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BRUTAL CHOICES IN CURRICULAR DESIGN…

WHY I DON'T GIVE A RESEARCH EXAM[1]

BY JUDITH ROSENBAUM

Judith Rosenbaum is a Clinical Associate Professor and the Director of Communication and Legal Reasoning at the Northwestern University School of Law in Chicago, Ill.

Most of us who teach legal research, whether as part of a stand-alone Legal Research course or as part of an integrated Legal Research and Writing course, would agree on the pedagogical goals we are trying to accomplish in our research training. We want students to learn that legal research is part of a process leading to oral or written analysis of legal rights and duties relevant to a client's problem. Thus, we want students to learn about the types of primary authorities used in legal analysis;[2] the range of finding tools that analyze the law or cite to primary authorities, or both; and the mechanics of using the various finding tools.[3] Ultimately, but probably not until they understand the webbed relationship between authorities and finding tools, we want students to understand how to develop a research strategy so that regardless of the substantive area their issue involves, they will be able to research that issue with facility.[4]

Legal research teachers would also probably agree that students do not remember nearly as much after completing our courses as we would like them to remember and that students and

[1] I would like to thank Helene Shapo, who taught me just about everything I know about teaching Legal Research and Writing. Her insight and advice guide much of what I do in this field. I would also like to thank Helene Shapo, Mary Lawrence, and Mary Hotchkiss for their encouragement about my writing this article and their patience waiting for it. Last, but not at all the least, I would like to thank the creators of the research exams cited in this article. I hope you will take my comments in this article as an appropriate subject for professional debate. I am very grateful to you for your willingness to share your exams by publishing them in print and on the Internet.

[2] The goal of research is to "find the relevant binding and persuasive primary authorities of law." Helene S. Shapo, Marilyn R. Walter & Elizabeth Fajans, *Writing and Analysis in the Law* 209 (4th ed. Found. Press 1999).

[3] *See* Maureen Fitzgerald, *What's Wrong with Legal Research and Writing? Problems and Solutions*, 88 Law Libr. J. 247, 257 (1996) ("[T]he focus in legal research and writing should be on the process of legal research and writing, which teaches students when particular sources are needed, where to look for them, and how to use them.").

[4] Susan S. Katcher, *Reflections on Teaching Legal Research* in *Expert Views on Improving the Quality of Legal Research Instruction in the United States* 46, 47 (West 1992) (suggesting that sources should be taught before introducing students to strategy).

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even recent graduates often struggle putting what they do recall into practice in their jobs.[5] Most of us would agree as well that we need to use good assessment and feedback tools in our teaching to motivate our students and to stimulate learning.[6] We would disagree, however, on why they don't retain what they learn in our classes as well as we would like[7] and also on what constitutes a good assessment and feedback tool.[8]

Although legal research assessment tools have been called by a myriad of different names,[9] all of them seem to fall into one of two categories. These assessment tools are either exercises designed to guide students in the various legal research resources or exams designed to test what they have learned at an earlier point in the year. Of course within the categories of exercises and exams, there are further subdivisions. For example, there are bibliographic exercises,[10] process-oriented exercises,[11] and, increasingly, exercises that try to blend the best of both the bibliographic and the process model.[12] With respect to exams, there are objective exams, using some combination of multiple-choice, true-false, or short-answer questions,[13] various kinds of practical application exams,[14] and take-home exams,[15] presumably administered in a manner similar to the bar exam performance tests. The legal education literature is filled with articles debating the merits of bibliographic or process-oriented exercises and suggesting ideas for improving on both.[16] Strangely, though, there has been nothing written about the merits of giving a research exam.[17] In

[5] In the late 1980s and early 1990s, many law librarians and legal research teachers engaged in vigorous written debate about the reasons for students' poor research skills. Citing all these articles would take up too much space in this short essay. However, many longer journal articles written after this debate do provide citations to this rich debate in its entirety. *See, e.g.*, James B. Levy, *Better Research Instruction Through "Point of Need" Library Exercises*, 7 J. Leg. Writing Inst. 87, 89 n. 7 to 90, nn. 8, 9 (2001).

[6] *Id*. at 92. *See also* Kristin B. Gerdy, *Teacher, Coach, Cheerleader, and Judge: Promoting Learning through Learner-Centered Assessment*, 94 Law Libr. J. 59 (2002).

[7] *Compare* Ann Hemmens, *Advanced Legal Research Courses: A Survey of ABA-Accredited Law Schools*, 94 Law Libr. J. 209, 213 (2002) (suggesting that if students don't have a chance to use the research skills that we teach them soon after the skills are introduced, they will not "retain knowledge about them very long.") *with* Helene Shapo & Christina L. Kunz, *Teaching Research as Part of an Integrated LR & W Course*, 4 Perspectives: Teaching Legal Res. & Writing 78, 80 (1996) (arguing that students remember more about their research instruction than they used to in "some former—but unspecified—'golden age' of research instruction" as a result of better text books, improvements in the exercises used to teach research, and the integration of research and writing instruction in many law schools). *See also* Mary Whisner & Lea Vaughn, *Teaching Legal Research and Writing in Upper-Division Courses: A Retrospective from Two Perspectives*, 4 Perspectives: Teaching Legal Res. & Writing 72, 72 (1996) (emphasizing that continual practice is needed to develop fully a newly taught skill).

[8] *See* Amy Sloan, *Creating Effective Legal Research Exercises*, 7 Perspectives: Teaching Legal Res. & Writing 8, 8 (1998).

[9] *See* Dennis S. Sears, *The Teaching of First-Year Legal Research Revisited: A Review and Synthesis of Methodologies*, 19 Legal Reference Serv. Q. 5, 10–14 (2001) (referring to dozens of these names, both favorable and derogatory).

[10] Bibliographic exercises derive their name from the bibliographic approach to teaching legal research. This approach introduces students to the various print and online sources of legal research by describing them and giving the students questions to answer about each tool. In order to answer the questions, the student has to use the particular tools, thus becoming familiar with their organization, content, and special features. *Id*. at 10.

[11] The process approach to legal research grew out of criticism that the bibliographic approach inappropriately taught about the tools of legal research apart from the context of a problem, which led to the need for research. Process-oriented exercises try to teach students about the sources of legal research through the context of a hypothetical client's problem that students are asked to analyze. *Id*.

[12] An example of this type is discussed in Levy, *supra* n. 5, at 97–112. *See also* Helene S. Shapo and Christina L. Kunz, *Teaching Legal Research as Part of an Integrated LR&W Course*, 4 Perspectives: Teaching Legal Res. & Writing 78, 80 (1996).

[13] *See* Brian Huddleston, *Trial By Fire ... Creating a Practical Application Research Exam*, 7 Perspectives: Teaching Legal Res. & Writing 99, 99 (1999); Kory D. Staheli, *Evaluating Legal Research Skills: Giving Students the Motivation They Need*, 3 Perspectives: Teaching Legal Res. & Writing 74, 74 (1995) (describing types of exams).

[14] Huddleston, *supra* n. 13, at 99–100, 102–03 (exam requiring students to demonstrate research skills in one-on-one 30-minute sessions with librarians; Mary Brandt Jensen, *"Breaking the Code" for a Timely Method of Grading Legal Research Essay Exams*, 4 Perspectives: Teaching Legal Res. & Writing 85 (1996) (exam consisting of a problem that a student had to research and report results in a narrative research log).

[15] *See* Terry Jean Seligmann, *Beyond "Bingo!": Educating Legal Researchers As Problem Solvers*, 26 Wm. Mitchell L. Rev. 179, 198–99 (2000); Craig Hoffman and Kristen Robbins, Conference Presentation, *Encouraging Transferability and Independence: Using a Combination of In-Class and Take-Home Examinations in the First-Year Legal Writing Curriculum*, Knoxville, Tenn., May 30, 2002 (copy of handout on file with the author).

[16] Michael J. Lynch, *An Impossible Task but Everybody Has to Do It—Teaching Legal Research in Law Schools*, 89 Law Libr. J. 415, 430–32 (1997).

[17] The few articles that have been written about research exams are short pieces describing some attempts to administer a "hands on" research exam. *E.g.*, Huddleston, *supra* n. 13; Jensen, *supra* n. 14.

this article, I would like to open that debate by explaining why I do not give a research exam. First, however, I want to make clear that when I began working on this article I intended only to explain why I do not give an objective research exam with multiple-choice, true-false, and short-answer questions. The exams described by Brian Huddleston[18] and Mary Brandt Jensen,[19] where a librarian trails a student through a research project either in person or by reading the student's written narrative of the student's thought processes while researching a particular problem, do not cause me the same concerns that an objective exam raises and are not part of the scope of this article.

The type of exam I am addressing in this article is the in-class exam taken outside the law library where there are correct and incorrect answers and the ability to identify correct answers depends on memorizing details about research sources. For example, the following extract illustrates how students may be tested on memorized material in a multiple-choice format:

I. The following are legal publications: 1. C.F.R.; 2. Restatement (Second) of Torts; 3. United States Reports; 4. Supreme Court Reporter; 5. General Digest. Which of these should always be regarded as primary sources?

A. All of the above.
B. 1 and 3.
C. 1, 2, 3, and 4.
x D. 1, 3, and 4.
E. 3 and 4.

II. Which of the following are works in which one would *not* expect to find references to West key numbers: 1. C.F.R.; 2. C.J.S.; 3. United States Code; 4. F.R.D.; 5. Am. Jur. 2d.

A. 3 and 5.
x B. 1, 3, and 5.
C. 1, 2, and 5.
D. 1 and 4.
E. 1 and 5.[20]

In the following excerpt, the questions are asked in a true-false format:

6. True or False: You can find a case using a digest if you know only the docket number. [3 points]
7. True or False: United States Supreme Court cases are always binding on each state supreme court. [3 points][21]

The following questions are asked in the short-answer format:

- Which legal periodical index would you use to find references to articles written prior to 1980? [2 points]
- It is extremely important that legal material is kept current. List two of the ways law books are updated. [4 points]
- What are three things contained in an annotated code that are not contained in an unannotated code? Please be specific. [6 points][22]

Some objective test questions use the "matching" format, which is somewhat of a cross between multiple choice and short answer. Following is an example of this format:[23]

Match These ...	**To These**
_____ American Law Reports (ALR)	A. An individual pamphlet issued upon enactment of a statute into law.
_____ Digest	B. The same case in a different reporter.
_____ Law Reviews or Law Journals	C. A system of arranging, by subject, the headnotes of cases.
_____ Official Reports	D. Statutes enacted by a legislature, arranged chronologically.
_____ Parallel Citation	E. The first appearance of a decision issued by a court.
_____ Restatements	F. Alphabetical compilation of terms defined by the courts.
_____ Session Laws	G. The public, general, and permanent statutes of a jurisdiction in a fixed subject or topical arrangement.
_____ Shepard's Citators	H. The opinions of a given court published by the court-designated publisher.

