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What the Legal Writing Faculty Can Learn from the Doctrinal Faculty

BY LOUIS J. SIRICO JR.

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An unfortunate theme often threads its way through discussions among legal writing faculty: We know far more about law teaching than our doctrinal counterparts. "They" teach boring classes in a boring way and do not connect with their students. "They" are not interested in interacting with their students except by way of an outdated Socratic grilling. In fact, "they" are simply uninterested in their students. Another issue seems to aggravate this thread. Because many Legal Writing departments are engaged in a daunting struggle for improved status within the academic community, legal writing professors may tend to regard their association with doctrinal colleagues as an "us vs. them" relationship. However, an us vs. them mentality does not lead to "win-win" results.

Because I move in both legal writing and doctrinal circles, I find the antidoctrinal rhetoric both distressing and unconstructive. To be sure, most law school faculties probably have one or two curmudgeons on the doctrinal faculty who are completely closed to any deviations from what they incorrectly perceive as the classic legal education. However, I have found that most of my doctrinal colleagues care deeply about their students and think deeply about how they can

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improve the educational experience that their students are receiving. Along the way, they have learned some lessons about educating future lawyers.

When legal writing faculty distance themselves from their doctrinal colleagues, they deprive themselves of a source of valuable mentoring. They also deprive their doctrinal colleagues of a rich source of teaching experience and insight.

A continuing dialogue among all faculty members can benefit legal writing faculty in four ways. It can improve teaching, lead to a better understanding of the substantive law that serves as a foundation for student assignments, offer guidance on producing academic scholarship, and help enormously in appreciating faculty politics.

Teaching

When I first entered the market for a teaching position, I was asked a very standard question: When you think back on your law school professors, did any of them employ a teaching style that you would want to adopt? My answer was no. The teachers I liked best were the ones who took the material beyond the conventional learning and offered me insights that I found exciting. My favorite teacher used a harsh Socratic method and even made us stand up to recite. Perhaps the conclusion is that what you learn is more important than how you learn it. However, even though that professor's method did not prevent me from learning, it alienated too many of the other students. In contrast, a successful teaching method would have guaranteed that a larger number of students would have profited from what the professor had to offer.

Today, most of my doctrinal colleagues are better teachers than my old professors. They experiment with different teaching methods, are more in tune with their students, and are far more entertaining. Like their counterparts at other schools, they think about teaching. A search of the literature uncovers considerable scholarship on teaching methods by academics who do not teach legal writing. Just as legal writing professors have something to offer the legal academy, doctrinal professors also have much to offer.

Most legal writing professors are teaching a single subject to a relatively limited number of students. In contrast, almost all doctrinal faculty are teaching two or three classes per semester to a large number of students. As a result, veteran doctrinal teachers have encountered a greater variety of teaching situations and a greater variety of students. Therefore, they can prove to be a source of wisdom on how to handle many situations, for example, a class that went wrong or an unpleasant dispute among students.

Perhaps the most challenging task for a teacher is dealing with the particularly difficult student. Although I have been teaching for more than two decades, just when I think I have encountered every student personality, I come across a new one. Each student requires a different approach. Discussions with other teachers have always provided guidance.

As more legal writing professors begin to add substantive courses to their teaching loads, they will appreciate the skills of the doctrinal professor who is always juggling several courses. Two courses are a surprisingly heavier burden than one course. Teaching doctrinal courses requires learning the most efficient ways to master the material, the best ways to keep current on the ever-changing law, and how to present substantive material effectively. These are not easy tasks. Fortunately, legal writing professors can consult colleagues who successfully perform these tasks every day.

Even if the legal writing professor is accomplished in employing interactive teaching methods in legal writing courses, he or she may discover that transferring those skills to the doctrinal classroom is no mean feat. An experienced doctrinal professor can prove an invaluable adviser. The legal writing professor may also discover that not all doctrinal professors teach like Christopher Columbus Langdell. Many have developed interesting exercises and teaching methods that their students find enjoyable and helpful.[1]

Critical legal writing professors might gain something from auditing a few doctrinal classes. To paraphrase Oliver Goldsmith, they might come to scoff and stay to learn.

[1] For a collection of practical ideas for innovative teaching across the curriculum, see Gerald Hess & Steven Friedland, *Techniques for Teaching Law* (Carolina Academic Press 1999).

The Law

Doctrinal professors also can help in drafting legal writing problems. Running a criminal law problem by a criminal law professor can help ensure that the problem is substantively correct. However, the doctrinal professor can assist in two other ways.

First, the doctrinal professor is in a position to explain the legal context of the narrow assignment. An understanding of this context can help the legal writing professor predict where a student might misunderstand the law upon which the problem is based. For example, the legal writing professor might draft a landlord and tenant problem dealing with the implied warranty of habitability for residential property. If the professor is not well versed in property law, he or she may not realize the risk that the student will become embroiled in cases dealing with the landlord's covenant of quiet enjoyment or the tenant's right to repair and offset the cost against the rent in some jurisdictions. The legal writing professor would benefit from discussing the assignment with a property professor who can suggest ways to avoid possible complications.

Second, because the doctrinal professor probably has written many an essay exam, he or she may be able to offer advice on how to draft the problem—which shares essential characteristics with an essay exam question—so that students avoid misreading the assignment or mistakenly focus on irrelevant or nonexistent issues. I suspect that every doctrinal professor can recall at least one essay question that went horribly wrong. He or she certainly can recall essay questions that worked well for most students, but left a significant number hopelessly confused. Mistakes have lessons to teach us.

Scholarship

At any national meeting of legal writing professors, programs on scholarship always draw large crowds. As more schools offer tenure-track positions and long-term contracts to legal writing professors, the ability to produce high quality scholarship grows in importance. Yet many in the legal writing field have never served on a law review and have never attempted to publish a scholarly article. They may not be entirely sure what makes for a highly regarded academic piece. On the issue of scholarship, doctrinal colleagues can offer assistance.

The fledgling author needs the answers to two questions: In the academic legal community, what constitutes good scholarship? At this particular school, what constitutes good scholarship? It is important to understand the difference between the two questions.

Of course, the second question is more critical. Some schools expect highly theoretical explorations. Others appreciate the value of scholarship that is of practical value to the bench, bar, and teacher. Some schools expect a legal writing professional to write about legal writing and such related fields as classical rhetoric and cognitive learning theory. Others want to see articles that "crunch cases," perform empirical research, or offer theoretical models in traditional doctrinal areas. Some schools lower the standards for acceptable scholarship for legal writing faculty. Others do not. The time-honored advice is to conform to the faculty's expectations, at least until you have job security. Members of the doctrinal faculty are in the best position to explain what those expectations are.

In addition to giving general advice, the doctrinal professor can provide two specific services. First, he or she can point to examples of scholarship that the faculty has deemed to be excellent—articles by law school professors that resulted in tenure or promotion. Legal writing professors often advise their students to examine model memos and briefs. In like manner, they should study successful models of scholarship.

Second, the doctrinal professor can agree to read and comment on drafts of articles by legal writing professors. This is a common practice throughout academia. Even very senior academicians frequently ask for critiques by their colleagues. At some schools, junior faculty in search of tenure meet regularly in a small group to offer suggestions on one another's drafts. A well-vetted article stands a good chance of success. Every legal writing professor should seek and receive feedback before searching for a publisher.

"Mistakes have lessons to teach us."

"When launching a new effort, the inexperienced professor must remember that he or she is entering a marathon that probably began some time ago."

Law School Politics

Legal writing professors may engage in law school politics for a variety of reasons, ranging from gaining approval of a new course to gaining an upgrade in status. In such endeavors, they should keep in mind the observation of British Labor politician Ken Livingstone: "Politics is a marathon, not a sprint."[2] When launching a new effort, the inexperienced professor must remember that he or she is entering a marathon that probably began some time ago. To mix metaphors, even seemingly new issues carry baggage from the past. Seasoned and careworn doctrinal professors can explain what that baggage is.

As an example, take an effort to upgrade the professional status of the legal writing faculty. The doctrinal professor may remember what transpired the last time this issue arose, how various people voted, which arguments proved compelling, and which did not. Even if the legal writing professor was at the law school at the time, he or she may not have been privy to all the public and private discussions and maneuvers that took place. He or she may not know whether any hard feelings resulted from the debate, much less how certain key faculty members now feel about the issue. He or she may not realize that certain faculty members always tend to vote together or on opposite sides of any hotly debated issue. However, a trusted doctrinal colleague may be willing to provide this information, information that is critical to the success of the current endeavor.

In July 2001, the Association of Legal Writing Directors hosted a conference with the theme, "Erasing Lines: Integrating the Law School Curriculum."[3] The participants discussed the many ways in which the artificial line between doctrinal and skills courses is disappearing. One happy consequence of this change in legal education is that both doctrinal and skills teachers will inevitably work more closely with one another and learn from one another. Not only can the doctrinal faculty learn from the legal writing faculty. The legal writing faculty can learn from the doctrinal faculty.

[2] *Oxford Dictionary of 20th Century Quotations* 192 (Oxford 1998).

[3] The proceedings are published as *Erasing Lines: Integrating the Law School Curriculum*, 1 Journal of the Association of Legal Writing Directors (2002).

