his case by being prolix. … Conciseness creates a favorable context and mood for the appellate judges."[5] Courts have indicated their displeasure with wordiness[6] and lack of clarity[7] in briefs and pleadings.

Poor writing by an attorney can result in any or all of the following: the court sanctioning the attorney; the client losing his or her legal claim; or the client becoming involved in unnecessary litigation.

Attorney Sanctions

No rational attorney would intentionally anger or frustrate a judge who is deciding his or her case. If that is not sufficient incentive to write well, numerous regulations impose requirements on lawyers' writing. The Federal Rules of Civil Procedure require a short and plain statement of the claim in a simple, concise, and direct manner.[8] A federal statute allows courts to impose costs and attorney's fees on lawyers who unreasonably multiply proceedings.[9] Many courts impose page limits on briefs.[10] Lawyers who exceed the required page limits, or manipulate their writing by using smaller margins or fonts to squeeze their documents to fit the page limits, have been subject to sanction, such as fines that they are prohibited from passing on to their clients.[11]

In *Laitram Corporation v. Cambridge Wire Cloth Company*,[12] for example, the court imposed a fine of $1,000 each on the lawyers who signed briefs for both parties, because the briefs lacked references to the record, relied on attorney argument as evidence, and cited inapplicable authority. The court stated that "counsel have in this case wasted this court's resources by playing in the rarified atmosphere of a debating society."[13] The district court's decision was vacated and remanded.

In *Julien v. Zeringue*,[14] the court imposed financial sanctions, equal to the defendant's attorney's fees, against the plaintiff's counsel.

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[1] A different version of this article was included in the *New York State Bar Journal*, January 2000, volume 72, number 1, published by the New York State Bar Association, One Elk Street, Albany, New York, 12207.

[2] *Quote It! Memorable Legal Quotations* 18 (Eugene C. Gerhart ed., 1987).

[3] "A Lawyer shall provide competent representation to a client." Model Rules of Professional Conduct Rule 1.1 (1983). It is certainly arguable that writing skills are one aspect of competent representation.

[4] For an excellent discussion of this subject, see Judith D. Fischer, *Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers' Papers*, 31 Suffolk U. L. Rev. 1 (1997).

[5] Commonwealth v. Angiulo, 615 N.E.2d 155, 169 n.17 (Mass. 1993) (quoting J.R. Nolan, *Appellate Procedure* § 24, at 11 (1991)).

[6] *See* Gordon v. Green, 602 F.2d 743, 744–45 (5th Cir. 1979).

[7] *See* Slater v. Gallman, 339 N.E.2d 863, 864 (N.Y. 1975).

[8] Fed. R. Civ. P. 8(a), (e)(1).

[9] 28 U.S.C. § 1927. This section has been used by courts to impose fines on lawyers who violate page limits, thereby requiring the court and opposing counsel to read two sets of briefs. *See* Westinghouse Electric Corporation v. National Labor Relations Board, 809 F.2d 419 (7th Cir. 1987).

[10] *See, e.g.*, U.S. Sup. Ct. R. 33(1)(d), (g); Fed. R. App. P. 28(f).

[11] *See* Westinghouse Electric Corporation v. National Labor Relations Board, 809 F.2d 419 (7th Cir. 1987).

[12] 919 F.2d 1579 (Fed. Cir. 1990).

[13] *Id.* at 1584.

[14] 864 F.2d 1572 (Fed. Cir. 1989).

In addition to numerous extensions and missed deadlines, the court noted that the attorney did not follow the court's rules of practice governing the preparation of a joint appendix.

Loss of Legal Claim

The inability of lawyers to write properly negatively impacts clients. Courts have dismissed complaints with grammatical errors.[15] Courts have denied motions with misplaced punctuation marks.[16] These rejected claims cost clients time and money, and may lead to loss of their legal rights.

In *Duncan v. AT&T Communications*, the court granted a motion to dismiss a complaint because the plaintiff's complaint was so poorly drafted that it failed to state a claim on which relief could be granted. The court made no attempt to hide its disgust with the plaintiff's pleadings, noting that "the court's responsibilities do not include cryptography, especially when the plaintiff is represented by counsel."[17] The court noted the grammatical and stylistic shortcomings, and stated that other allegations were written in a conclusory manner that failed to explain the facts to the court. The court stated that some of these allegations may have been legally significant if they were well pleaded. The plaintiff lost her claim for employment discrimination because of the failure of her attorney to write effectively.

In a similar case, *Feliciano v. Rhode Island*,[18] the plaintiff's claim under the Americans with Disabilities Act was dismissed because the complaint was too vague. The court found that the complaint did not describe the claim in sufficient detail, nor did it allege facts to support the claim of denial of constitutional rights. The complaint also alleged that there were differences in interpretation in the two applicable federal laws, but did not articulate those differences, and therefore the court did not consider this allegation.