(continued on next page)

[18] Huddleston, *supra* n. 13.

[19] Jensen, *supra* n. 14.

[20] Lynch, *supra* n. 16, at 438, n. 42.

[21] Darby Dickerson, Stetson College of Law, Faculty and Courses, Research and Writing I Exercises, Fall 1999 Exam <www.law.stetson.edu/darby/r&w1.htm> (last updated Aug. 19, 2002).

[22] Staheli, *supra* n. 13, at 75

[23] Douglas Miller, *Using Examinations in First-Year Legal Research, Writing, and Reasoning Courses*, 3 J. Legal Writing Inst. 217 (1997).

"Research is a process involving an interaction between thinking and doing."

(continued from previous page)

Match These ...	To These
_____ Slip Law	I. Publisher-selected leading cases, both state and federal, with detailed annotations and commentary.
_____ Slip Opinion	J. The official, permanent session law publication for federal laws.
_____ Statutory Code	K. Student-edited periodicals that contain respected commentaries on the law.
_____ Treatise	L. Specialized publications whose purpose is to trace the use of earlier authority in later sources.
_____ U.S. Statutes at Large	M. Respected reiteration of major legal doctrines covering ten specific fields of law.
	N. Scholarly written discourse of an area of law by an expert in the field.

The problem with all of these test questions, regardless of whether they are asked in multiple-choice, true-false, short-answer, or matching format, is that they teach memorization. While it certainly is true that knowledge acquisition is a necessary foundation for learning, because raw facts have to be absorbed, and often memorized, before higher forms of cognitive activity can take place,[24] the essence of legal research is a search for understanding[25] in which finding and thinking[26] continually cross-fertilize each other and these mental processes cannot be emulated by an objective test.

Some research professors have recognized that knowing the answer to a question such as how many series of ALR® are published does not really demonstrate a student's mastery of legal research ability, because these questions do not involve any analysis. These professors have attempted to devise analytical questions by building a series of multiple-choice questions based on a short hypothetical fact pattern. The following is an example of this type of exam question:

Questions 17–20 are based on the following paragraph.

> Your firm has been retained to represent Britney Moore. Ms. Moore recently had the name "Justin" tattooed around her navel by a tattoo artist in Nevada. Apparently, the tattoo dye has caused inflammation and infection of her navel. You attended a meeting with a senior partner at your firm and Ms. Moore to learn more about the facts of the case and her injuries.

17. At the conclusion of the meeting, the senior partner asked you to determine potential causes of action to be pursued in Nevada and to begin researching the law immediately. What are your next steps?

    A. Go to the library and begin to research Nevada law on body tattoos.
    B. Go online and pull up all law review articles from Nevada journals addressing body tattoos and tattoo dye.
    C. Analyze the facts and formulate a preliminary research question.
    D. Go to the library and find a secondary source discussing body tattoos.
    E. Make a list of all sources of law.

18. The senior partner believes that there is a statute in Nevada that regulates tattoo artists. He has asked you to research this potential statutory claim. Which of the following would be the most effective way to begin your research?

    A. Find the Nevada Revised Statutes because it will provide the governing statutory language.
    B. Find the Nevada Revised Statutes Annotated, either in the statute books or on Lexis or Westlaw, because the annotated statutes will provide both the governing statutory

[24] Maureen Fitzgerald, *What's Wrong with Legal Research and Writing? Problems and Solutions*, 88 Law Libr. J. 247, 261–63 (1996); Gerdy, *supra* n. 6, at 61–64.

[25] Lynch, *supra* n. 16, at 416.

[26] *Id.* at 416–19.

language as well as annotations to cases interpreting the statutory provisions.

C. Search the Internet for sites about tattoos because the Internet is free for all attorneys, and searching the Internet is the most efficient method to find all information.

D. a and c.

E. all of the above.[27]

* * * *

The problem with all of these is that they do not measure a student's understanding of or ability to do good research. Research is a process involving an interaction between thinking and doing. It takes place in context—in the context of a client's problem for which controlling law must be located and analyzed.[28] Thus, a good researcher must

- understand the relevant facts;[29]
- think about legal concepts that can serve as search terms;
- go to research sources, whether in print form or online, to test out the utility of the search terms;
- evaluate the utility of the sources and information discovered and adjust the search terms if necessary;
- read explanations in secondary authority of unfamiliar areas of the law governing the issue once the relevant search terms are identified;
- read and analyze the primary authority to determine how it relates to the client's problem;
- evaluate the usefulness of the material discovered and determine whether there are gaps that need to be filled, either by more research or by deeper analysis of the sources;
- conduct additional "spot" research when necessary or appropriate to fill in the holes;
- know when to follow a research trail to the end, when to start a new trail[30], and when to stop.[31]

These tasks, which are essential to a good research strategy, are part of a recursive process, in which the researcher understands the relationship among tools, authorities, and analysis and constantly fine-tunes and adjusts the steps of the research process based on reading what he or she discovers and analyzing that material in light of the oral or written report he or she will make to the client or to a senior attorney.

The problem with the objective research exam is that it is one-dimensional. The answer is there if the questions are multiple-choice, true-false, or matching format, or the answer can be recalled from memory if the questions are short answer. This type of exam does not mirror in any way the trial-and-error aspects of actual research.[32] It fails to capture the internal feedback loop that comes from reading and analyzing the various sources consulted. It doesn't bring up the decision points where the researcher reaches a fork in the road, such as what to do when he or she cannot find a controlling case or statute, and must decide which way to turn. The objective exam omits the critical role that timing often plays in research, where an answer must be found by a certain date in order to be ready for a client meeting or to satisfy a court deadline. It is missing the imagination and creativity, and even a little bit of the serendipity[33]

"The problem with the objective research exam is that it is one-dimensional."

[27] Hoffman & Robbins, *supra* n. 15.

[28] Fitzgerald, *supra* n. 24, at 268. *See also* Seligmann, *supra* n. 15, at 185.

[29] In practice, this involves listening to a client, reading documents, and talking to other people to get a complete picture of the problem. In our classes, the best we do to imitate this process is to enact a client interview to give our students a sense of the facts. More often we give the students documents, such as pleadings, a client interview, or discovery excerpts to give them a sense of how a lawyer synthesizes the facts. Sometimes, we simply give them a canned narrative of facts.

[30] For example, sometimes the first step in research, perhaps reading a treatise, will lead to a citation to a relevant case in the controlling jurisdiction. A good researcher might go to that case, read it, decide it is helpful, and go to either a citator or a digest to find similar cases from the jurisdiction. This is what I call following a research trail to its end. Once the end of the trail is reached, the researcher must decide whether to start a new trail, such as looking at another treatise, or perhaps *American Law Reports* or a legal periodical or whether he or she has enough material from the first trail to begin preliminary analysis of the problem.

[31] Christina L. Kunz, *Terminating Research*, 2 Perspectives: Teaching Legal Res. & Writing 2 (1993).

[32] *See* Theodore A. Potter, *A New Twist on an Old Plot: Legal Research Is a Strategy, Not a Format*, 92 Law Libr. J. 287, 293 (2000).

[33] We all must have had at least one time or another, at least in print research, the experience of looking for what we need in one section of a book and accidentally happening upon another section that turns out to be even more useful than what we were originally trying to find.

"The objective research exam seems to me to put the cart before the horse, or perhaps more accurately, focuses on the cart and leaves the horse in the barn."

that research actually involves. In short, the objective exam is missing the tangible, physical interaction between thinking and doing that constitutes the essence of good legal research.

Having said all this, and having taken the time to review at least some of the research exams that our profession is using—and, of course, having been a lawyer for 26 years—I can see the other side. A lot of time and thought has gone into the creation of these exams. Many of the questions are excellent. Moreover, these types of questions have a purpose since learning theory tells us that knowledge acquisition is the first step to moving from novice to expert and these objective questions force students to know the basics and give them the motivation (or prod, as the case may be) to commit the basics to memory so that they can go on to higher forms of learning such as "comprehension, application, analysis, synthesis, and evaluation."[34]

The objective research exam seems to me to put the cart before the horse, or perhaps more accurately, focuses on the cart and leaves the horse in the barn. It makes the answers to questions an end in themselves and not a means to an end. These questions would seem to make an excellent in-class assignment, maybe even a game that could be played in class where students work on the questions in teams and a prize is given to the team that garners the most points. But as an end-of-the-semester evaluative mechanism, these exams miss the point. The real proof of whether we have accomplished our pedagogical goals in teaching legal research is not whether our students can answer these objective questions, but, rather, whether they can harness together "finding and thinking,"[35] or in other words whether they can get the horse out of the barn and in front of the cart.

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.

[34] Fitzgerald, *supra* n. 24, at 262.

[35] Lynch, *supra* n. 16, at 426.

The Proverbial Tree Falling in the Legal Writing Forest: Ensuring That Students Receive and Read Our Feedback on Their Final Assignments

BY EMILY ZIMMERMAN

Emily Zimmerman is a Legal Writing Instructor at the Villanova University School of Law in Villanova, Penn. During the fall semester of 2002, she will teach Legal Writing at the School of Law of the City University of Hong Kong.[1]

As legal writing professors, we spend hours of our time crafting our students' final assignments of the semester (typically, a memorandum in the first semester and an appellate brief in the second semester). Our students then spend hours of their time drafting, rewriting (we hope), and polishing these assignments—and we devote our time to helping our students understand and complete these assignments. We then spend hours reading, *critiquing*, and grading these assignments. Although our students are very interested in the final grades that their assignments receive, they are frequently less interested in our feedback on these assignments. In fact, students may not even pick up their final, graded assignments, full of our comments.