LORI SHAW AND THE SEARCH FOR THE GOLDEN SNITCH: USING CLASS WEB SITES TO CAPTURE THE TEACHABLE MOMENT

BY LORI SHAW

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Technology for Teaching … *is a regular feature of Perspectives, designed to introduce and describe the ways in which teachers of legal research and writing are using technology to enhance their teaching. Readers are invited to submit their own "technological solutions" to* Mary A. Hotchkiss, Perspectives Editor, University of Washington School of Law, 1100 N.E. Campus Parkway, Seattle, WA 98105-6617, phone: (206) 685-0119; fax: (206) 616-3480, e-mail: **hotchma@u.washington.edu.**

OK … I'll admit it. The title of this article is a bit misleading. Most legal writing professionals do not enjoy Potteresque adventures. (Although our offices may resemble the cupboard under the stairs.) Nonetheless, like Harry, we are—or should be—forever in pursuit of something golden, the elusive teachable moment.

For teachable moments must be pursued. Like the golden snitch, they do not simply fall into our laps. Have you ever looked up the word "teach" in the dictionary? Among its definitions is "to communicate." But communication requires both a speaker and a listener. A teachable moment can occur only when both teacher and student are ready to communicate. For the past five years, I have used my class Web site in general and my threaded discussion list in particular to capture many teachable moments.

Chapter One: The Quest

As teachers, we all seek those teachable moments. Although many occur in the classroom, the classroom has its limitations. We stand ready to share our wisdom with our students. We do our best to anticipate the challenges students will face in completing an assignment and to prepare them to meet those challenges. Unfortunately, a major component of the communication equation is beyond our control. We may be ready to teach about synthesis or citation form, but at that moment, a student may not be ready to learn.

The reality is that law students are constantly bombarded with new information. They cannot possibly process every piece, so they filter out that which they deem unimportant. Regrettably, their judgment is not always sound. Students may hear your brilliant explanation of how to structure a thesis paragraph without absorbing it. The minutiae required to compose an effective thesis paragraph become truly relevant only when students must compose a thesis paragraph on their own.

Ultimately, the day (or more likely the night) comes when students need that brilliant explanation. As they are toiling away on their memos, the realization strikes that they have no clue as to some aspect of the thesis paragraph. Students want to write a good memo and would give anything for some guidance. They are not only ready to listen; they are anxious to listen. It is the perfect teachable moment.

It is also Friday night at 10 p.m. Our students are most likely to focus on major writing assignments when they have large blocks of available time—that means evenings and weekends. At the very moment a student is most ready to learn, the classroom doors are locked tight as a drum.

So how do we respond to this opportunity? One response is to ignore it. Legal writing professionals work long, hard hours, and it is far from unreasonable for us to say, "Enough." We have a right to lives outside of the classroom. But that is not how most of us are made. We teach because we love it, and we cannot resist any opportunity to capture that golden snitch. We want to be there when our students are ready to learn.

> "We may be ready to teach about synthesis or citation form, but at that moment, a student may not be ready to learn."

"A threaded discussion list also promotes interaction among the students. Students can and should learn from one another."

Chapter Two: The Solution

The question then becomes how to be there. For several years, I attempted to "be there" by answering e-mail questions and distributing my responses to an e-mail list consisting of my entire class. I knew that if one student had a question, chances were that many students had the same question. Perhaps I could capture more than one snitch with a single response. However, not every student had the same question at the same moment, and many students deleted my messages only to pose the same question later. In short, an e-mail system did not prove to be the most efficient method of snitch catching.

Then along came the Web site era and the option of creating a threaded discussion list. Within days of my first use, I was sold on the list's value. Like an e-mail message, a threaded discussion list gives students the opportunity to pose questions when they arise. Unlike an e-mail message, a threaded discussion list provides a permanent record of questions and responses. Many students have shared that they planned to post a question only to see that it had already been asked and answered. They received the instruction they needed at the very moment they were seeking it, and I was not troubled with duplicate questions.

A threaded discussion list also promotes interaction among the students. Students can and should learn from one another. Simply reading a classmate's question can take a student down a new path, and that student can add his or her own questions to the thread. I have even had students beat me to the punch by attempting to answer their classmates' questions. More often than not, their answers are dead on.

Web sites offer a myriad of additional opportunities for communication. For instance, my site serves as an ever-evolving course supplement, providing students with unlimited access to handouts, assignments, PowerPoint presentations, and other course materials. I have required students to post collaborative exercises on the site and allowed them to "interview" clients via the site. Finally, both my teaching assistants and I schedule student conferences via the site. When ready to learn, a student can find a wealth of information on the site.

Chapter Three: The Dilemma

If you decide that a course Web site is right for you, your next step is to select a vehicle for creating that site. One option may be to create a private site using your school's webmaster and other resources. Another option is to use one of the commercial services, The West Education Network® (TWEN®) or the LexisNexis™ Web Course. Each option has its own advantages.

The use of commercial services has engendered a sometimes heated debate. Many in the academy argue that by choosing one of these services a teacher is giving its vendor a commercial advantage in the sale of research products. Students may perceive the teacher's choice of services to be a product endorsement. Even more problematic, the direct links existing between the Web service and the vendor's research products make it more likely that students will develop a comfort level with those products.

The decision as to whether the advantages of using a commercial service outweigh this concern is yours alone. Personally, I view my students as sophisticated consumers who are not unduly influenced by my choice of a commercial service. I make it abundantly clear that employers will expect them to be well versed in more than one research system, and I require them to use both LexisNexis and Westlaw®. In my experience, when students favor a particular product, it is because they find that product to be superior. They make up their own minds.

I avail myself of the TWEN service because of its ease of use for myself and my students. My goal is to communicate with my students, not to become a webmaster. This service gives me the tools to set up an incredibly sophisticated site in less than an hour. Creating a private site would likely take far more time and given my lack of expertise, might well result in an inferior product. Further, a private site would lack the 24-hour technical support provided by the vendor. When a technical problem occurs at 2 a.m., I want my students to be able to obtain help without my intervention.

Whether you opt to go private or commercial, please know that creating your own Web site is doable. You need not be a computer nerd to produce a terrific site. In short, do not allow your fears to rule the day.

Chapter Four: Baiting the Trap

Your threaded discussion list may be an aesthetic and technological wonder, but if your students never use it, the snitch will once again evade your grasp. Fear not. By following a few simple rules, you can position your site at the top of your students' "favorites" list.

One, require your students to post at least one message. I often begin the school year by showing a videotaped client interview. For their first homework exercise, students post their reactions. One problem-free posting is usually all that it takes to calm the fears of my computerphobes. In fact, former computerphobes often become the site's biggest boosters.

Two, allow anonymous postings. Students fear looking foolish. Many are afraid to ask questions in class or even in your office. In five years of permitting anonymous postings, I have never had any serious problems with inappropriate postings. A key to my success is that I work hard to set a professional tone. Take every question seriously, and try to end each response by thanking the questioner. When someone has asked a particularly good question, say so.

Three, do not respond to e-mail questions. For the site to succeed, it must be perceived as *the* place to go for information. You must build a critical mass of questions and answers. Early on, I tell my students that they may not e-mail me with questions relating to their assignments. Students who ignore this rule receive a polite response indicating that their questions were so good that I posted them and my response on TWEN.

Four, check the site faithfully. Students will not ask questions if they do not expect to receive timely answers. Note that a difference exists between checking faithfully and checking obsessively. Most days, checking once or twice will be sufficient. The weekend before a paper is due, you might wish to check more frequently. Your students' response may surprise you. They are genuinely and openly grateful for your efforts outside the law school.

Chapter Five: The Happy Ending

Will a course Web site capture every teachable moment? No. Can it make a difference? I think so. During the past semester, counting my own visits, my site enjoyed more than 10,000 "hits." The threaded discussion page alone had nearly 5,000 hits. I may not catch the golden snitch every time, but my Web site has certainly increased my odds. Harry would be proud.

"By following a few simple rules, you can position your site at the top of your students' 'favorites' list."

CELEBRATING THE VALUE OF PRACTICAL KNOWLEDGE AND EXPERIENCE

BY MITCHELL NATHANSON[1]

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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**.

What price knowledge?
—The theorist

What price avocados?
—The realist

The move into the hallowed halls of academia was a daunting and intimidating one for me. I had spent the entirety of my 10-year professional career up to that point in the scrum, so to speak, first as a litigator and then moving in-house to handle environmental coverage claims, where it was dog eat dog (or worse, as Woody Allen once said, where it was "dog doesn't return other dog's phone calls"[2]). I had written a few pieces here and there along the way but nothing to match the scholarly output of even the most lackadaisical doctrinal professor. Worse, I had done very little "deep thinking" on the larger issues that face us as a society. If asked, I would not know how to solve our health care crisis, nor did I believe that I had anything worthwhile to add to a debate on the Establishment Clause. In short, I feared that I had very little to offer the next generation of practicing attorneys that I was assigned to teach.

> "I feared that I had very little to offer the next generation of practicing attorneys that I was assigned to teach."

Oh sure, I figured, I knew how to write and that, such as it was, got me here and would allow me to fulfill my teaching responsibilities, at least on the most basic level. But my concern was greater: how would I get them to listen to me, to *respect me* in light of the brilliance they would no doubt encounter in each of their doctrinal courses? Surprisingly, I found my answer not far into my first semester of teaching, when I was forced to veer off course, away from my lecture notes, as a result of a perturbed student's question.

The topic was the "CRAC" analytical format[3] and a discussion of why this format was preferable to the style most students had become accustomed to using in college. I handed out two sample paragraphs, one descriptive and retelling the chain of events chronologically, the other probative and using the CRAC format, then asked the students to state which style they preferred. Not surprisingly, a majority chose the descriptive paragraph, arguing that it was easy to follow and presented a "comfortable" format. Attempting to use this as a teaching tool, I then tried to explain the philosophy behind the CRAC format (i.e., this is the way lawyers think when they approach a problem) to no avail.