Tips for Effective Writing

The following suggestions are made to assist attorneys in writing more clearly and effectively.

- Learn the rules—federal, state, and local—for page limit, font and margin requirements, and other similar restrictions.
- Be as concise as possible. Edit your work, omitting all excess words. For example: use "because" instead of "due to the fact that"; "to" instead of "in order to"; and "now" instead of "at this point in time."
- Repetition does not improve clarity. For example, use "give" instead of "give, devise, bequeath, and transfer"; "the property" instead of "All my rights, title and interest in and to the property"; and "void" instead of "Null, void, and of no further force and effect."
- Proofread a printed draft. Do not rely on a spell-checking program. It will not pick up such errors as missing apostrophes, "there" instead of "their," and "he" instead of "the." Do not rely on reading a draft document on the terminal screen, because pagination is often altered. Never reprint one page of a multiple-page document without confirming that you have not omitted or repeated the first and last lines.
- Use headings and subheadings, and begin each paragraph with a clear topic sentence for ease of comprehension.
- Shorter sentences and paragraphs are easier to read.
- Learn the *Bluebook* citation rules and use them.
- Omit legalese. English is more clear than Latin, in most cases. For example, do not use any of the following: witnesseth, hereinbefore, hereinabove, aforementioned, party of the first part, said (as a substitute for *the*), in witness whereof, to wit, from the beginning of the world to this date, quid pro quo, de minimus.
- Use the active voice. It is more direct and concise to write "the defendant breached the contract," rather than "the contract was breached by the defendant."
- Use pinpoint citations whenever practical. It is a courtesy to readers to indicate the page on which they can find your authority.

[15] *See, e.g.,* Duncan v. AT&T Communications, 668 F. Supp. 232, 237 (S.D.N.Y. 1987).

[16] *See, e.g.,* People v. Vasquez, 520 N.Y.S.2d 99, 103 n.2 (N.Y. Crim. Ct. 1987).

[17] 668 F. Supp. at 234.

[18] 160 F.3d 780 (1st Cir. 1998).

"Clear and concise writing should be the goal of every attorney."

In *Lennon v. Rubin*,[19] the court upheld a grant of summary judgment against the plaintiff, and stated that its review was made more difficult because the plaintiff's brief lacked analysis of the statute and identification of the lower court's reasoning. "[W]herever material uncertainties result from an incomplete or indecipherable record and impede or affect our decision, we resolve uncertainties against appellants."[20]

Unnecessary Litigation

Lack of clarity in transactional documents can cause a client to be involved in a lawsuit that might not have been required if the drafting attorney had been more skilled in writing. Many lawsuits are caused by parties asking a court to determine the meaning of ambiguous terms. In both of the following examples, parties were involved in district court suits that were appealed to the circuit court of appeals. Neither case would have been necessary if the contracts were drafted clearly and accurately.

Bourke v. Dun & Bradstreet Corporation[21] is a typical case involving a poorly drafted contract that caused expense to the client. Employees sued their former employer for money due under a contractual incentive compensation plan. Under the contract, the employees were to be paid if "targets" had been achieved. Each employee had several targets and was entitled to increased compensation for each higher target. The employer claimed that the language meant that the employee would be paid at the 100 percent level, and no higher. The employees contended that the phrase entitled them to payment at the 200 percent and higher levels for higher targets. The differing interpretations resulted in a dispute worth nearly $2 million to the employees. The court found that, although the language was ambiguous, the employer's interpretation of the language was reasonable. The employees' complaint was dismissed, as it had been by the district court.

In *Baybank v. Vermont National Bank*,[22] the loan participation contract at issue was inaccurate regarding the loan origination date, maturity date, and loan amount. The plaintiff, a participant in the loan, relied on these inaccuracies to allege that the contract was ambiguous. The plaintiff refused to participate in the loan renewal. The court agreed that the inaccuracies made the contract ambiguous, but found that the plaintiff's conduct indicated its consent to participate in the loan renewal.

Conclusion

Clear and concise writing should be the goal of every attorney. A failure to achieve this goal can result in excess costs to the client, loss of rights of the client, sanctions imposed by the court against the attorney, wasted time for all parties, and frustration for opposing counsel.

[19] 166 F.3d 6 (1st Cir. 1999).

[20] *Id.* at 9 (quoting Credit Francais International S.A. v. Bio-Vita Ltd., 78 F.3d 698, 700–01 (1st Cir. 1996)).

[21] 159 F.3d 1032 (7th Cir. 1998).

[22] 118 F.3d 30 (1st Cir. 1997).

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.

Linda Holdeman Edwards, *Legal Writing: Process, Analysis, and Organization* (2d ed. 1999). [New York, NY: Aspen Law & Business, 450 p.]