It is painfully ironic that the very assignments on which we and our students spend so much of our time are the assignments on which our students are most likely *not* to receive our feedback. For our students, failing to read our comments on their major assignments is a huge lost learning opportunity. For us, our students not reviewing our feedback on their major assignments is a huge lost teaching opportunity and a waste of all the time that we have spent writing comments. After all, we do not spend so much of our time writing comments—actively reading our students' writing and engaging in a written dialogue with the students regarding their papers—for the sheer joy of doing so. Obviously, we spend so much time commenting on our students' assignments because we believe that the students will actually read those comments and apply them to their future writing. Although individuals may debate whether an unheard tree falling in the forest still makes a sound, we know that unread comments on students' papers are as useful to our students as comments that have never been written. Therefore, what can we do to ensure that students read our comments on their final assignments?

I admit that I have harbored a not-entirely serious desire to hand out a one-item questionnaire to my students before I grade their papers. The questionnaire would ask the students whether they actually intend to read the comments that I write on their final assignments. Of course, I would assure the students that I would read and grade their papers with equal care, regardless of their answer to my questionnaire. I, however, would not spend hours writing comments on the papers of those students who had no intention of reading any of my comments.

In reality, I recognize that this questionnaire would serve neither my students nor myself. First, allowing students to opt out of receiving feedback defeats the whole purpose of providing legal analysis and writing instruction in the first place. Our role is not just to assign interesting and challenging memoranda and briefs to our students, but to provide guidance to our students with respect to the documents that they have created. Students should not be permitted to opt out of the process of learning legal analysis and writing, but rather should be given every chance to reap the benefits of this process.

Similarly, I suspect that I would be less effective in my reading and evaluation of students' writing if I was not also writing comments on that writing. Commenting on student writing makes me a more active reader. I am engaged in the text that I am reading because I have to read the text carefully to analyze its organization and content so that I can provide meaningful feedback to the students. Knowing that I have to assign a grade to a writing assignment also requires me to read actively, but writing comments as I read makes it impossible

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[1] The author is grateful to Assistant Dean Diane Edelman for her thoughtful feedback on this article.

> "The first step toward getting our students to review their papers is making sure that our students know that there is a *reason* that they should review their papers."

not to be engaged with the text, making me a more attentive reader.

My hypothetical questionnaire is, thus, not a viable option. However, I do need to review my students' work with the belief that they will actually read the feedback that I am providing on their papers. By writing comments on my students' papers, I am engaging in a dialogue, albeit on paper, with my students about their writing. The sole point of writing comments for my students is so that they can read those comments and evaluate their own analysis and writing in light of those comments. There is no point in writing comments that are never going to be read.

Moreover, if I believe that many of my students will never read my comments on their final assignments, those students who *would* review my comments will suffer. The more I think that my comments are for naught, the more likely I might be to spend less time and attention reviewing and critiquing my students' final assignments. I might consciously determine that it simply is not worth spending weeks of effort on papers that are likely never to be read, or I might subconsciously spend less time critiquing students' papers believing that, in many cases, my comments will never be read. Either way, students who are eager for feedback will receive less of it.

Thus, it is imperative to ensure that students will read the comments on their final assignments for both our students' sake and our own. All students suffer if there is a pervasive failure to retrieve and review final papers. The students who are not reading our comments lose out on valuable feedback on assignments that, we hope, they have spent a significant amount of time writing. The students who do read our comments lose out because we might not spend as much time commenting on students' papers generally, under the belief that many of the commented upon papers will go unreviewed by their writers. Finally, we suffer because we are holding back from one of our most important roles: providing feedback to our students. Because we may take for granted that our comments will be read or resign ourselves to the fact that many of our comments will not be read, it is worth confronting this issue head-on.

The Basics

The first step toward getting our students to review their papers is making sure that our students know that there is a *reason* that they should review their papers. In other words, we must tell our students that we will write comments on their papers and that these comments will help them as they continue their legal analysis and writing. In this respect, it is more likely that students will get their first-semester final assignments and review these assignments without much prompting from us. Students know that they will have additional assignments to write in the second semester of their legal analysis and writing course and, in many cases, students know that they will be graded by the same professor who graded their work first semester. Students, therefore, have an incentive to review their final first-semester assignment because it may provide them with insight as to what will be expected of them in the second semester.

It can be harder, however, to inspire students to review (or even retrieve) their final second-semester assignment. At my school, students cannot pick up their final assignment (an appellate brief) until their final grades have been released. By the time grades are released and the students can pick up their briefs, the first year of law school may seem like a distant memory to the students, who may then be deep in the throes of their first legal job and geographically distant from their law school.

Despite these difficulties, we can provide incentives for our students to care what we have written on their final assignments. First, we can lay the groundwork for students to want to get their papers back even before the papers are graded and ready to be retrieved by the students. When we introduce students to their assignments, we can explain that students frequently use their final writing assignments as writing samples, that we will give the students feedback on their final assignments, and that students can use this feedback to craft even better, more polished writing samples.[2] We can also note that even those students who have no intention of revising their

[2] Our students' writing samples should represent their own work, not our editing prowess. However, our written comments can be made with an eye toward helping students improve their own work, as opposed to retyping their own work to incorporate our changes.

assignments after receiving our feedback might, at least, want to review our feedback before deciding whether to use their assignment or portions of it as a writing sample. In addition, we can explain that while the students' final assignment is the last assignment that they will have for their legal analysis and writing course, the assignment is by no means the last analytical legal writing assignment that the students will ever have. In fact, this final assignment represents only the beginning of the ongoing process of legal analysis and writing development in which the students will engage throughout their legal careers. Explaining to our students that we consider their final writing assignment to be part of the process of their legal analysis and writing education (and not merely an end in itself) and explaining that their final writing assignment will have future practical significance in their legal career can prime our students to retrieve their final assignment and review our comments.

Once students' assignments are ready to be retrieved, we can build on the foundation that we have laid during the semester. When the students' assignments are available, I send an e-mail message to my students notifying them that they may pick up their assignments. I tell my students what materials they will be receiving: the copy of their brief with my comments, the copy of their brief with their teaching assistant's comments, and a grade sheet that tells the students their grades for the graded second-semester assignments (the appellate brief and the oral argument on that brief) and their final grade for the course. I also encourage my students to pick up their briefs, noting that I have written extensive comments on the briefs, pertaining not only to the brief assignment but also to the students' legal writing generally. I remind my students that they may use these briefs as writing samples and may want to see the comments on the briefs before doing so. Finally, I encourage the students to contact me if they have any questions regarding their briefs.

This past semester (spring 2002), within two weeks of my initial e-mail message, 22 of my 38 students had picked up their briefs or e-mailed me and requested that I mail their briefs to them.[3] In order to encourage the remaining students to retrieve their briefs, two weeks after my initial e-mail, I sent a follow-up e-mail message to the 16 students who had not yet picked up their briefs. This message told the students that their briefs were available to be retrieved and strongly encouraged the students to get their briefs and review the feedback on them. I also offered to mail the students' briefs to them if they were unable to come by school to pick them up. Sending this follow-up e-mail message reinforced the importance of the students' review of their briefs. In addition, this message made clear to the students that, although their briefs were available for them to pick up at Student Services and not my office, I knew who had picked up their briefs and who had not. Moreover, it gave the students an easier option for obtaining their briefs, while still requiring the students to take an active role in receiving them. Within less than 48 hours of sending the follow-up e-mail message, I received 10 e-mail messages from my students requesting that I mail their briefs to them.[4] In addition, following my second e-mail message, one brief was retrieved by a student who did not contact me.

I am a firm believer that having students retrieve their final assignments is more than half the battle in getting students to review the comments on their assignments and, thus, benefit from the feedback. Students have a great incentive to obtain their assignments and review our comments at the end of the semester and over the summer. The assignments are fresh in the students' minds and the students may want additional feedback as they head into their summer jobs and prepare their application packages for second-year summer jobs. We should encourage students to pick up their final assignments as soon as they are available and make sure that our students know that we are available to answer questions about their assignments.

Beyond the Basics

Even those students who retrieve their final assignments might not read or understand all of our comments. Beyond encouraging our students to read our feedback, we can pursue other options

"Once students' assignments are ready to be retrieved, we can build on the foundation that we have laid during the semester."

[3] One or two of these students stopped by my office shortly before I sent my e-mail message to ask when they could pick up their briefs.

[4] Of these 10 students, two ended up retrieving their briefs from the law school themselves.

"The simplest option is to follow up with students at the beginning of second year."

to make the feedback on our students' final assignments a more integral part of their legal analysis and writing course.

The simplest option is to follow up with students at the beginning of second year. Specifically, we can e-mail students who have not yet picked up their assignments and, again, encourage them to do so. We can also e-mail those students who have retrieved their assignments and encourage them, now that they are back at school, to see us if they have any questions regarding our comments.

A more complicated option, but one with potentially high returns, is to incorporate a one-on-one conference regarding the final assignment into the curriculum. Our first instinct might be to want to meet with our students to review their final assignments at the end of their first year of law school. However, there are practical and administrative reasons why we might not be able to read, critique, and meet with students about their final assignments at this time. In the alternative, students could be required to have a conference with their legal writing professor to discuss their final assignment at the beginning of the *second* year of law school. In fact, as discussed below, these second-year conferences might be, in some respects, more advantageous than conferences at the end of the first year.

Ideally, second-year conferences would be mandatory for all students. Of course, if we are going to require second-year conferences, the issue of how to enforce this requirement then arises. One possibility would be to make participation in the conference a requirement for receiving credit for the first-year legal analysis and writing course. In other words, students would not officially receive credit for the course until they participated in the second-year conference. This scheme would most effectively render the conferences an integral, entrenched part of the legal analysis and writing course. In reality, it might be more practicable to require second-year conferences only for students whose final assignments demonstrate significant weaknesses and to *encourage* all other students to meet with us about their final assignments.

For the second-year conferences to succeed, students must prepare for and meaningfully participate in the conferences. To this end, we should require our students to review the feedback on their final assignments prior to their conferences. Knowing that our students would review our feedback on their final assignments and that our comments would form the springboard for final conferences with our students would encourage us in our effort to write meaningful and constructive comments.

Moreover, these second-year conferences could serve a valuable function in the legal analysis and writing curriculum. The conferences would require students to review the feedback on their final assignments and would provide students with an action plan for their future legal analysis and writing endeavors. The conferences would be forward-looking sessions during which the student and professor together would identify both strengths and weaknesses in the student's legal analysis and writing and would try to formulate strategies to address the student's weaknesses. Furthermore, these second-year conferences would reinforce for students that the legal analysis and writing skills they learned in their first year of law school should be applied throughout both their law school and legal careers. In fact, having these conferences after many students would have just completed their first legal jobs over the summer could put our feedback in greater practical context for our students and enhance student interest in our comments.