I tried everything I could think of in an effort to persuade them to accept the theory behind the CRAC format but they just wouldn't buy it. Regardless of the philosophical rationalization proffered in support of the CRAC format, it was met with shaking heads and looks of disdain. And then, way in the back, a young woman raised her hand in obvious annoyance. "I was an English major," she said. "I know how to write. Why should I write like that when it seems so stilted and

[1] The author is grateful to Villanova Law School Professor Louis Sirico and Dean Diane Edelman for their valuable advice and feedback in the preparation of this article.

[2] *See Crimes and Misdemeanors* (Orion Pictures 1989) (motion picture). Really. See it. It's quite good. You'll thank me.

[3] Conclusion, Rule, Analysis/Application of Rule, Conclusion Restated. *See* Richard K. Neumann Jr., *Legal Reasoning and Legal Writing* §10.1 (3d ed., Aspen Law & Business 1998) (discussing the proper structural format of an office memorandum Discussion section). *See also Annie Hall* (United Artists 1977) (motion picture), because after reading all of this technical stuff, you'll probably want to treat yourself to a good laugh. *But don't see Interiors* (United Artists 1978) (motion picture), because Woody isn't in that one and it is extremely depressing.

repetitive?" she asked. And that's when, with nothing left in my arsenal, I blurted out the only answer I could think of: "Because your boss is billing the client $400 an hour and your client won't pay him to spend 20 minutes poring over your memo just to find out what your conclusion is." With that came silence. I looked around the room. Everyone sat up in their seats. All eyes were on me. The resistance in the air had dissipated. At that moment, I realized that, contrary to my assumptions, I had something quite valuable to offer my students: the wisdom that comes with significant, recent, practical experience.

Don't get me wrong; I'm not one for war stories, per se. However, I found that allowing the students to peek into my former life just a little gave me the "street credibility" I needed to convince them to put their trust in me. Much to my surprise, I soon discovered that providing a practical basis for my advice necessarily lent much of it greater weight than might otherwise have been the case. For example: the CRAC format works because I used it for years; paraphrase rather than quote whenever possible because judges prefer to know what a case *means* rather than have it parroted back to them; always make sure you completely understand an assignment *before* heading off to the library to avoid the wrath of an angry partner who, by the way, may very well hold the fate of your professional future in his or her hands. The practicalities of modern law practice are the overarching topics of concern of many of today's students. And we, as legal writing professors, are often among the most qualified members of our faculties to speak on this subject.

In addition, we're often the most accessible. Because we teach smaller classes and are generally (with apologies to the elder statespeople in the field) closer in age to the typical first-year student, we're the ones they feel most comfortable speaking with. They want to know what their lives are going to be like in three short years and we're the ones who can best tell them. Not the third years who smugly think they know it all, not the law firm recruitment attorneys who paint a smile on everything, and most assuredly not their father, mother, aunt, uncle (fill in the filial blank) who hasn't Shepardized® a case since the poor student was in diapers. Not them—us. Accordingly, we should feel comfortable stepping into the breach. By doing so, we are not only providing a much-needed service to our students, we are engendering the respect we not only desire but desperately need in order to teach effectively.

Of course, there is the fear that by labeling ourselves experts in all things practical, we are necessarily diminishing our role as scholars within the academy. However, these two roles are not mutually exclusive. A quick perusal through any law school Web page demonstrates that there are many members on most, if not all, doctrinal faculties who likewise had significant practical experience. The stereotypical road to academia (federal clerkship, one to two years as an associate at a large firm, minimal practical experience to call upon) is no longer applicable even to them. Accordingly, the age-old notion that practical experience is "beneath" the scholar is rapidly becoming outmoded. Nevertheless, our past lives as practitioners are still viewed by some within the legal writing field as our "dirty little secret" that serves to undermine our status as academics. In my experience, I have found just the opposite to be true, at least as this issue pertains to students. They respect our backgrounds and what that dimension adds to their law school experience; they are glad that we are here to tell them what it is like "out there." We should feel honored whenever we are called upon to discuss the issue that is most important to a majority of our students. It would be a shame, however, if we refused to answer that call.

Unbeknownst to me, I learned that day in class that I brought something of great value with me when I arrived on campus a year ago. "Life lessons" are so named for a reason and the opportunity to educate others based on personal experience is one that, in my opinion, should not be missed. So long as care is taken not to overdo it and transform the class into a recitation of personal war stories, the occasional anecdote will serve to support whatever particular point is being stressed in class as well as the professor's overall authority to make it.

"The practicalities of modern law practice are the overarching topics of concern of many of today's students."

Active Learning Benefits All Learning Styles: 10 Easy Ways to Improve Your Teaching Today

BY BARBARA TYLER

Barbara Tyler is the Director of the Legal Writing, Research and Advocacy program at the Cleveland Marshall College of Law in Cleveland, Ohio.

"Studies show that students in lecture classes are most attentive in the first 10 minutes and that interest wanes greatly after that."

Introduction

Two things made me a better teacher: my blind student and my deaf student. I realized when forced to confront my deficiencies several years ago that I did not speak enough for the blind student's auditory needs, nor did I provide enough images for the deaf student's visual learning needs. I corrected those deficiencies.[1] Yet, I was still dissatisfied with the extent of my students' retained knowledge when I assessed their learning through class questions, exercises, quizzes, and tests.

Then I learned that I was a kinesthetic learner. I began to read about learning styles and found that my own impatience and inability to learn, coupled with the restlessness I felt unless I wrote things down and read them myself, signaled a kinesthetic learning style. This discovery triggered my own decision to add a new mode of delivery requiring "active learning" to each class I teach.

Thus, three styles of learning are represented above: auditory, visual, and kinesthetic. Some students learn best by seeing others do something. These students favor carefully organized information and prefer to write down what a teacher tells them.[2] In class, they are the quiet ones and are seldom distracted by sound.[3] These *visual learners* contrast with the *auditory learners* who do not bother to look at what the teacher does or take notes. The auditory learners depend upon their ability to hear and remember; they are talkative and easily distracted by noise.[4] *Kinesthetic learners* tend to learn by doing and are impatient and agitated unless they can move and do.[5]

But few students exclusively exhibit only one type of learning style. So in order to meet the needs of all types of learners, a teacher must be versatile. Studies show that students in lecture classes are most attentive in the first 10 minutes and that interest wanes greatly after that.[6] When you teach using both auditory and visual dimensions, the message is reinforced by two systems of delivery and you have a greater chance of satisfying the varied learning styles of students. You can do that by using lecture combined with movies, transparencies, slides, or PowerPoint presentations. But merely hearing something and seeing it is not enough to learn it, because lectures with visuals are passive learning exercises. The learner comes to the exercise without being engaged in it.

Active learning cannot occur without student participation. That is the beauty of it. Incorporating active learning exercises into each and every class is easy to do, applies to the kinesthetic learner who learns by direct involvement and concrete activity, and greatly benefits all other learning types as well since techniques often employ both speech and visuals. Better yet, active methods provide the teacher with the ability to get almost instant feedback on how well the lesson is understood by all.

Lastly, using active learning can involve individual students or groups. The feeling of safety and security in allowing learning to take place in a small group enables students to feel secure, become involved, discuss issues with others, and best of all—teach others, which is the most desirable way for anyone to permanently master a subject.[7]

Suggestions follow using concrete examples of active learning that you may implement in your class to involve and challenge students either

[1] Our classrooms are now equipped with smart podiums that allow you to place any document on a screen and project it. That innovation has allowed us to place student work or texts right on the projector for all to see and better involve the class in every aspect of learning.

[2] *See* Mel Silberman, *Active Learning, 101 Strategies to Teach any Subject* 4–5 (1996).

[3] *Id.* at 4.

[4] *Id.*

[5] *Id.*

[6] *See* Wilbert J. McKeachie, *Teaching Tips* 70 (10th ed. 1999).

[7] *See The Learning Pyramid, National Training Laboratories,* Bethel, Maine (2002). The average retention rates for subject matter teaching styles are as follow: lecture, 5 percent; reading, 10 percent; audio-visual, 20 percent; demonstration, 30 percent; discussion group, 50 percent; practice by doing, 75 percent; and teaching others, 90 percent.

individually or in small groups without intimidating them. No matter how your classroom is set up, you can ask students to seat themselves closer together or pair students up to take advantage of active learning exercises that involve partners or small groups. The key to an engaged class is to use a variety of tactics and learning modalities involving individuals, partners, and small groups to interest the class and encourage engagement.

Individual Active Learning Activities

1. Encourage Reading the Text: Many of my colleagues note that law students do not read for legal writing classes. As one of my colleagues stated a while back, "Test them and they will read."[8] Begin using this tactic early on for reading compliance. The strategy for your lecture should include statements tying the text into the lecture: "As you read in chapter seven in your text ..." or "Explain what the authors meant when they defined secondary sources."[9] But your goal here is to ascertain what the class members thought was the most important point they learned from reading the assigned chapter in your chosen text. Give the class five minutes to write on a file card. Collect the cards and pull some answers from them. Place the cards on a projector so the class may see them and respond. This method works well because it also addresses the need for students to read the materials before class and come prepared to discuss the concepts. Use this technique early in the course and repeat it often.

2. Teach Citation Rules: Always follow teaching and discussing a citation rule in which you used an overhead or handout, or you wrote on the blackboard, by testing understanding with an in-class exercise focusing on the rule(s) taught. Bring individuals up to the front of the class to write on the board or on the worksheet displayed on an overhead and supply answers to the specific citation exercise. This method works well since wrong answers are often duplicated by others in the class and this visual exercise reinforces correct application of rules to examples. (This can be used for small groups as well.)