Organized around two main tasks—writing productively and writing persuasively—the book has a process-oriented approach that demonstrates the interrelationships between reasoning and writing. Contains a new chapter on oral argument.

Stephen Elias, *Legal Research: How to Find and Understand the Law* (7th ed. 1999).

Provides an overview of legal research and an overview of the law followed by a discussion of the main sources to use in addressing a legal issue. Includes numerous illustrations.

Bryan A. Garner, *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts* (1999). [New York, NY: Oxford University Press, 444 p.]

A compendium of practical, easy-to-learn, and proven techniques for writing the most compelling brief one can present. Written by one of the leading authorities on legal writing.

Edward Herman, *Internet Supplement* (1999) to *Locating United States Government Information. A Guide to Sources* (2d ed. 1997). [Buffalo, NY: William S. Hein & Co., 228 p.]

Contains hundreds of new and revised Web sites since publication of the main volume in 1997.

Magill's Legal Guide, edited by Timothy L. Hall (1999). [Salem Press, 3 vols.]

An extensive compendium of the legal system of the United States that defines basic legal concepts and offers a practical guide to explain how the law impacts day-to-day life. Contains 594 essays and 124 articles addressing legal issues in civil and criminal law.

Joe Morehead, *Introduction to United States Government Information Sources* (6th ed. 1999).

Over the past 25 years the various editions of this book have kept pace with identifying the major government publications and pointing out their value. This latest edition continues that tradition. Technology is emphasized.

Kent Olson, *Legal Information—How to Find It, How to Use It.* (1999). [Phoenix, AZ: Oryx Press, 344 p.]

In addition to explaining why legal information exists in several formats and how to maximize the value of major reference tools, this book suggests the best sources for different kinds of information and explains how these resources compare to other available materials.

Edward D. Re & Joseph R. Re, *Brief Writing and Oral Argument* (9th ed. 1999). [Dobbs Ferry, NY: Oceana Publications, Inc., 312 p.]

Perhaps one of the longest-running, best-known texts in the field, this new edition includes discussion of changes and recent developments in procedures, rules of court, and case law. Includes new explanations of function, structure, standards of review, and frivolous appeals and the imposition of sanctions.

Helene S. Shapo, *Writing and Analysis in the Law* (4th ed. 1999). [Westbury, NY: Foundation Press, 1999, 448 p.]

A new edition of one of the leading texts in the field. Clear, concise, and focused on producing the best legal writers possible.

Sanford R. Silverberg, *Index to Law School Theses & Dissertations* (1998). [Buffalo, NY: William S. Hein & Co., CD-ROM.]

This CD-ROM product contains more than 2,000 new entries and more than 5,500 authors from more than 40 law schools. Updated biannually.

Fritz Snyder, *The West Digest System: The Ninth Circuit and the Montana Supreme Court*, 60 Mont. L. Rev. 541 (1999).

Begins with an overview of the West Digest System, followed by a discussion of how it can be used most efficiently to locate Ninth Circuit and Montana Supreme Court cases.

Steven D. Stark, *Writing to Win: The Legal Writer* (1999). [New York, NY: Main Street Books, 283 p.]

Focuses on writing of lawyers (not judges), including argumentation, litigation, and writing used in legal practice. Includes an appendix titled "Thirteen Rules of Professionalism in Legal Writing."

Arturo Lopez Torres & W. Clinton Sterling, *Will Law Schools Go the Distance? An Annotated Bibliography on Distance Education in Law,* 91 Law Libr. J. 655 (1999)

Current through October 1998 and focusing on the 1990s, this annotated bibliography has as its purpose "to review the current literature and report the findings that purport to incorporate directly, indirectly, or by analogy certain aspects of distance education that are relevant to legal education today and perhaps in the future." *Id.* at 656–67.

United Nations Cumulative Treaty Index (1999). [Buffalo, NY: William S. Hein & Co., 15 vols.]

Contains four parts: a numerical list of agreements; a chronological list of all agreements; information arranged alphabetically by country; and a comprehensive and detailed subject index. The *Index* is updated semiannually by the *Current United Nations Treaty Index Supplement*. The set also includes information about treaties and agreements registered or filed with the U.N. Secretariat but not yet published in the *United Nations Treaty Series*.

Universal Citation Guide (1999). [Chicago: American Association of Law Libraries; Madison, WI: State Bar of Wisconsin, 98 p.]

Designed to complement *The Bluebook*, this guide is designed to bridge the gap between print-based citation form and technology-based information. Written by the Committee on Citation Formats of the American Association of Law Libraries.

Gail I. Winson, *Historic Preservation Law: An Annotated Survey of Sources and Literature* (1999). [Buffalo, NY: William S. Hein & Co., 365 p.]

Divided into two annotated sections—books and articles—this survey of published literature gives a retrospective view of developments and offers reflection on the future of historic preservation law. A bibliographic essay introduces each of the two sections.

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