These conferences would also enable students to realize how much they did indeed learn in their first-year legal analysis and writing course and how far they have come after only one year of law school. At the same time, students might be better able to review their assignments objectively and critically at the beginning of their second year than at the end of the first year, closer to the time that the students handed in their assignments.[5]

Students probably spend more time on their final legal writing assignment than on any of their other first-year assignments. We spend a

[5] To be sure, second-year conferences have their drawbacks. These conferences would take a significant amount of time at the beginning of the first semester, when we are already incredibly busy with our new first-year students. In addition, second-year conferences would impose a significant additional workload on us, for which we should be fairly compensated. However, the benefits of meeting with our students about their final assignments make it worthwhile to at least try to devise a workable mechanism to make that happen—regardless of the form this mechanism takes.

tremendous amount of time reading and providing feedback on these assignments. If our students are to benefit from our feedback, they must, at least, review our comments on their assignments. If students fail to do so, they lose out on a valuable component of their legal analysis and writing course and we have wasted hours of our time writing comments that will never be read. When no one hears a tree falling in a forest, that tree has, nonetheless, fallen. In contrast, when a student fails to read our feedback on an assignment, that feedback might as well not have ever been written. It is, thus, well worth the effort to ensure that our comments are heard.

"If our students are to benefit from our feedback, they must, at least, review our comments on their assignments."

A Tale of Two Issues: "Applying Law to Facts" Versus "Deciding What the Rule Should Be"

BY MARY DUNNEWOLD

Mary Dunnewold is a Legal Writing Instructor at Hamline University School of Law in St. Paul, Minn.

"Once you have determined what rules apply and what fact stories are available for comparison, you develop arguments on the basis of that information."

The first objective memo assigned in law school usually involves a fairly straightforward set of facts that correspond with a fairly straightforward set of rules and cases. Students are then set about the task of interpreting the existing law and applying it to the given facts. This kind of assignment introduces important basic concepts like synthesizing a legal rule from existing authority and making rule-based and analogical arguments to achieve a result.

Later assignments may, however, strike out into new territory. Instead of being asked to analyze how existing law applies to a novel set of facts, students may be asked to analyze what the law *should be* in a particular jurisdiction, either because the law is unsettled or because the legal question has never before arisen in that jurisdiction. This type of legal issue requires a slightly different approach. Students should understand the difference between these two types of legal questions before setting out into the library.

Applying Existing Law to Facts

When the legal issue presented requires an application of existing law to novel facts, a good starting point is to decide what main legal idea the issue involves. You can then focus on that main legal idea, or "phrase that pays,"[1] finding and analyzing authority that either 1) establishes what rules determine when the legal idea is satisfied and when it is not; or 2) provides factual examples of when the legal idea is satisfied and when it is not. For instance, if you are analyzing whether, under a particular fact scenario, a dog has been used as a dangerous instrument for purposes of a first-degree robbery statute, the phrase that pays is "dangerous instrument." Useful case law may contain general principles that define dangerous instrument in this context, like "a dog is used as a dangerous instrument when it is within the control of the defendant and is trained to attack." Or it may contain a helpful "fact story" like "In the *Smith* case, a defendant ordered a 100-pound Rottweiler that had attended Joe's Guard Dog Obedience School to 'sic 'em,' and the court held the dog was used as a dangerous instrument."

Once you have determined what rules apply and what fact stories are available for comparison, you develop arguments on the basis of that information. So for the dog example, one rule-based argument might be "Here, the state can argue that the defendant used his dog as a dangerous instrument because the dog was within his control and was trained to attack." An analogical argument might be "Like the dog in the *Smith* case, here the dog was a trained dog of about 100 pounds. Further, just as the defendant in the *Smith* case told his dog to 'get 'em,' here, the defendant told his dog to 'sic 'em.' Therefore, like in the *Smith* case, the court in this case will probably conclude that the dog was used as a dangerous instrument." Thus, through a developed set of criteria and through comparison to existing examples, you can draw a conclusion about whether the particular legal idea at issue is satisfied in this case.

Deciding What the Rule Should Be

An analysis of and argument about what the law *should* be, however, involve a different kind of strategy and thinking. Consider two different scenarios that may require the legal writer to define the law. First, suppose your legal issue is whether under this jurisdiction's first-degree robbery statute a dog *can be considered* a dangerous instrument. The courts in this jurisdiction have never decided the issue, so there are two possible rules the court could choose: yes, a dog can be considered a dangerous instrument, and no, a dog cannot be considered a dangerous instrument. Or second, suppose your legal issue is whether under this jurisdiction's Heart Balm statute, fault should be a factor in deciding who gets to keep the ring after an engagement is terminated.[2] Numerous courts in

[1] *See* Mary Beth Beazley, *A Practical Guide to Appellate Advocacy* 54–55 (Aspen L. & Bus. 2002).

[2] Thanks to Debby McGregor for sharing this example through a problem bank.

this jurisdiction have decided the issue, but some courts have decided yes, fault is a factor, and some have decided no, fault is not a factor. So the current court must choose which rule it will apply. These two scenarios do not require analysis of whether a particular definition is satisfied, such as was the defendant "at fault" or was the dog *actually used* as a "dangerous instrument." Rather, these issues require analysis about which is the better rule. Only after we decide which rule will apply can we move on to determine whether our facts fit the definitions the rule prescribes, the type of issue discussed earlier.

To analyze which is the better rule, we have to use a different set of analytical tools than we used for the first kind of issue. A primary tool used to determine the better rule is policy analysis. The judge adopting or applying a new rule will be concerned about whether the new rule implements sound policy. The policy driving the rule should be consistent with the policy within that particular area of the law and consistent with policy within that jurisdiction in general. For instance, if the judge must decide whether fault should be considered in determining who gets to keep the ring after an engagement termination, the judge may want to examine current policies in other areas of family law. Since other areas of family law currently reject a fault analysis in favor of a no-fault analysis (e.g., in marital termination proceedings), you could argue that to ensure consistent policy, the court should adopt the no-fault rule.

When researching a question like this, then, the researcher should look for discussion of the policy behind a particular rule and for discussion or clues about the policies implemented in this area of the law in general. Possible sources include cases from other courts that have already decided to adopt or reject a certain rule and cases from the governing jurisdiction involving related areas of law. Legislative history may also provide information about the policy intent behind a statute that must be interpreted.

In deciding which is the better rule, the legal writer may also examine what the majority of other courts have held and what the trend seems to be. For instance, if the issue is whether a dog may be considered a dangerous instrument, you may argue that all other courts that have entertained the issue have decided that a dog can be considered a dangerous instrument, so this court should too. Further, if earlier courts decided that a dog cannot be considered a dangerous instrument, but all courts in the last 20 years have decided that it can, you can argue that the court should follow the "modern trend." Also, you may base an argument on the fact that certain well-respected courts or judges or courts from neighboring jurisdictions have decided one way or the other. Research and analysis involving this kind of issue should therefore include good "mapping" of how other courts are deciding the same issue, when those decisions have been made, and what particular courts and judges have made the decision.

Finally, the legal writer deciding a "best rule" question should also be concerned about achieving the most workable and just result for the most people. Thus, the overall effect of the rule, the ease or difficulty of applying the rule, and the practical results in the case presented will all provide bases for argument.

Notice that for the most part, when thinking about what the rule should be, the facts of the particular case in front of you are *not* the main focus. Rather, the main focus is the proposed rule's shape, effect, and consistency with other rules in that area of the law. This focus differs from the analytical focus for an "apply existing rule to given facts" issue, where the concern is primarily about whether our facts fit under the umbrella of the existing rule. The straight analogical analysis that was so important to us under the "apply rule to facts" issue ("like the dog in the *Smith* case, the dog in our case was barking menacingly; therefore it was a dangerous instrument") does not work here. Rather, we have to make policy arguments and arguments about the "legal landscape" and how this rule fits into it.

Conclusion

This discussion is not intended to exhaustively examine all the kinds of analysis helpful to these two types of legal issues. But the student legal writer who sees the difference between the two types of issues and thinks carefully about how to approach each type before starting the research and analysis process will plan and work more efficiently and effectively.

"In deciding which is the better rule, the legal writer may also examine what the majority of other courts have held and what the trend seems to be."

"[P]sychologists and educators have established that law school provides the most stressful learning environment of any graduate program."

College Reunion: An Exercise That Reduces Student Anxiety and Improves Case Analysis

BY JAMES PARRY EYSTER

James Parry Eyster teaches Immigration Law and Research, Writing, and Advocacy at the Ave Maria School of Law in Ann Arbor, Mich.

Legal writing instructors can help their students overcome the stress and anxiety of the first weeks of law school by relating legal analysis to the methods of inquiry students learned in their college majors. This article presents the need for such an activity, the method used, and examples of actual student responses, and concludes with a justification for celebrating the diversity of academic experience in law.

Current scholarship on pedagogy insists that real learning can only take place in a "mindful" environment, in which students are able to make the material meaningful to themselves by linking new information and concepts to those that they already know about.[1] In contrast to requiring rote memorization and teaching subject matter in isolation from other topics, the teacher should seek to show students how the subject matter is similar to and different from the concepts and data with which students are already familiar.

Unfortunately, law school provides students with little that is familiar. The gulf between the subjects taught in law school and those taught to undergraduate students, regardless of their major concentration, may likely serve as the cause for the high levels of stress reported by law students. In fact, psychologists and educators have established that law school provides the most stressful learning environment of any graduate program.[2] In addition to the novelty of the subject matter (most incoming students define a tort as a rich layer cake) and the Socratic method of instruction, the specialized techniques of legal research, writing, and advocacy contribute to the students' sense of disconnectedness and despair, especially in their first year of law school.

The high levels of anxiety may create fear and shatter confidence, further decreasing a student's ability to learn.[3] James B. Levy has gravely opined that such stress results in "an atmosphere in which no meaningful learning can take place."[4]

Noting my own students' uneasiness as we entered our third week of classes, I looked for a way to reduce their sense of anxiety. We were learning the basics of case analysis by examining Florida appellate decisions that depicted the evolution of intentional infliction of emotional distress (IIED) as an independent tort. The students' pinched brows and strained voices insinuated that I was intentionally inflicting emotional distress on them. Some sort of palliative was needed to revive the students' self-confidence.