3. Guide Note-Taking: This approach works well in the beginning of first-year law classes to encourage listening and note-taking. Early on in your class, optimally in orientation, supply a handout that summarizes the main points of your lecture. Instead of supplying the answers yourself, leave some portions blank. For example, when you teach the class about laws, weight of authority, or government or court structure, prepare the handout to require the students to fill in the blanks. *The three branches of government are* _____, _____, *and* _____. *Primary authority is defined as* _____. *Diagram the court system levels in the state of* _____. After the class, or at the next class meeting, hand out the blank form and challenge the students to fill in the blanks from memory. This questioning is a great tool to see what information needs to be accentuated in future classes.

4. Assign Peer Teaching: Teaching others provides the most beneficial and immediate use of learning to the student. Select individuals to present topics to the class and limit the time they may use to do so—for example, allow 10 minutes. The topics can include such varied items as grammar rules, paragraph formation, sentence structure, use of punctuation, editing written work, citation form, or any other area that engages them. Urge the student teachers to create visuals, handouts, and exercises to assess learning as well as to leave time for questions afterward. You must give them a time limit for their presentation and you may devote class time to one or two in-class student teachers each week.

5. Use One-Minute Papers:[10] These very short papers can do much to assess your clarity in a lecture presentation. They provide you with feedback on the success of your presentation. Just before the end of class, provide students with two minutes to answer no more than two questions you pose. For example: 1) What was the most important concept you learned today? 2) What is still unclear to you? 3) Do you have any questions to suggest? Beginning with the next class, you may

> "The key to an engaged class is to use a variety of tactics and learning modalities involving individuals, partners, and small groups to interest the class and encourage engagement."

[8] I do not remember exactly which legal writing colleague was responsible for this bon mot.

[9] *See* McKeachie, *supra* note 6, at 144–48.

[10] David Royse suggested this idea and the name one-minute papers in his book *Teaching Tips for College and University Instructors* 67 (2001)

"Connection to the group helps meet the social needs of new law students and leads to further positive connections with one another."

target any points that were not clearly understood by all.[11]

Group Learning Activities

1. Build Teams for Collaborative Learning: It is key to new law students to feel accepted, safe, and connected to one another and to be included in the group as members. In orientation, pair two students and begin with a questionnaire that asks several interesting things about each student.[12] Have two students sitting next to one another exchange their questionnaires when completed. Have the students meet and then introduce each other and describe each other's background and interests to the rest of the class. Often alliances are formed early on in this way since otherwise unknown connections or similarities are brought to light through these introductions to the class. Connection to the group helps meet the social needs of new law students and leads to further positive connections with one another.[13]

2. Formulate Group Issues and Holdings: Divide the class into small groups of three to five students. Articulate the strategy: to learn from each other about discrete case analysis points. Set a time limit of 15 minutes. Have each small group appoint a scribe. After teaching students that rules from cases are incorporated into holdings with the addition of the salient facts of the case, have students discuss and write out the rule gleaned from the case as well as a fact-specific holding for an assigned case. Then call each group scribe up to the front of the class to post the group's product on an overhead, or write it on the board. Let the class vote on the best rule or holding. This exercise also works very nicely when formulating Issues or Questions Presented statements as well.

3. Use Peer Editors: Divide the class into small groups, perhaps even groups of two. Set a time limit for the exercise. Hand out to each member before this class the standard editor's marks sheet so they may familiarize themselves with these. For the exercise, one must create a worksheet for students to edit each other's work. Limit the editing to one or two pages of text at the most. Assign each student to meet with others and critique the written product you assigned asking several guided questions that you posed.[14] Retrieve the product and the peer editing worksheet after having the students staple them together.

4. Sharpen Fact Identification: Your goal is to get better factual analysis. Well before the first objective written analysis is required, have the class read one or two cases that include a short test, or statutory or common law elements. Divide the class into small groups and provide each group with a short fact pattern. Encourage each group to identify what facts in the fact pattern you supplied to them may be utilized to prove or disprove each of the elements or parts of the test in the cases. You may even suggest that students make a small chart and begin with each case's facts and then insert the salient facts of your fact pattern in its own block. Have each group list the salient relevant facts and to which element they can be applied. This also can work well with more complicated fact patterns and persuasive writing later in the year. (Make certain the groups insert facts to meet each element, including mentioning ages and other things in statutes regarding "child endangerment," for example).

5. Develop Games and Offer Prizes:

a. In Orientation: I adore games and prizes. Students seem to as well. In order to encourage case reading early on by students in orientation, I hand out a packet of 10 unique and funny cases that I have found and ask questions about them. (Under the case named *Fisher v. Lowe*[15] what poem ("Trees") is parodied here? Is the author of the parodied poem (Joyce Kilmer) a male or female?) The winner or winners may pick prizes ranging from a law school T-shirt to library safe beverage containers.

[11] *Id.*

[12] We usually ask the following of our students: the home state, undergraduate degree (current work experience for night students), hobbies, and favorite movie or music groups, just to name a few items.

[13] *See generally* Abraham Maslow, *Toward a Psychology of Being* (1998).

[14] For example, questions for the reviewer could be: What skill should the writer work to improve? What skill does the writer perform well? Are topic sentences clear and well developed? Questions for the writer to answer may be: What questions do you have regarding the comments? Do you agree with the editor's remarks? Did you find the comments helpful?

[15] 333 N.W.2d 67 (Mich. Ct. App. 1983) (holding, written in verse, based upon a parody of "Trees" by Joyce Kilmer, a well-known male poet, that defendants were immune from tort liability for damage caused by their automobile to a "beautiful oak tree.")

b. Learning Tournaments Later: *Jeopardy* or Carnival:[16] Consider having a citation *Jeopardy* or research carnival once or twice during the school year. It makes retention of citation and other material less painful and more fun. The goal is to review citation or other important concepts in legal writing. Groups can be assigned before or during the class at random and citation manuals are allowed if correct citation is the goal.

c. Citation Stations: Usually about five separate citation stations are set up in advance of the class. (Helium balloons are a nice touch for each station.) Each group is assigned at random to a station from which it begins. Each station has a separate citation (or other) task. Each group gets copies of a master sheet with spaces for all five station answers. At five-, 10-, or 15-minute timed intervals (depending on your available class time and the difficulty of the assignment), the citation or learning stations rotate until each group has visited each station and filled in the entire sheet. The groups correct their own sheets on their honor, and the group with the most correct answers wins. You may choose to give prizes to all participants, allowing the first-place group to select its prizes first. Or, you may choose to award extra points to the first-place group members, with lesser points conferred on the second-place team.

d. Research Stations: You can also use the same concept for reviewing research modalities asking questions regarding secondary sources, statutes, reporters, binding and persuasive authority, the court systems, and so forth in separate group stations. Some of my colleagues have Gender Wars, in which they pit the males against the females. The students take these challenges very seriously. But the contests are actually very therapeutic since students are also able to laugh a lot and release pent-up pre-exam anxiety as well.

Conclusion

Law students learn best with practical and real-world tasks that build on what they know. A lecture format relegates students to learning passively. Even adding visuals only increases learning somewhat. Active learning is a means to the laudable end of engaging students, increasing their retention, and providing information to all types of learners. Use multisensory techniques to meet student needs: variety adds spice to learning. You can decide what constitutes the right mix of auditory, visual, and kinesthetic or active learning that is best for your class.

"Law students learn best with practical and real-world tasks that build on what they know."

[16] My colleague Beverly Blair was one of the first individuals I know to employ the Citation Carnival and provide simple prizes from small dime-store items to jars of cookies. She indicated to me that she read the idea in a legal writing newsletter from the mid 1970s. She also likes to add a twist to the carnival by dividing groups by gender, calling it Gender Wars.

Creating New Learning Experiences Through Collaborations Between Law Librarians and Legal Writing Faculty

BY SUSAN KING AND RUTH ANNE ROBBINS

Susan King is an Assistant Professor and Reference Librarian and Ruth Anne Robbins is a Clinical Attorney and Supervising Attorney at the Rutgers Law Domestic Violence Project at the Rutgers School of Law–Camden in Camden, N.J.

"Given our experience in the classroom and at the reference desk, we saw a need for more intensive instruction in legal research."

There are very few articles discussing true collaboration between legal writing professionals and law librarians. In particular, the kind of collaboration that creates an environment structured to present multiple opportunities for engaged research is seldom mentioned. Although we have read articles written by legal writing professionals teaching research and by librarians teaching legal writing, we are not taking sides in the debate over who should teach research.[1] Instead, this article focuses on what we believe is often overlooked in the ongoing and informal dialogue: the potential integration of the two disciplines in course design and the resulting benefits to students of a richer, more complete understanding of legal research.

Given our experience in the classroom and at the reference desk, we saw a need for more intensive instruction in legal research. For that reason, we have established a collaboration that is less formal than co-teaching, and yet more formal than that anticipated by the established curriculum, a once-per-semester drop-by. We work together toward several goals: reviewing and strengthening the students' basic legal research skills; inviting students to expand their research skills into new and different areas; asking students to research in different media (print sources, databases, Internet sources); and making transparent the process of research. This collaborative piece occurred to us several years ago and since then we have established a synergy that plays to both of our strengths and which we believe results in a more well-rounded approach to legal research and writing than we could have done individually.