I therefore created a take-home assignment that I named "College Reunion," asking students to reanalyze the same cases, using the methodologies they had mastered as undergraduates in their chosen college majors. Each student presented his or her explication with a degree of self-assurance and joy that was quite distinct from earlier in-class participation. An unexpected benefit of this assignment was that the students uncovered legally valuable insights. In addition, most of them evidenced a far closer reading and appreciation of the facts than they had previously shown when they had limited themselves to (what they considered) the legal analysis of the case. Finally, most of the students genuinely enjoyed the chance to exhibit their expertise and mastery, not only to the other students and to me, but also to themselves. The exercise reminded them that three months earlier, as graduating seniors, they had exemplified high standards of academic excellence. It also provided them with reassurance that they could likely master the legal process as well. This assignment was so successful that I encourage all legal writing teachers to use it.

To provide a sense of the range and beauty of the responses, and to better enable other teachers

[1] *See generally*, Ellen J. Langer, *The Power of Mindful Learning* (Addison Wesley 1998).

[2] Stephen B. Shanfield and Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. Legal Educ. 65, 69 (1985).

[3] Robert S. Redmount, *A Conceptual View of the Legal Process*, 24 J. Legal Educ. 129, 150 (1972).

[4] James B. Levy, *Legal Research and Writing Pedagogy*, 8 Perspectives: Teaching Legal Res. & Writing 103, 107 (2000); *reprinted in* Best of Perspectives 39, 43 (2001).

to create their own assignments, I present the following examples from my own classes. The first example presents how a student's nonlegal expertise revealed the dangers of a narrow legal reading. A psychology major analyzed an IIED case that centered on whether a defendant insurance agent's conduct was outrageous when she attempted to persuade a brain-damaged beneficiary to waive his rights to payments. The student noted that no evidence of severe emotional distress had been introduced. The plaintiff also claimed to have preexisting psychiatric problems, mental problems, and mental injuries. Remarking skeptically on the likelihood of words alone causing emotional distress to someone who is severely brain damaged, the student recommended that psychological tests and batteries should be used to analyze the plaintiff's current mental status and such tests should be compared to a previous evaluation to establish whether further mental stress appeared. The student commented, "A correlational analysis of these new psychoses with elements associated with the situation surrounding the case may further solidify or weaken charges alleged." Absent substantive differences, the student questioned the merit of the plaintiff's case.

Another student, a political science major, provided useful thoughts about the social burdens that may have been at the root of the same controversy. On one hand, he saw an insurance industry that felt within its rights to manipulate and injure the same people that it was being asked to protect. Such an attitude may have been prompted by the burden that competition placed on insurance companies, encouraging them to deny liability whenever possible. The student hoped that the courts finding against the insurance company in the case being studied would "send a signal to our insurance industry concerning potential uses of the system that our present society will not accept." The student enlarged his analysis to an even more abstract level proclaiming that it is our nation's duty to protect the weak from bullies: protecting individuals from corporate aggressors.

An electrical engineering student who had been previously silent in class delighted and surprised us with detailed schematic diagrams of the same case, showing the decedent's health as an electric generator, her illness as an inductive coil, and the various actions of the insurance company as resistors of differing ohms. The student showed in a very intense way that certain choices made by the insurance company would obviously reduce and interrupt the decedent's life force. The graphic nature of the presentation weakened the strength of the insurance company's claim and the court's holding that contractual language protected the insurance company from liability.

Instead of speculating on underlying abstract policy considerations, an English major studied the sentence construction of an early Florida case that involved IIED. The long tortuous sentences reminded him of the long, convoluted, and sometimes ungrammatical sentences of another Southern writer, William Faulkner. Whether the judge's style was due to careless or thoughtful deliberation was not clear. Perhaps, like Faulkner, the judge was using the "stream-of-consciousness" device to give the reader direct access to the full contents of the judge's thoughts, even if these thoughts were inharmonious and vague. The student wondered whether Northern judges would write with more clarity and precision and whether decisions and jurisprudence in general might vary between the North and South due to differences in syntactic preferences.

Because Ave Maria is a Catholic law school, it attracts students with a strong education in theology, religion, and moral philosophy. In discussing a Florida court's first encounter with IIED, several students noticed the theological implications of the state's recognition of IIED as an independent cause of action. One student commented that accepting IIED as an independent tort reveals society's view that "(1) money can compensate for emotional suffering, and (2) such compensation is just." This exemplifies, she stated, the current American view that the payment of money can atone for evil actions and that society should have the ability and the right to alleviate suffering. The student pondered how this cultural shift from a view that suffering is the natural result of Adam's sin to the position that money can and should mitigate suffering has influenced the holdings in other types of cases.

Another saw the central element of IIED—whether a reasonable person would be outraged by the conduct—as a radical shift away from the Catholic definition of the nature of personhood.

"Instead of speculating on underlying abstract policy considerations, an English major studied the sentence construction of an early Florida case that involved [intentional infliction of emotional distress]."

"Thus, in expressing their own opinions based on their special areas of expertise, the students illustrated some of the viewpoints that have captured the attention of legal scholars."

While a moral view might indicate that all individuals are entitled to respect as they are made in the image and likeness of God, modernistic views that spring from the empiricism of the Enlightenment offer no firm rule, but rather ask courts and juries to judge conduct on the basis of their own emotional responses to the facts of the complained-of action.

As the reader may have noticed, some of the students' analyses resemble accepted methods of legal analysis. For example, one political science major adopted a Marxist perspective, commenting that protecting an insurance company from IIED liability betrayed the legal system's favor for the capitalist mode of production, exposing the uneven power relationships between capitalists and the proletariat in a capitalist society. This mirrors the cynicism of "critical legal studies" proponents, who believe that the logic and structure of the law are primarily derived from societal power relationships, and not from independent legal principles.

Similarly, an economics graduate unknowingly argued a "law and economics" view in finding that the courts decreased the economic efficiency of justice by establishing IIED as an independent tort. A finding of IIED is so subjective that its determination requires exhaustive analysis of the facts. In addition, because the outcome of IIED cases is so uncertain, lawyers have little ability to determine the merits of a case, increasing the amount of litigation. However, the student noted, a final determination would require analyzing the cost of increased court caseloads against the benefits of increased justice.

Thus, in expressing their own opinions based on their special areas of expertise, the students illustrated some of the viewpoints that have captured the attention of legal scholars. While I did not speak to my students of these divergent theories of jurisprudence, the very breadth of analysis enriched the class's understanding of the legal context of the cases studied.

The entire class regarded this exercise as a great success. It generated rich class discussion, promoted deeper reading of the cases, and made it easier for students to learn about case analysis by linking new information to knowledge previously acquired. Most importantly, the exercise gave each of the students the opportunity to stand out as an expert, presenting his or her sophisticated views to classmates with assurance and pride.

Some law professors may be hostile to an exercise that maintains a student's self-esteem and reduces stress. Traditionally, the first year of law school has been seen by some as a "boot camp" that seeks to destroy a student's former self and then rebuild the individual as a lawyer. However, to be successful, a lawyer cannot restrict himself or herself to narrow stereotypes of an attorney. Even in television depictions, lawyers are shown in all shapes, sizes, and stripes. The successful lawyer is one who incorporates a legal perspective into his or her preexisting persona.[5] One way to teach students to draw on their unique gifts is to encourage them to integrate their prior experiences into their legal studies through exercises like "College Reunion."

[5] "For the lawyer must engage his work with his whole self to give the world the benefit of his moral sensibility and to receive from the world all that the world has to teach about the complexities of right and wrong." Robert P. Burns, book review of *From Expectation to Experience* by James Boyd White, 50 J. Legal Educ. 147, 151 (2000).

BETTY BOOP GOES TO LAW SCHOOL

BY JUDY GIERS

Judy Giers is a Legal Writing Instructor at the University of Oregon School of Law in Eugene.

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.

I left 10 years of law practice to teach legal research and writing to first-year law students. I expected my career change to produce at least three things: more time for my family; a huge pay cut; and a fun work environment. My first and second expectations were satisfied immediately upon my entry into academia. My third expectation was partially satisfied before classes began (my colleagues are a fun bunch), but I worried about classes. As a recovering litigator, it was not the performance nature of the classroom setting that had me worried, it was the legendary uptightness of first-year law students. I did not want to spend even four hours a week in a room full of uptight, anxious people (been there, done that). I needed an icebreaker—but given the packed nature of my syllabus, it had to be a working icebreaker. Here's what I came up with—it's a role-playing exercise that gets the students out of their chairs, working in small groups, doing silly things that everyone can laugh at *and* it teaches element-by-element analysis. We act out three vignettes. Here is the script for one of them:

Betty Boop Goes for a Drive

Cast members:

Betty Boop—the driver
Joey Webb—8-year-old boy
Techie—to roll out the ball and return all props to backstage for use by the next group (Props: ball, phone for Betty, ball cap for Joey)
Narrator—to narrate (read this script) as events unfold

Scene: Betty Boop is driving through a residential neighborhood at the posted speed limit of 25 mph. She is not paying close attention to her driving; she is humming along to the radio and putting on her lipstick using her rearview mirror. While she is thus distracted, a child's ball rolls out from between two parked cars on the right side of the street. Betty doesn't see the ball. A few seconds later, Joey Webb, age 8, dashes out to retrieve the ball. Betty is unable to stop and collides, in a glancing blow, with Joey's arm. Joey falls down, clutching his arm and yelling (not too loudly, please). Betty stops her car, rushes out to help, and realizes Joey's arm is hurt (turns out to be a hairline fracture). Betty calls an ambulance using her car phone.

End of Scene (Wild Applause)

This exercise requires some advance setup so I use it for the third class of the year. My first couple of classes are, I suspect, pretty typical legal research and writing (LR&W) fare. In the first class, I introduce the course, talk about what a case is and show how to brief one. I assign *Hodge v. Lanzar Sound, Inc.*, 966 P.2d 92 (Kan. 1998), (any failure-to-keep-a-proper-lookout case will do) and tell the students to bring a brief of that case to the next class. In the second class, we talk about the *Hodge* case. We work through the facts, the procedural posture, the rationale, and the holding. We pay particularly close attention to the duty in the case—the duty to maintain a proper lookout while driving. I assign no homework.

Since there is no homework assignment, the students arrive at the third class not knowing what to expect. The front desks are pushed back to create a "stage" area, and I have a box of props on my desk. There are two rolling chairs on the stage. Once the students have settled in, I tell them I am going out on an educational limb and they are

"I needed an icebreaker—but given the packed nature of my syllabus, it had to be a working icebreaker."