A Historical Approach

We have been actively collaborating for several years on research assignments for a required first-year legal research and writing course as well as an advanced brief writing course. Our working together began as a chance assignment. At Rutgers-Camden, each law librarian is paired with one of the legal research and writing faculty. Usually, this connection goes no further than the librarian first making a brief appearance in the legal research and writing class early in the semester to welcome the students, and then again acting as a moot court judge later in the second semester. On occasion, the legal writing faculty member might contact the librarian with a quick question, e.g., "Do we have the Iowa *Shepard's*®?", but that is the extent of the partnership in most cases. The librarian presumably has copies of major research and writing assignments but is not otherwise involved.

This approach does not emphasize enough the librarian's expertise. Moreover, the first-year students are often too overwhelmed to really take much note of this phenomenal resource at their disposal. Academic integrity issues may also concern the students; they may feel that they are somehow "cheating" if they ask a librarian for anything other than simply "Where are the regional digests?" Thus the students do not become accustomed to viewing librarians as another weapon in their research arsenal. If these future lawyers do not learn early in their careers what a librarian can offer in the research process, they may not consider librarians as resources in the future.

Our Solution: Methodological Collaboration

The type of collaboration we advocate does not necessitate moving directly from infrared to ultraviolet on the spectrum of research instruction duties. We are not talking about foisting all

[1] A review of back issues of *Perspectives: Teaching Legal Research and Writing* proves this point. Many of the articles discuss how best to teach students to do legal research. Some articles are written by law librarians and some are written by legal research and writing instructors. Few are written jointly and none discusses approaching the issue collaboratively.

research education upon librarians at those law schools where the librarians do not normally teach research to the entering class. Instead, at Rutgers-Camden, where legal writing professionals are also primarily responsible for teaching legal research, we have jointly designed a creative and powerful series of learning experiences for students in which we clearly demonstrate how a lawyer actually does good research. With a major goal of enhancing student comprehension of the synergy between thorough research and effective writing, we jointly design assignments with the intention that the students will face gaps in their research know-how, both with respect to legal and nonlegal research.

In order to reach this goal, we have shifted the paradigm (legal writing and research instructors in the classroom, librarians in the library) and highlighted the librarian's role by providing planned opportunities for the students to learn. For several years we have sat down before each semester and figured out when and where the students will see and work with the librarian. Certain aspects are a given. Although she may not be listed as a co-professor, the librarian is nevertheless always included on the course Web page access list. She gets and sends e-mail messages to the discussion board. She is always invited to one of the early classes and her experience and expertise are discussed for a few minutes. She is mentioned often in class—"Susan King and I were looking at this." When a student asks the professor a research question that is beyond the basics she expects law students to already know, her standard answer is "I might ask Susan King how to do this."

Beyond these simple norms, we have further developed the collaboration to a more advanced level, incorporating both in-class and long-term projects. We have cocreated at least two final legal writing projects, one for first-year students and one for upper-level students.We submitted one of the projects, which involves home schooling issues in New York, to the Legal Writing Institute's Biennial Idea Bank. When choosing other major writing assignments, the legal writing professor specifically chooses those requiring students to conduct specialized forms of research, both legal and nonlegal in nature. The students understand that part of the grade depends on their ability to demonstrate strong research innovations. Moreover, the students are also cognizant that the librarian worked on these writing assignments. In fact, before the legal writing professor distributes assignments, we each conduct background research, to guarantee that two lawyers have looked at it. Playing to our focus areas, the legal writing professor concentrates on the background work from a writing perspective, making the assignment a pedagogically sound writing project. The librarian focuses on things like hard-to-find resources, or sometimes easy-to-find but nonlegal resources.

Thinking Outside the Box: Collaboration Beyond Traditional Legal Research

We purposefully construct problems to require nonlegal research as well as the more traditional legal research. The legal writing professional believes in teaching students how to think about and possibly incorporate facts that are not part of the controversy itself, but are of a "real world" or Brandeis-brief practical nature. The librarian helps present the lesson in a context where the students need the information to proceed with their assignment and at a point in the semester when the students are most open to learning the research strategy needed to locate the needed information. The librarian prepares several in-class presentations that cover research strategies pertaining to the areas the students are currently researching and writing about in their assignments.

For example, a situation involving a question of probable cause to stop and question a bank customer may require students to research the general crime and bank robbery statistics for the neighborhood. In that situation, in fact, students discovered three bank robberies that same week within 10 miles of the incident at hand. The students also researched uniform crime reports in order to discuss the overall crime rates in that town. In another situation, students researched information about a particular animal, in connection with a problem concerning the definition of "household pets." Students also researched the geographic range of a particular animal to address the issue of whether the trapped animal was an endangered species. Although these issues are legal in nature, students cannot stop with just researching the laws and cases regarding depositions, but also must alert the reader about

"We purposefully construct problems to require nonlegal research as well as the more traditional legal research."

"The students learn that collaboration is not a sign of weakness or dishonesty, but a model of sound strategy."

the nature of the world in order to demonstrate the need for expediency. Again, the librarian plays a key role in this lesson. The librarian's research presentation might include information about how to find political and topographical maps on the Web. She may also include information about how to research information and statistics maintained by federal agencies, by states and municipalities, and by advocacy groups. These presentations always lead to "aha" moments for the students as they suddenly understand how it is that a researcher might approach a problem, find a source, or locate a solution to a problem. The in-class discussion lets students brainstorm strategies, understand gaps in their previous research, and consider paths to explore in future assignments.

We also collaborate on "backward learning exercises," although we try to do these gently. Some simple synthesis exercises early on demonstrated a pattern of fruits that have very low pH levels. The librarian's presentation revisited that exercise by showing students how to find online the list of food pH levels maintained by the U.S. Food and Drug Administration.[2] At another point in the presentation, students are shown how they could have researched historical weather data in order to make a very persuasive argument in a brief-writing assignment regarding the duty and breach of duty by a bank manager to keep a walkway clear of wet leaves. The brief was set in a nearby town noted for its many large trees in the downtown shopping district. The fictitious plaintiff fell at a real bank on a particular day in a past November. The weather records for the week before that day demonstrate wet and windy conditions all week, causing a condition of slippery leaves.[3] Further, the town's Web site talks about the "Shade Tree Commission," which meets monthly, indicating that townspeople are well aware of the hazards associated with autumn leaves.[4]

The facts of the problem are clear that the bank manager has lived in the town for decades. During the course of the librarian's presentation, the students realize that the case is actually a "slam dunk" for the plaintiff in light of this research. We take great pains, however, to reassure the students that the professor did not expect the students to include this information at the time they wrote the first brief, but instead to see how much more persuasive their future briefs can be with the inclusion of specialized research. We are laying the foundation for better lawyering in the future.

We Think It Works

Our deliberate collaboration creates another intended benefit. By making our collaboration open and transparent we invite students to be part of the collaborative process as well. We specifically tell the students that we discuss writing and research strategies with each other. We demonstrate through the class discussions, the Web board, and the teaching assistant sessions that the librarian is an active consultant to the course. Thus, we strive to take the mystery out of the research process, and we invite students to engage us in their own research questions and successes. The students learn that collaboration is not a sign of weakness or dishonesty, but a model of sound strategy. As a result, the students are better, more creative researchers and their writing reflects their increased comfort with the process of research and persuasive writing. Each semester's final assignment nets research gems from the students that help turn their briefs into delightful documents. Each semester, as a result of the collaboration, we find that students are far more likely to ask us for assistance in doing sophisticated research than students who have not benefitted from the type of collaboration described here. In turn, this allows us to engage the students at greater depths, which leads them to further explore and ultimately write better documents.

[2] <http://vm.cfsan.fda.gov/~comm/lacf-phs.html>.

[3] <http://www4.ncdc.noaa.gov/cgi-win/wwcgi.dll?wwEvent~Storms>. The National Climactic Data Center's Storm Events database allows searches by state, county, and time period for all manner of storm events (e.g., flood, dust storm, hail). The National Climactic Data Center is part of the National Oceanic and Atmospheric Administration.

[4] <http://www.haddonfieldnj.org/borough_publicworks.shtml#shadetreecommission>. Last visited Nov. 25, 2002.

What to Do When a Student Says "My Boss Won't Let Me Write Like That"?

BY WAYNE SCHIESS

Wayne Schiess is a Senior Lecturer at the University of Texas School of Law in Austin.

The Question

I've taught a course called Writing for Litigation for five years. It covers the most basic documents used in litigation practice: letters, motions, and trial briefs. Students learn what those documents look like and how they are used, and they also get detailed writing advice. I spend a fair amount of time on words, sentences, and paragraphs, not to mention document design and format.

I also preach clarity, brevity, and simplicity in the course. In fact, I tell students that when they see something in a form or a model document that they think is odd, archaic, or unnecessarily legalistic, they should question it: look it up, do some research, ask around. If they conclude that it doesn't have to be that way, I tell them, then change it. Students seem to appreciate this advice, and many take it to heart.

Still, every time I teach the course, I get at least one student who says something like this: "I like your advice, professor, but at the law office where I'm working this summer, my supervisor doesn't want me to write like that. Either I'm told to rewrite it the old way or my supervisor just changes it back. What should I do?"

For any legal writing instructor who emphasizes a modern approach to writing style, it's probably a common question. I get similar questions from new attorneys, too. For example, here's a similar concern expressed by a former student, who sent me this question in an e-mail message:

"I work for a very small firm in southern California. The partner I work for is frequently overbearing and even more frequently wrong. Virtually every motion, memorandum, brief, or other document I draft comes back with incorrect and antiquated 'corrections.' After working here for a little more than six months, I decided to draft documents in the style of the partner I work for, even though I knew much of what I was writing was grammatically incorrect or stylistically antiquated. Now that I have taken some writing courses, I have come back with a new desire to write better. Unfortunately, the partner I work for is upset with my new-fangled writing. I have shown him modern books, but he is still set in his ways. Aside from quitting, do you have any recommendations?"