"The vignettes get progressively more complex."

coming with me. I explain that we are going to act out, argue, and decide three failure-to-keep-a-proper-lookout cases. I ask for (and usually get) 15 volunteer actors, three plaintiff's lawyers, three defense lawyers, and a bunch of jurors (this works well with my class size of 25). I divide my volunteer actors into casts for the three vignettes, hand them their scripts and props, and send them out into the hallway with instructions to read the script, decide who will play each role, and rehearse.

Then, with my lawyers and jurors still in the classroom, we write the four elements of a negligence claim on the whiteboard and identify the breach of duty as failure to keep a proper lookout. I very quickly explain what they need to know about causation and damages. I explain to the plaintiff's lawyers that each of them will represent the injured child (Joey Webb) and that their job will be to explain to the jury in two minutes or less why the facts as acted out satisfy each element of a negligence claim for failure to keep a proper lookout. I explain to the defense lawyers that they represent the driver in each case and that their job is to convince the jury that at least one element of the claim is missing. I explain to the jurors that their job will be to decide each case based upon the facts as presented in the vignette and the arguments of the lawyers.

Then the fun really begins. I go collect my actors and answer any questions they may have.

They all come into the classroom and the first group (the Betty Boop cast) acts out the vignette above. The students really go to town with this! There is much laughter, some confusion, and outrageous overacting! When the scene ends, I (acting as the judge) call the court to order and plaintiff's counsel presents his or her case, defense counsel presents his or her case, and I submit the case to the jury. The jury deliberates for a minute or two, announces its verdict (to great cheers and boos and hissing), and we move on to the next vignette.

The vignettes get progressively more complex. In the second vignette, the driver, Judge Upright, is not paying close attention but, since Joey dashes out from between parked cars immediately in front of the driver, there is some question as to whether the breach of duty caused the damage. The passenger, Sister Mary Margaret, exclaims that there was no way the judge could have avoided Joey. In the third vignette, the driver, Carla Careful (a law student), is paying close attention, but Joey drops out of a tree above her. Carla's only warning is Joey's friends on the sidewalk gesturing up at the tree and singing the Spiderman song (a great opportunity for overacting). I have been very impressed with how well the students argue these no-breach-of-duty and lack-of-proximate-cause issues.

By the time we get through the third vignette, things are pretty relaxed. The students are laughing, I'm laughing, and we've all forgotten that law school is a high-stress, scary business. I call the class to order (a relaxed order, I admit) and we talk about what we just did. Even if they didn't get it at the beginning, by this time the students understand what it means to look at a fact scenario element by element, to argue it element by element to a jury, and to decide it based upon the presence or absence of each element.

I have used this exercise with four first-year classes so far, and it has been a big hit each year. It really helps to break the ice and get students to take chances in class. The opportunity to work with each other on something silly and completely ungraded builds a real esprit de corps that helps my LR&W students to work cooperatively with each other for the rest of the year. And, it's fun.

SEARCHING CASE DIGESTS IN PRINT OR ONLINE: HOW TO FIND THE "THINKABLE THOUGHTS"

BY SCOTT MATHESON

Scott Matheson is Reference Librarian at the Lillian Goldman Law Library, Yale Law School, New Haven, Conn.

This article outlines how to use digests in print and online to find case law on a specific topic. The West Key Number System®, sometimes called the "universe of thinkable thoughts," is the foundation of U.S. case law digests. The system organizes legal concepts into broad groups, then into smaller and smaller parts and subparts. What follows is a basic guide to effective use of this powerful system, whether searching in print or online.

Many books have an index. Statutory sets have an index. Sometimes law students ask where the index to West's National Reporter System® is. They are seldom amused (or enlightened) when I point to the wall of the reading room filled with the *Decennial Digest*. Often by the time they ask for an "index," they have already tried searching for a relevant case in an online database with no success. The student's question raises the question for me of when to refer students to the print digests and when to suggest that they search the headnote field in cases on Westlaw®.

Regardless of where I suggest the student end up searching, I usually pull down *West's Analysis of American Law*[1], a handy publication that presents the entire digest system in one volume. I explain to the researcher that this is the outline of the index—a sort of list of broad legal concepts each broken down into more discrete topics.

This allows students several options. If they have already found one case that they believe is on-point, then I suggest picking a favorite headnote or two and browsing around the *Analysis* to see if an adjacent key number might be more on point. Students seem to find the posting notes (brief explanations included for some numbers) particularly helpful.

If the researcher has not found a case that seems helpful at all and only has a vague notion of the issue he or she is looking for, the *Analysis* is useful in conjunction with the Descriptive-Word Index from the latest digest. The Index is helpful for translating ideas like "will" or "inheritance" in digest topics like "Dower and Curtesy" (topic 136) or "Descent and Distribution" (topic 124). Once a concept has been translated into a digest heading, perusing the *Analysis* allows the researchers to easily narrow down just the right topic and key number. For example, a case about the inheritance rights of a surviving wife might be assigned the topic and key number Descent and Distribution k 52(2).[2] Once students have picked a key number they think is just right, I suggest that they read the first case they find that has been assigned that number to make sure the key number is the correct one for their issue.

When the student is coming from an annotated code, looking for a case that has analyzed a concept discussed in the statute, he or she may already have a key number suggested by the annotation in the statute. Alternatively, he or she may have a case that seems on point. Consulting the headnotes in the case should yield a useful key number. Again, scanning the *Analysis* at this point can reassure the researcher that he or she has the correct key number.

Regardless of how the student finds the key number, a few moments spent with the *Analysis* can save a lot of time in the long run. This is especially clear to students when I explain how to use the print digest system—they want to search for as few key numbers as possible to get their "perfect case." One library I have used thought the *Analysis* was so useful that it placed copies with the *Decennial Digest* and the state digest, and at the reference desk.

Once the student has decided on a few key numbers that describe the concept or issue he or she is researching, the student is left with a pure

"Regardless of how the student finds the key number, a few moments spent with the *Analysis* can save a lot of time in the long run."

[1] *West's Analysis of American Law* (2002 ed.)

[2] It is important to understand how key numbers are expressed in print: Descent and Distribution k 52(2) and how they are expressed in Westlaw: 124k52(2). The words *Descent and Distribution* are replaced with the equivalent topic number in the online world. The *Analysis* provides a numbered list of topic and key numbers in the front of the book.

"The question of whether to turn to the print digest or an online digest service is important today, especially in an educational setting."

bibliographic question; that is, whether to use the print digest system or to search for the key number in an online database. This is where the reference librarian can really show off the elegance of the digest system. It also allows the construction of an incredibly precise online search. Which route to choose is influenced by many factors; I'll outline a few that I usually go over with student researchers when we get to this fork in the road.

Price: For students, price is usually a moot point as they don't directly pay for either the costs of the print digests or the costs of their online research. It is always something I encourage them to consider: if they have the option, they should weigh the greater time investment for using the print version against the greater cash investment for using the online version.

Display: Some researchers (myself included) prefer the format of the print digests to the on-screen display, even though it means that they may spend a few more minutes searching for their key numbers. The print display lets the researcher easily browse the adjacent key numbers; this is more difficult in the online environment.

Scope: A state-specific digest or the federal digest, if available, can be a great time-saver for some types of questions. For others, the *Decennial Digest* is the only way to get the scope needed. Online, state-specific (or jurisdiction-specific) digest searches are available, but so are subject-specific digest searches. Researchers can search for their key numbers in subject databases, e.g., only tax cases or only labor cases. This is helpful when searching for a key number that describes a subject-specific concept. Sometimes this is not helpful, for example when searching for a key number that describes a procedural issue that could crop up in any type of case.

Speed: Speed depends on how many key numbers are involved, the jurisdictions involved, and the desired results. If the researcher only wants the two or three most recent state cases with a specific key number, it might actually be faster to find the cases in the state digest. Most experienced researchers can pull the appropriate volume and check a key number (or a range of key numbers) before they can start a computer, let alone log in, select a database, and enter a search. Conversely, if a 50-state survey of the entire 20th century through the present is the researcher's goal, searching for the key numbers online will save countless hours of research, note-taking, and photocopying.

Currentness: Updating cases, of course, is always best done online; similarly, an online search will reveal the most recent cases with a given key number long before they can be printed and delivered in advance sheets. That said, this factor is not always decisive. A properly updated print digest search—working through the *Decennial Digest* and the *General Digest* to the newest bound reporters and advance sheets (with their "back of the book" digests)—can also be fairly comprehensive, if a bit tedious.

Availability: Some researchers may not have access to the print digests, while others may not have access to an online research service. Additionally, a number of factors affect the availability of online services. As reliable as many services are, a power or phone outage could cut off access to an online service. Conversely, another student may have the required print digest volume off the shelf.

Assignment: Sometimes a professor (or supervising attorney) may require a student to work in one format or the other. Most research can be done either in print or online, as long as students understand the difference in the methods. These differences in the mechanics of finding cases with a given key number are important, but are secondary to the importance of understanding the system that makes the search possible. Explaining the system to students and showing them the *Analysis* is a big part of making sure they understand the system they are using—whether in print or online.

The question of whether to turn to the print digest or an online digest service is important today, especially in an educational setting. But, as more firms do away with bulky print digests, and as new lawyers are more and more pressed for time, this consideration will become less important. What will (hopefully) remain important is the researcher's ability to understand and use the underlying index—the West Key Number System—and to use it effectively, in print or online.

"HOWEVER" IS NOT A FANBOYS

BY MARTHA FAULK

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

"However" is usually the most contentious word discussed in the Legal Writing seminars I conduct. It's surprising, isn't it, that a rather simple little adverb—specifically, a conjunctive adverb—is cause for so much disagreement among legal writers? This sometimes very heated disagreement concerns the placement of "however" in a sentence and the proper punctuation for its use. Although "however" is not an essential legal word, it would be hard to imagine legal writing without it. In this column, we'll explore the grammatical context for the word and also suggest that you may use the word wherever and however you like in a sentence.

We begin our search for guidance in the dictionary. According to the most recent edition of *The American Heritage Dictionary*, "however" as an adverb has the following meanings: "1. In whatever manner or way. 2. To whatever degree or extent. 3. In spite of that; nevertheless. 4. On the other hand; by contrast." When "however" is used as a conjunction, it means "In whatever manner or way."[1] The meaning will be determined by the context in which it appears.