As another example, a participant in one of my seminars sent me this question: "Why are so many attorneys wedded to the old ways of writing motions? How can I make them (supervising attorneys, for example) not insist on using 'COMES NOW' and 'this its motion'?"

And I'm not the only one getting questions like this. In *Plain English for Lawyers*, Richard Wydick says that "[t]oo many law students report back from their first jobs that the clear, simple style they were urged to use in school is not acceptable to the older lawyers for whom they work."[1]

So what do you say to these students and new attorneys?

A Possible Answer

At first, I took the concerns lightly and suggested to my students that they ought to follow the advice of the writing expert: me. In my job—safely insulated from the realities of law practice—I don't have to answer to a boss for my writing techniques the way a junior attorney does. So it was all too easy for me to say "Do it the way I told you, of course."

But that answer didn't seem to satisfy them, and I noticed. I began to see that their concerns were not merely about words and sentences and writing style, but about keeping their jobs and pleasing their bosses. Their questions were really about survival.

So I began to think that the right advice was to adopt the writing style that pleased the boss. In fact, at least one writing teacher has recommended that new lawyers conform to their boss's outdated expectations for legal writing. In his humorous essay, *Pursuant to Partners' Directive, Lawyer Learns*

"I began to see that their concerns were not merely about words and sentences and writing style, but about keeping their jobs and pleasing their bosses."

[1] Richard C. Wydick, *Plain English for Lawyers* 4 (4th ed., Carolina Academic Press 1998).

"They need to point to a source, cite some authority, and tell the boss what the experts think."

to Obfuscate, Ken Bresler says that he approached his old legal writing teacher with a "my boss wants it the old way" dilemma. His teacher responded, "I teach legal writing. I don't run an outplacement service. Write how they want you to write."[2]

A Better Answer

But I'm now persuaded that neither of the extremes is helpful. I can't in good conscience recommend that new lawyers blindly follow archaic models that reflect poor writing style. Neither can I recommend that new lawyers risk their jobs by insisting on a modern style that antagonizes the boss. So I've developed a stock, three-part answer that takes a middle ground. This is what I tell my students.

1. Don't sacrifice your job or your work relationship over a point of writing.

The plain-English movement and the modern trends in legal writing are aimed at making legal writing clearer, easier to read, and precise. Those are important goals. But even though as a legal writing teacher it pains me to say this, *they are not important enough to risk a job over*. And they aren't important enough to justify antagonizing the boss. That relationship is more important than document format or word choice. So I tell students and new attorneys not to take a stand if they think it will put their job or work relationship at risk.

2. When you have control over the document, write it the way you want.

I always tell students in my advanced classes the following story: When I practiced in a large law firm's bankruptcy department, I was usually at the mercy of the attorney I worked for. The documents we filed—even if written by me—looked the way my boss wanted them to look and used his language.

But once my boss gave me a small bankruptcy case and told me to handle it on my own. I tried new formats for the pleadings, new language for the introductions, and a more relaxed tone in the text. (By the way, nothing imploded.) I used that case to experiment with newer, plainer legal writing. It was great, and I didn't upset my boss at all.

Sometimes new attorneys will be asked to handle a case or matter on their own. So I tell my students that when they're in charge, they should write it the way they want: they'll learn, and they won't risk offending the boss.

3. Take a stand—occasionally—but have backup.

I still want to see legal writing improve in the practicing bar, and I still want to teach students about clarity, simplicity, and plain language. So I tell students that they can take a stand for modern legal writing style, but only when it won't offend the boss.

If they have a strong and positive relationship with the boss, then new attorneys can sometimes persuade bosses that the modern way is better. Sometimes the boss will listen. But I always point out that the boss is not likely to listen if the junior attorney is the only source. A novice lawyer's opinions, thoughts, and feelings about legal writing aren't convincing enough.

In short, I tell my students, don't take a stand without backup.

New attorneys should never say that the way they write is superior because it looks better or sounds better or feels better. They need to point to a source, cite some authority, and tell the boss what the experts think. That way, when they decide to take a stand, their own credibility is not the only thing supporting them. Recognized experts on legal writing support their point of view, too.

For example, if new attorneys need backup on a point of grammar, punctuation, usage, or style, they can rely on one of the following excellent legal style manuals. Please note that I am distinguishing here between legal style *guides*, of which there are many, and legal style *manuals*, of which there are only a few. These are comprehensive references on points of grammar, punctuation, usage, and style in legal writing.

- Bryan A. Garner, *The Redbook: A Manual on Legal Style* (West Group 2002)
- Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* (Aspen Law & Business 2001)
- Mary Barnard Ray & Jill J. Ramsfield, *Legal Writing: Getting It Right and Getting It Written* (3d ed., West Group 2000)

[2] Ken Bresler, *Pursuant to Partners' Directive, Lawyer Learns to Obfuscate*, 3 Perspectives: Teaching Legal Res. & Writing 18 (1994), originally published in Chi. Daily L. Bull. (Aug. 16, 1990), at 2.

If they're in litigation practice, new attorneys might rely on the following sources. Of course, there are others, but these books are particularly focused in writing litigation documents in a contemporary style.

- Irwin Alterman, *Plain and Accurate Style in Court Papers* (ALI-ABA 1987)
- Bryan A. Garner, *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts* (Oxford U. Press 1999)
- Steven D. Stark, *Writing to Win: The Legal Writer: The Complete Guide to Writing Strategies That Will Make Your Case—And Win It* (Main Street Books 1999)

Plus, there are many other good sources; this is only a short sampling of my favorites. If you don't care for these sources, there's nothing wrong with doing a little research to find support for writing in a contemporary style.

The Result

This three-part advice to students has gone over well. I occasionally get phone calls and e-mail messages asking for a good source. That usually means someone is looking for backup. I sometimes get a report that someone's boss has come around. It's rare, but it happens.

And I'm happy to say that no former students have called to tell me they got fired because of their "modern" writing.

"A law-trained mind will not blindly adopt the analogy without independently weighing it."

You Are in the Business of Selling Analogies and Distinctions

BY SARAH E. RICKS

Sarah E. Ricks is a Legal Writing Instructor at the Rutgers School of Law–Camden in Camden, N.J.

This fall, I created an exercise to directly address the trouble my students have had in grasping how best to analogize and distinguish the key facts from decided cases, a problem both in objective writing in the fall and in persuasive writing in the spring.

The students readily recognize the persuasive value of a legal analysis that incorporates explicit analogies to the facts of decided cases, even early in the fall semester. Most students also are able to make verbal comparisons and contrasts between the facts of the client's case and the facts of a decided case.

But while my students grasped the importance of drawing explicit analogies to and distinctions from decided cases, they had trouble expressing them in writing. Many thought that by simply juxtaposing an explanation of the law alongside their clients' facts, they were communicating explicit analogies and distinctions. Others understood that, to draw an explicit analogy to a particular case, the writer should mention that case by name, but then failed to do more than that, leaving the reader scratching her head as to what fact in the decided case was being compared to what fact in the client's case. Despite doing the hard work of mentally analogizing and distinguishing decided cases, students were failing to plainly communicate those comparisons and contrasts to the reader.

To help the students better communicate the analogies and distinctions they needed the reader to understand, this fall I created an in-class handout and exercise, breaking down the process into incremental steps. The exercise is equally adaptable to persuasive writing.

The Business of Selling Analogies

I told the students that, while no two cases were alike, two situations may be analogous and that their job was to persuade the supervising attorney that a court was likely to view the client's facts as more similar to certain decided cases and less similar to other decided cases. To do so would require the students to draw analogies, such as "the apple in Case A is analogous to the tomato in Case B because both are red." I used a market metaphor: "You are in the business of selling analogies and distinctions. Your job is to get the busy partner, and ultimately the court, to buy your analogy to a case and to buy your distinction of a case."

In class, I walked them through the best way to sell the supervising attorney an analogy to a decided case, and ultimately, to sell the court the same analogy. First, in the explanation of the law, assure the supervising attorney that the decided case the student will later analogize to is binding legal authority. Otherwise, the court will not be constrained to follow it. (While analogies to nonbinding law will sometimes be necessary, for this exercise I wanted to focus students on the best source of analogies and the surest way to get the supervising attorney to buy the analogy.)

Second, again in the explanation of the law, assure the supervising attorney that the fact the student wants to analogize to was a key fact in that decided case. If the fact was not outcome determinative in the decided case, then neither will the presence or absence of that fact in the client's case affect the outcome. Third, when applying the law to the client's facts, give the supervising attorney sufficient information to permit him or her to independently evaluate whether the fact from the decided case really is similar to the fact in the client's case. A law-trained mind will not blindly adopt the analogy without independently weighing it.

Keeping in mind that analogies must be explicit, I then asked the students to look at three attempted analogies to see if they could easily tell what analogy the attorney was trying to sell to the busy partner (and ultimately, the court). Because I wanted the students to focus on a single new skill, I chose a legal analysis the students already knew very well:

- Like the unattached garage in *Picaroni*, which was separated from the house by a walkway, here the trailer was separate from Ms. Peluso's main house.
- Like *Picaroni*, here the trailer was separate from Ms. Peluso's main house.
- Here, the trailer was separate from Ms. Peluso's main house.