Although "however" is not a term of art, that is, a specialized legal word, legal writers would be hard-pressed to write without it. It is especially useful as a synonym for "in spite of that," or "nevertheless." Since legal reasoning necessarily requires analysis of the contrary or opposing position, "however" provides a signal to the reader that the writer is about to consider a contradictory or qualifying idea by using a transitional meaning such as "on the other hand; by contrast." Without "however," legal writers would have fewer transitional words with which to signal a change in direction to the reader.

[1] *The American Heritage Dictionary* 413 (4th ed. 2001).

FANBOYS Explained

So, why all the fuss about this little word? To answer that question, we'll first consider the grammatical classification of "however." As our rather cryptic title suggests, "however" is *not* a FANBOYS. Although some secondary school teachers suggest this acronym as a mnemonic device for their students, many legal writers may not be familiar with it.

This handy little acronym represents the seven most common coordinating conjunctions. They are *For*, *And*, *Nor*, *But*, *Or*, *Yet*, and sometimes *So*.[2] Coordinating conjunctions—FANBOYS—are grammatically empowered to join together two independent clauses into a compound sentence with only a comma preceding the conjunction. That empowerment comes about because the FANBOYS words bring together similar grammatical units called independent clauses, also defined as complete thoughts that stand on their own.

Example: The lawyer researched the case, *but* she was unable to find any useful information.

Commas Before Coordinating Conjunctions

The comma before the coordinating conjunction "but" appropriately signals the reader that two independent clauses are combined into one compound sentence. Now, if we substitute "however," the conjunctive adverb, for the FANBOYS word "but" in this example, then we must change the punctuation because "however" is not a FANBOYS.[3] Since "however" is not classified as a coordinating conjunction—remember, it's a *conjunctive adverb*—it must be preceded by a stronger punctuation mark than a comma, usually a semicolon.

Example: The lawyer researched the case; *however*, she was unable to find any useful information.

Even on those rare occasions when "however" functions as a conjunction (meaning "in whatever manner or way"), it still does not fall into the category of a *coordinating conjunction*, a

[2] Martha Faulk & Irving Mehler, *The Elements of Legal Writing* 57 (1994).

[3] *Merriam-Webster's Guide to Punctuation and Style* 58 (1995).

> "Without 'however,' legal writers would have fewer transitional words with which to signal a change in direction to the reader."

"In the past, many writers were advised against placing 'however' at the beginning of a sentence."

FANBOYS able to link together independent clauses. In the example below, "however" functions as an ordinary conjunction meaning "in whatever manner or way."

Example: You may organize your argument *however* you choose.

In the above example, "however," because of its meaning in the sentence, doesn't require any punctuation at all because the sentence is not a compound sentence. As our examples illustrate, "however" may be used as a conjunctive adverb or as an ordinary conjunction, but it is never classified as a coordinating conjunction, a FANBOYS, because it lacks the grammatical power to coordinate two independent clauses. Thus, it's easy to see that writers may be confused about the classification of "however" and argue about where it belongs and how it affects punctuation.

Conjunctive Adverb Cousins

Let's place "however" where it belongs—with its cousins, other conjunctive adverbs. According to Karen Elizabeth Gordon's unique and interesting grammar handbook, *The Deluxe Transitive Vampire*, here are some additional examples of conjunctive adverbs: *accordingly, afterwards, also, besides, consequently, earlier, furthermore, hence, however, indeed, later, likewise, moreover, nevertheless, nonetheless, otherwise, similarly, still, then, therefore,* and *thus*.[4]

You'll recognize these words as useful tools in any lawyer's lexicon. They lead the reader through the text by providing transitional signals about chronology (earlier, later), shifts in direction (however), and also logical clues (accordingly, therefore). As you consider using these connective words, perhaps you hesitate about their placement because you've heard that there are grammatical "rules" prohibiting their use at the beginning of a sentence.

Proper Placement

In the past, many writers were advised against placing "however" at the beginning of a sentence. Strunk and White recommend against "starting a sentence with *however* when the meaning is 'nevertheless.'"[5] Unfortunately, they do not explain why the starting position is offensive. Terri LeClercq in *Expert Legal Writing* suggests that it may be because Professor Strunk disliked the sound of the word.[6]

William Zinsser, whose excellent guide to writing nonfiction has influenced many undergraduates, says, "Don't start a sentence with 'however'—it hangs there like a wet dishrag."[7] Such a discouraging image has no doubt influenced many lawyers and other writers as well. Yet, in an apparent contradiction, Zinsser also gives this advice about words he labels as "mood changers": "Learn to alert the reader as early as possible in a sentence to any change in mood from the previous sentence. At least a dozen words will do this job for you: 'but', 'yet', 'however', 'nevertheless' ... ."[8] Zinsser does not explain why "however" is the only disparaged word in the list. Perhaps, like Strunk, he dislikes the sound of the word.

Free "However"!

Since the advice of Zinsser and Strunk and White seems idiosyncratic and inconsistent, why not give "however" the freedom to do its job as a signal or mood-changing word in the best place possible? Modern commentators agree that "however" should be placed where it most effectively emphasizes the words the writer wants to emphasize.[9] *Webster's Dictionary of English Usage* asserts that "there is no absolute rule for the placement of however; each writer must decide each instance on its own merits, and place the word where it best accomplishes its purpose."[10]

However you decide to use "however," remember that it's not classified as a FANBOYS and must have a semicolon in front of it when it connects two independent clauses. If, however, you wish to place the word at the beginning of your sentence over someone else's objection, you may be assured that you have modern authority on your side.

[4] Karen Elizabeth Gordon, *The Deluxe Transitive Vampire* 28 (1993).

[5] William Strunk Jr. & E.B. White, *The Elements of Style* 48 (3d ed. 1979).

[6] Terri LeClercq, *Guide to Legal Writing Style* 179 (1995).

[7] William Zinsser, *On Writing Well* 107 (2d ed. 1980).

[8] *Id.* at 106.

[9] *Webster's Dictionary of English Usage* 515 (1989).

[10] *Id.* at 515.

LEGAL RESEARCH AND WRITING RESOURCES: RECENT PUBLICATIONS

COMPILED BY DONALD J. DUNN

Donald J. Dunn is Associate Dean for Library and Information Resources and Professor of Law at Western New England College in Springfield, Mass. He is a member of the Perspectives *Editorial Board.* *This bibliography includes references to books, articles, bibliographies, and research guides that could potentially prove useful to both instructors and students and includes sources noted since the previous issue of* Perspectives.

Andrew H. Baida, *Writing a Better Brief: The Civil Appeals Style Manual of the Office of the Maryland Attorney General*, 3 J. App. Prac. & Process 685 (2001).

A review of this special style manual "created for the purpose of improving and standardizing the hundreds of civil appellate briefs that the Office files each year in state and federal courts." *Id*. at 686.

Carol M. Bast & Margie A. Hawkins, *Foundations of Legal Research and Writing*, 2d ed., 2002 [New York: West Legal Studies, 550 p.]

Designed primarily for use in vocational, two-year, four-year, and graduate paralegal programs. Includes cyberlaw exercises, sample documents, and illustrations.

Joshua Bauchner & Rekha Ramani, *International Regulatory Devices: Legal Research Guides to the EU Data Protection Directive and the Convention on Biological Diversity*, 2001 [Buffalo: NY: William S. Hein & Co., Inc., 46 p.]

Two bibliographies that provide the starting points for those doing research on either the European Union Data Protection Directive or the Convention on Biological Diversity.

Robert C. Berring & Elizabeth Edinger, *Legal Research Survival Manual*, 2002 [St. Paul, MN: West Group, approx. 100 p.]

A basic introduction to legal information and legal research designed to help first-year law students easily work their way through the complexities of basic legal research. Written in an informal style.

Lackland H. Bloom Jr., *Bad Consequences*, 55 SMU L. Rev. 69 (2002).

Points out that advocacy should often focus on the "bad consequences" that might follow if a particular course of action is not pursued. Focuses on constitutional law cases.

Barbara P. Blumenfeld, *Integrating Indian Law into a First Year Legal Writing Course*, 37 Tulsa L. Rev. 503 (2001).

Discusses the reasons the author (director, Legal Research and Writing, University of New Mexico School of Law) incorporates Indian law into her first-year legal writing course.

Charles R. Calleros, *Legal Method and Writing*, 4th ed., 2002 [New York, NY: Aspen Law & Business, 600 p.]

Provides an extensive introduction to legal analysis and addresses different types of legal writing, e.g., law school, law offices, advocacy, appellate briefs, pretrial advocacy, and writing to parties. Includes a *Teacher's Manual*.

Henry Saint Dahl, *Dahl's Law Dictionary Dictionnaire Juridique Dahl Français–Anglais/French–English*, 2d ed., 2001 [Buffalo, NY: William S. Hein & Co., Inc., 675 p.]

An annotated legal dictionary that provides words and phrases in English with the correct French translation and French with the correct English equivalent. Indicates the sources of each definition provided.

Diane Penneys Edelman, *It Began at Brooklyn: Expanding Boundaries for First-Year Law Students by Internationalizing the Legal Writing Curriculum*, 27 Brook. J. Int'l L. 415 (2002).

Describes "the fundamental concepts that must be taught in an international law moot court course… ." Offers "suggestions for integrating international law into the first semester legal writing program as well." *Id*. at 418.

Florida State University Law Review Staff, *Florida Style Manual, 5th ed.*, 29 Fla. St. U. L. Rev. 1139 (2002).

The latest manual for use by practitioners and scholars who must reference Florida-specific materials.

Michael Fontham et al., *Persuasive Written and Oral Advocacy: In Trial and Appellate Courts*, 2002 [New York, NY: Aspen Law & Business, approx. 350 p.]

Provides detailed coverage of appellate practice as well as trial-court motions practice. Covers the processes of writing, editing, and presenting effective written arguments, and also preparing and delivering persuasive oral arguments.

Bryan A. Garner, *Legal Writing in Plain English: A Text with Exercises*, 2002 [Chicago, IL: University of Chicago Press, 399 p.]

Offers sound advice and practical, proven techniques for improving all kinds of legal documents. Each of the 50 sections includes basic, intermediate, and advanced exercises. Includes an appendix on "How to Punctuate." A very useful source.

Bryan A. Garner, *The Redbook: A Manual on Legal Style*, 2002 [St. Paul, MN: West Group, 399 p.]

A comprehensive guide to the essential rules of legal writing by one of the leading experts in the field. Answers a wide array of questions about grammar and style, with detailed, authoritative advice on punctuation, capitalization, spelling, footnotes, and citations.

Suzanne Elizabeth Gordon & Sherifa Elkhadem, *The Law Workbook: Developing Skills for Legal Research and Writing*, 2001 [Toronto, Ontario: Edmond Montgomery Publications, Ltd., 385 p.]

A part of the publisher's "Working with the Law" series. Deals with the law in Canada.

Crystal Hackett, *Bibliography of Harry Bitner*, 94 Law Libr. J. 206 (2002).

A listing of books, articles, book reviews, student case notes, panel discussions, and unpublished papers of this major leader in the area of legal research. Accompanies various tributes to this individual.

Rhea P. Hamilton, *A Guide to Researching the Caribbean Court of Justice*, 27 Brook. J. Int'l L. 531 (2002).

"[O]utlines sources and techniques that are useful in researching the development of the Caribbean Court of Justice ('CCJ')." This guide also discusses research materials regarding Caribbean legal systems.

Penelope Hazelton et al., *Washington Legal Researcher's Deskbook*, 3d ed., 2002 [Seattle, WA: Marian Gould Gallagher Law Library, 300 p.]

Provides an expanded discussion of the sources one would need to use in researching Washington state law and law-related sources. Has increased emphasis on Web sites.

Paul D. Healey, *Pro Se Users, Reference Liability, and the Unauthorized Practice of Law: Twenty-Five Selected Readings*, 94 Law Libr. J. 133 (2002).

An annotated listing of 25 sources one interested in the topics would want to consult. Arranged by category.

Ann Hemmens, *Advanced Legal Research Courses: A Survey of ABA-Accredited Law Schools*, 94 Law Libr. J. 209 (2002).

Based on information gained from a survey of ABA-accredited law schools regarding advance legal research course offerings. "[A]nalyzes whether the number of such courses has increased in recent years and whether there is uniformity in course structure and methodology. Variations based on the size of the student body, the number of professional librarians, and law school ranking are addressed." *Id*.

Peter A. Hook, *Creating an Online Tutorial and Pathfinder*, 94 Law Libr. J. 243 (2002).

> "[E]xplores the educational potential of Web-based tutorials and pathfinders. ... [D]iscusses how the multimedia environment can effectively reach a broad range of learner types, explaining how the disciplines of information architecture and information visualization can contribute to designing a successful tutorial and pathfinder." *Id*. Includes a bibliography of sources.

Christine Hurt, *Network Effects and Legal Citation: How Antitrust Theory Predicts Who Will Build a Better Bluebook Mousetrap in the Age of Electronic Mice*, 87 Iowa L. Rev. 1257 (2002).

> Explains how *The Bluebook* became the dominant product in the legal citation industry and how and why the *Maroonbook* failed, and discusses how the *ALWD Citation Manual* has emerged as a major source that has the potential to supplant *The Bluebook*.

Institute for Justice and Reconciliation, *Truth Commissions and Transitional Justice: A Select Bibliography on the South African Truth and Reconciliation Commission Debate*, 16 J. L. & Relig. 69 (2001).

> Arranged in eight sections—primary documents; the context, work, and findings of the Truth and Reconciliation Commission; comparative Truth Commission processes and transitional justice; international law and the International Criminal Court; history, memory, and healing; civil, political, and economic issues; ethical, philosophical, and theological concerns; and Web site and Internet sources.

Diana C. Jaque & Lee Neugebauer comps., *Legal Reference Books Review*, 94 Law Libr. J. 101; 94 Law Libr. J. 315 (2002).

> Succinct reviews contained in two issues of this journal of 22 legal reference books published in 2001.

Kathleen M. Johnson, *The Case of General Augusto Pinochet: A Legal Research Guide*, 27 Brook. J. Int'l L. 519 (2002).

> "[P]rovides a research framework for students, scholars and professors of law who are interested in the Pinochet case." *Id*. Discusses historical and procedural background, identifies key sources, and describes useful finding tools.

Susan P. Liemer, *The Quest for Scholarship: The Legal Writing Professor's Paradox*, 80 Or. L. Rev. 1007 (2001).

> Discusses how legal writing professors find time to write and argues that legal writing professors could be much more prolific if law schools provided them with the same kind of support for scholarship that other law professors receive, e.g., a summer research grant and no teaching load.

Hazel D. Lord, *Husband And Wife: English Marriage Law from 1750: A Bibliographic Essay*, 11 S. Cal. Rev. L. & Women's Stud. 1 (2001).

> "[T]race[s] the development of statutory law from the 1753 Marriage Act to the present, examining some of the most important reference sources, including both contemporary treatises and later works which interpret these legal developments." *Id*.

William H. Manz, *Digital Performance Rights in Sound Recordings Act of 1995: A Legislative History of Public Law No. 104-39, 109 Stat. 336*, 2002 [Buffalo, NY: William S. Hein & Co., Inc., 3 vols.]

> Brings together all relevant reports and hearings, various bill versions, and excerpts from the *Congressional Record* regarding this Act. An important contribution to the field of copyright law.

William H. Manz, *Guide to State Legislative and Administrative Materials*, 2002 ed. [Buffalo, NY: William S. Hein & Co. Inc., 612 p.]

Brings together the major print and electronic sources of administrative and legislative information, including bills, codes, regulations, attorney general opinions, executive orders, ethics opinions, and administrative orders and decisions. Covers all 50 states, the District of Columbia, and U.S. commonwealths and territories.

Roy M. Mersky & Donald J. Dunn, *Fundamentals of Legal Research*, 8th ed., 2002 [New York, NY: Foundation Press, 821 p.]

A substantial revision of the leading text in the field of legal research. Includes almost 200 new illustrations, with increased emphasis on Web sites. The chapters on "Legal and General Research and Reference Aids," "Legal Citation Form," and "Electronic Legal Research" have been expanded and updated, and "Legal Systems of the United Kingdom" has replaced the former chapter on "English Legal Research." Includes a separate *Assignments* book and an *Instructor's Manual* prepared by Mary Ann Nelson of the University of Iowa Law Library.

Roy M. Mersky & Donald J. Dunn, *Legal Research Illustrated*, 8th ed., 2002 [New York, NY: Foundation Press, 543 p.]

An abridged, paperback version of *Fundamentals of Legal Research*, 8th ed. Like the parent volume, it contains almost entirely new illustrations and with substantial revision and updating of the various chapters.

David W. Miller et al., *Practicing Persuasive Written and Oral Advocacy*, 2002 [New York: Aspen Law & Business, 250 p.]

Designed to link the classroom to the courtroom. A case simulation problem that traces the steps in a federal action from the filing of a complaint and motion for temporary restraining order, through the filing of a notice of appeal from a depositive opinion and order.

Laurel Currie Oates et al., *The Legal Writing Handbook: Analysis, Research, and Writing*, 3d ed., 2002 [New York, NY: Aspen Law & Business, approx. 950 p.]

Covers all three components of the basic legal writing course, namely research, writing, and analysis.

Laurel Currie Oates & Anne Enquist, *The Legal Writing Handbook Practice Book*, 3d ed., 2002 [New York, NY: Aspen Law & Business, approx. 340 p.]

A supplement to *The Legal Writing Handbook* containing class-tested exercises and an answer key.

Joan Pedzich, *Student Dress Codes in Public Schools: A Selective Annotated Bibliography*, 94 Law Libr. J. 41 (2002).

"[C]ompiles and summarizes recent legal and educational literature on the constitutionality and viability of student dress codes in the public schools. The annotations cover the legal issues and the practical problems of drafting and enforcing dress policies that will pass the scrutiny of the courts." *Id.*

Kimberly Pruett, *Sexual Harassment in the Workplace: A Legal Research Guide*, 2001 [Buffalo, NY: William S. Hein & Co., Inc., 28 p.]

Covers the sources needed to research this topic. Lists major primary and secondary authorities, combining leading cases and articles with a research strategy designed to serve as a starting point for exploring the topic in depth.

Bernard D. Reams Jr., *Law of E-SIGN: A Legislative History of the Electronic Signatures in Global and National Commerce Act, Public Law No. 106-229 (2000)*, 2002 [Buffalo, NY: William S. Hein & Co., Inc., 7 vols.]

A legislative history of the federal law of encryption technology as it made its way to the enactment of the Electronic Signatures in Global and National Commerce Act, which established the validity of electronic signatures.

Wayne Schiess, *Ethical Legal Writing*, 21 Rev. Litig. 527 (2002).

Shows that lawyers get into trouble in their legal writings by failing to research well, misstating facts, misrepresenting the law, not citing the law correctly, plagiarizing, not obeying court limits on documents, making personal attacks, and not writing well.

Helen Shapo & Marshall Shapo, *Law School Without Fear*, 2d ed., 2002 [New York, NY: Foundation Press, 208 p.]

Discusses in simple terms what law students need to know about law school and how to get the most out of the law school experience. Also discusses the problems law students encounter most frequently and solutions to those problems.

Amy E. Sloan & Steven Schwinn, *Basic Legal Research: Tools and Strategies Workbook*, 2002 [New York, NY: Aspen Law & Business, 160 p.]

Designed to accompany the text by the same name. Contains exercises at four levels, progressing from basic to advanced source features. Includes both print and electronic sources in each exercise.

Jack T. Smith Jr. & Patricia C. Higginbottom, *Americans with Disabilities: An Annotated Guide to Resources on the World Wide Web*, Health Care on the Internet. Vol. 5, No. 4, 2001, at 19.

A description of Web sources that can help consumers locate information. Emphasis is on products and services for those with disabilities, not on the Americans with Disabilities Act.

Michael R. Smith, *Advanced Legal Writing Theories and Strategies in Persuasive Writing*, 2002 [New York, NY: Aspen Law & Business, approx. 350 p.]

Designed for upper-level legal writing courses. Emphasizes persuasive writing strategies while combining theory with practicality.

Betsy L. Stupski, *Florida Legal Research Guide*, 6th ed., 2001 [Charlottesville, VA: Lexis Publishing] An extensive guide to the sources used for conducting research in Florida law.

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VOLUMES 1–10 (1992–2002)

PREPARED BY MARY A. HOTCHKISS

Mary A. Hotchkiss is Professor of Law and Assistant Dean for Academic Services at the University of Washington School of Law.

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