The students easily grasped that the first analogy was superior because it explicitly equated the trailer to a specific fact in the decided case. That helped build the students' confidence. They easily understood that the second equated the trailer to some unspecified fact in *Picaroni* and that the third example drew no analogy at all but left it up to the reader to figure out how the law applied to the client's facts. We called the last example the "Happy Hour" analogy. That is, the message communicated to the busy partner was "Hey, Happy Hour's about to start, so this junior attorney can't be bothered to spend any more time on this memo."

I then shifted the students' attention to what information was necessary in the explanation of the law to set the stage for explicit analogies in the application of the law to the client's facts. Again using the market metaphor, I told them the busy supervising attorney is in the market for analogies between the client's facts and the key facts in binding legal authority. Because the court is the ultimate decision maker, and the court is constrained to act consistently with binding law, the supervising attorney is most interested in demonstrations of how the client's case is similar to critical facts from authority that will bind the court.

I had the students examine three explanations of a legal principle they knew well, asking each time whether the explanation made it easy to grasp whether the case discussed was 1) binding legal authority and 2) whether the facts mentioned were the key facts that determined the court's ruling. The first example did both. The second example provided the holding shorn of key facts, so the reader could not tell why the court reached its ruling. The third example provided many irrelevant facts from the case but again left out the outcome-determinative facts, leaving the reader in the dark as to the reasons for the court's ruling. Again, the students' confidence was increased by their easy grasp of the superior explanation of the law.

The Business of Selling Distinctions

We then turned our attention to "How to get the busy partner to buy your distinction of a binding legal authority." I explained the focus was on binding law because the most efficient way to distinguish nonbinding law is to point out that it is not binding. Because the steps were very similar to those necessary for persuasive analogies, the students' confidence grew.

First, in the explanation of the law, assure the busy supervising attorney that the fact from the decided binding authority that the student wants to distinguish was a key fact in the decided case. As with analogies, if the fact was not critical to the outcome in the decided case, then neither will the presence or absence of that fact in the client's case affect the outcome. Second, when applying the law to the client's facts, give the supervising attorney enough information to independently evaluate whether the fact from the decided case really is different from the fact in the client's case.

I told them the busy supervising attorney is in the market for distinctions between the client's facts and the key facts in binding legal authority. As with the analogy exercise, I had the students examine three explanations of a legal principle they knew well, asking each time whether the explanation made it easy to grasp whether the case discussed was: 1) binding legal authority and 2) whether the facts mentioned were the key facts that determined the court's ruling.

The first example did both. The second example provided the holding but no key facts, so the reader could not tell why the court reached that holding. The third example provided irrelevant facts from the case but left out the key facts, again failing to explain the reasons for the court's ruling. While the focus was on laying the groundwork for the later distinction of the cases, these examples also demonstrated the importance of thesis sentences in explaining the law.

Keeping in mind that distinctions, like analogies, must be explicit, I then asked the students to look at three attempted distinctions of

"[T]he busy supervising attorney is in the market for distinctions between the client's facts and the key facts in binding legal authority."

"Then came the moment of truth: It is easier to recognize good legal writing than to create it."

the case just explained and asked if they could easily tell what distinction the attorney was trying to sell to the busy partner:

- Unlike the attached garage and enclosed patio in *Cook*, which qualified as integral parts of the main house because they were akin to additional rooms, here Ms. Murray's trailer does not share any door with the main residence, even when the trailer is parked in the driveway.
- Unlike *Cook*, here Ms. Murray's trailer does not share any door with the main residence, even when the trailer is parked in the driveway.
- Here, Ms. Murray's [trailer] does not share any door with the main residence, even when the trailer is parked in the driveway.

The students easily identified the first distinction as most persuasive because it explicitly contrasted the trailer with specific facts from the decided case. They readily understood that the second contrasted the trailer to some unspecified fact in *Cook* that the writer did not bother to identify. They had no trouble seeing that the third example drew no distinction at all but left the hard work of applying the law to the reader. By then, some of the students were laughing at the hapless author of the third example.

Applying the New Skills of Selling Analogies and Distinctions

Then came the moment of truth: It is easier to recognize good legal writing than to create it. I had the students take out their copies of their own completed memos, which they had handed in but had not yet received back.

I asked them to look only at the section of the memo applying the most complex prong of the legal test and to highlight an important analogy that they had drawn between the facts of a decided case and the facts of the client's case. They then asked themselves two questions: Does the analogy give the busy partner enough information to independently evaluate whether the fact from the decided case really is similar to the fact in the client's case? If there are no case names in the application of the law, will the busy partner easily grasp what legal principles are being applied and what their sources are? I heard groans, nervous laughter, and sighs of recognition in the room.

Keeping in mind the analogy they had highlighted, I then had them highlight the explanation of the legal significance of the fact they had analogized to in the application of the law. They then asked themselves three questions: Does the explanation of the law tell the busy partner that the decided case is binding legal authority? Does the explanation of the law clearly identify the fact you later analogize to as a key fact in the decided case? Does the explanation of the case include any unimportant facts that do not help the busy partner to understand why the court ruled the way it did? Again, sighs of recognition.

After the first time I taught this exercise, one student told me in an e-mail message that, until that class, he had not understood how best to draw comparisons between decided cases and his own case: "I think I was doing exactly what you mentioned in class—providing Piece A and Piece B, but not putting them together to create comprehensive Completed Puzzle C." Another student came to my office to tell me she now realized the weaknesses in the memo she had just turned in. I think the exercise helped many other students reach the same point, which prepared them for the critical feedback on their memos that they were about to receive from me.

Finally, because the concept of explicit comparisons and contrasts is harder for students to implement in their own writing than it is for them to recognize in the writing of others, I repeated the self-editing portion of the exercise later in the semester, just before the students handed in their second memos.

Conclusion

I think this exercise helps students learn a core skill necessary for all legal analysis: extracting the governing legal principle from a case, explaining what key facts were critical to the outcome of the case, and then explaining how that governing legal principle applies to a new set of facts by explicitly comparing and contrasting their clients' facts with the key facts of decided cases. Students seemed to understand that this is the same skill necessary to respond to the hypotheticals tossed at them in their doctrinal courses, and to appreciate having the process broken down into incremental, easily

digested steps. Finally, students appreciated the self-editing process during class, which gave them both an objective tool for assessing whether an application of the law was as strong as it could be and a tool to help strengthen the analysis.[1]

[1] I have both a student handout version and a teacher's version of the above exercises, both of which I am happy to share if you contact me at **sricks@camden.rutgers.edu**.

Determining the Scope of a Court's Holding

BY M.H. SAM JACOBSON

M.H. Sam Jacobson is an Instructor of Law at the Willamette University College of Law in Salem, Ore.

"This year the lead case in my closed-universe problem provided a wonderful opportunity to discuss how broadly or narrowly to interpret the case's holding."

New assignments bring the unexpected—sometimes bad (e.g., a seemingly insignificant background fact that annoyingly skews the analysis in an unanticipated way), sometimes good (e.g., a delightful synthesis that weaves the cases into a tidy framework). This year the lead case in my closed-universe problem provided a wonderful opportunity to discuss how broadly or narrowly to interpret the case's holding.

The assignment concerned whether a court would sanction a party for attorney fees as a result of discovery violations. Oregon Rule of Civil Procedure 46 B(2)(c), like the federal rule, required that the court's sanction be "just." In *Pamplin v. Victoria*, 319 Or. 429, 877 P.2d 1196 (1994), the Oregon Supreme Court established a test for determining when a sanction is just. However, the court established this test somewhat indirectly when it remanded the case to the trial court with instructions: it directed that the trial court make findings of fact and explain its reasons for the sanction, and that the trial court find willfulness, bad faith, or other similar fault. The first portion of this directive establishes a record that the appellate court can review on appeal and the second portion establishes the test for determining when a sanction is just.

For my first-semester students, however, the holding was not so clear. First, since the students were evaluating a problem for a client, not an appellate court, they had to evaluate *Pamplin* from a different point of view: the students needed to determine what guidance the case gave to a party considering an appeal of a trial court decision, rather than what guidance it gave to a trial court for making a decision. Second, the students needed to evaluate whether the test in *Pamplin* was not relevant or was materially distinguishable because *Pamplin* involved a sanction of dismissal, rather than a sanction of attorney fees. Finally, the students needed to evaluate whether the case could provide any factual guidance concerning what would be a just sanction when the appellate court remanded the case to the trial court for further proceedings and when the appellate court would defer to the lower court's decision unless the lower court abused its discretion.

Using the holding of *Pamplin*, a case with which the students were by now intimately familiar, I could more effectively illustrate for the students the factors that would determine how broadly or narrowly they could interpret the scope of *Pamplin*'s holding and what inferences they reasonably could draw from the case. Those factors include: 1) the specific nature of the court's ruling, 2) the facts of the case, 3) the court's reasoning, and 4) the degree of deference that the appellate court must give to the decision of the trial court. To illustrate:

Court's Ruling

First, how broadly or narrowly a person may interpret a court's decision depends on the specific nature of the court's ruling. In *Pamplin*, the Oregon Supreme Court did not rule on whether the facts of the case were sufficient to support a sanction of dismissal. Instead, the court stated that it was unable to rule because the trial court needed to do some additional work before an appellate court could consider the case. Therefore, the issue and holding would be:

> Issue: Can a trial court dismiss a case with prejudice as a sanction for discovery violations if the sanction must be just when the trial court made no oral or written findings of fact; when plaintiffs did not respond to numerous requests for medical and tax documents, nor a court order to compel; and when the defendant has received no information concerning plaintiffs' damages and the trial date is in nine weeks?
>
> Held: The trial court could not dismiss this case with prejudice as a sanction for discovery violations unless it determined first that the sanction is just, and that determination is reflected in oral or written findings of fact and a statement of its analysis that establishes that plaintiffs' failures to respond to the multiple requests for production of documents and the court order to produce constituted willfulness, bad faith, or other fault of similar degree.

Because the supreme court only determined what test would apply for determining when a sanction of dismissal would be just, one could draw no conclusion about whether the facts of this case are legally sufficient, or insufficient, to support a finding that dismissing the case would be just. The supreme court reversed this case to allow the trial court to enter an order that complies with the supreme court's test, not because the facts were not sufficient to justify dismissing the case. Consequently, the court's holding would be limited to the test it declared.

Case Facts

Second, how broadly or narrowly a person may interpret a court's decision depends on the facts of the case and whether they are characterized generally, supporting a broader interpretation, or whether they are characterized more specifically, supporting a narrower interpretation. In *Pamplin*, if the trial court had made a proper record for the appeal, the supreme court could have considered the underlying merits of the sanction. Then the issue would be:

> Issue: Can a trial court dismiss a case with prejudice as a sanction for discovery violations, if the sanction must be just, which (a) requires a trial court to make findings of fact and explain its reasoning when the trial court made findings of fact and explained its reasoning in writing; (b) requires a finding of willfulness, bad faith, or other fault when plaintiffs did not respond to numerous requests for medical and tax documents, nor a court order to compel; and (c) does not require, but a court may consider, prejudice when the defendent has received no responses to multiple requests, over a period of seven months, for medical and tax documents, and the trial date is in nine weeks?

The test that the court declared earlier now becomes the framework for the issue; each part of the test is an aspect (or element) of the issue (just). Included with each aspect are the key facts that concern that aspect. In this circumstance, how narrowly or broadly a person interprets the court's holding on this issue depends on how the person characterizes the key facts.

For example, assume that the supreme court had ruled that the sanction of dismissal was just:

> Held: The trial court's sanction of dismissal for discovery violations was just because the trial court made written findings and explained its reasoning, and because the plaintiffs acted willfully when they failed to respond to numerous requests and a court order to produce medical and tax documents, even though the defendant is not prejudiced by the failure to respond when the trial court can reschedule the trial date.

If a person were evaluating another case on the same issue, that person would compare the facts of his or her legal problem with the facts of this case to determine how the court likely will rule. Assume that in the legal problem, the trial court made oral findings and explanations before issuing its sanction. As part of the analysis, a person must determine if the oral findings and explanations of the trial court are sufficient to comply with the first requirement for dismissal. When the facts of the supreme court case are interpreted narrowly, i.e., that the findings must be in writing, then the oral findings might not be sufficient to facilitate appellate review. However, when the facts of the supreme court case are interpreted broadly, i.e., that the trial court must make findings, regardless of the form, then either written or oral findings might satisfy this requirement and be sufficient to facilitate appellate review.

Court's Reasoning

Third, how broadly or narrowly a person may interpret a court's decision depends on the appellate court's reasoning in its decision and what reasonable inferences the person can draw from that reasoning. Earlier, I stated that a person could draw no conclusion about whether the facts of *Pamplin* were legally sufficient, or insufficient, to support a finding that dismissing the case would be just, because the supreme court only determined what test would apply for determining when a sanction of dismissal would be just. The situation might be different if the supreme court had commented on the sufficiency of the evidence in its opinion. Then, a person might be able to draw some inferences from the case that go beyond its actual holding.

For example, assume that the supreme court's opinion included strongly worded dicta that

"The test that the court declared earlier now becomes the framework for the issue."

directed the trial court on how it should rule. If the strong wording advised the trial court that the facts would support a finding of willfulness, bad faith, or other similar fault, then a person reasonably could infer that another case with similar facts probably would support a finding of fault. Likewise, if the strong wording advised the trial court that the facts would not support a finding of fault, then a person reasonably could infer that another case with similar facts probably would not support a finding of fault.

Degree of Deference

Finally, how broadly or narrowly a person may interpret a court's decision depends on the degree of deference that the appellate court must give to the lower court's decision. The degree of deference that the appellate court must give to the lower court's decision is established by the "standard of review" that applies to the type of question on appeal. While the beginning of fall semester is quite early in the learning process to discuss standards of review, some information about standards of review could be helpful now, because it may help explain why two cases with similar facts but different outcomes might both be affirmed on appeal.

Imagine that the degree of deference that an appellate court must give to the lower court's decision is a continuum ranging from no deference on one end to almost complete deference on the other end. How much deference an appellate court must give depends on the type of question that is on appeal. The least amount of deference is given when the question before the appellate court concerns what law applies. The greatest amount of deference is given when the question before the appellate court concerns the findings of fact by a jury. In between these two extremes are additional standards of review, including the one that the court applied in this case, abuse of discretion. When the standard of review is significant, a person might include it in the issue; for example:

> Issue: Did the trial court abuse its discretion by dismissing a case with prejudice as a sanction for discovery violations, if the sanction must be just, which (a) requires … ?

Generally, whenever the law gives the trial court discretion on a matter, a review of the trial court's decision by an appellate court will be limited by the abuse of discretion standard of review. Under this standard of review, the appellate court would affirm the trial court's decision if the record included some facts to support it. This usually will mean that the appellate court will give substantial deference to the lower court's decision since the record almost always will include some facts that could support the decision. As a result of this deference, the appellate court conceivably could affirm the results in two cases with similar facts but opposite results since the record most likely would include facts that would support deciding either way.

Conclusion

In deciding how broadly or narrowly to interpret a court's opinion, the students' first concern should be evaluating the nature of the court's holding; their second concern should be evaluating the facts of the case; and their third concern should be evaluating the court's reasoning. Next semester, after the students learn more about standards of review, they can add it to their repertoire of analytical tools for determining the scope of a case's holding.

"How much deference an appellate court must give depends on the type of question that is on appeal."

A Revised Concept Chart: Helping Students Move Away from a Case-by-Case Analysis

BY DEBORAH SHORE

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One of the most challenging tasks I have faced in teaching first-year legal research and writing is moving the students away from a case-by-case analysis of the law in a memo toward a thesis or factor-based analysis. However, I have found that the use of a typical case chart has often hindered my ability to succeed in this endeavor. By requiring the students to list the relevant cases in the first column and then asking them to fill in the facts and relevant factors considered by each court in the subsequent columns, the traditional case chart still focuses the students' attention first on the individual cases, rather than on legal concepts flowing from those cases.

Example 1: The Traditional Case Chart

CASE NAME	FACTS	FIRST FACTOR	SECOND FACTOR	OUTCOME
Case A				
Case B				
Case C				

The typical student, after completing a traditional case chart such as the one shown in Example 1, will often immediately begin a discussion of the law in a memo by first mentioning Case A, then discussing the facts of Case A, the relevant factors addressed by the court in Case A, and then the outcome of Case A. This will then likely be repeated for Case B, and so forth, with little, if any, attempt to synthesize those cases. In my teaching experience, so long as the case chart's primary focus in the first column was upon the individual cases, it was difficult for novice legal writers to move away from a case-by-case discussion of the law in their memos.

In an effort to remedy this method of case-by-case discussion in a memo, I quickly designed in class a revised concept chart that helps to focus the students' attention not so much on the individual cases, but on the various legal concepts flowing from the cases.

Example 2: The Revised Concept Chart

RELEVANT FACTOR	FACTOR-RELATED FACTS	OUTCOME OF FACTOR	CASE NAME	MISC. INFORMATION
Probable cause	Security guard witnesses theft of item	Satisfied	Case A	
(same)	Third party informs security guard of apparent theft	Satisfied	Case B	
(same)	Security guard witnesses shopper running out of store	Not satisfied	Case C	
Reasonableness of the detention	Suspected shoplifter detained for four hours	Not satisfied	Case A	
(same)	Suspected shoplifter detained for 30 minutes until police arrived	Satisfied	Case B	
(same)	Suspected shoplifter handcuffed in front of other customers	Not satisfied	Case D	

I first used the revised concept chart shown in Example 2 in a semester where my memo assignment required the students to grapple with the issue of whether, and to what extent, a shopkeeper may lawfully detain a suspected shoplifter.[1] After the students had found and reviewed the relevant case law, I asked them to tell me what factors the courts generally consider when resolving this issue. The students properly responded that the relevant factors are whether the shopkeeper had probable cause to believe a

"After the students had found and reviewed the relevant case law, I asked them to tell me what factors the courts generally consider when resolving this issue."

[1] The students' assignment required them to research the shopkeepers' privilege as a defense to a false imprisonment claim under New Jersey law. While the information included in the chart is generally based on actual New Jersey cases, I have simplified the facts and omitted case names for demonstration purposes.

shoplifting had occurred, and whether the detention itself was reasonable.

I then told the students to review their pile of cases quickly and write on top of each case which factor or factors the court considered in rendering its decision and whether each factor considered was satisfied in that case. I then asked the students to put in a pile all of the cases that addressed the first factor, probable cause.

We then turned to the chart where I entered probable cause in the far left column of the chart in an effort to focus the students' attention first on that factor. Once I entered the probable cause factor, I completed the next two columns of the chart by asking the students to tell me the factor-related facts from each case, as well as whether the probable cause factor had been satisfied in each case. Only after I gathered this information did I ask the students for the individual case names from which this information came. I then entered into the final column any other relevant information the students wished to include about the factor or the case. This revised chart thus has as many probable cause rows as there are relevant cases discussing probable cause.

Once we had gone through each of the cases that addressed the probable cause issue, I moved on to the second factor, the reasonableness of the detention. I began by asking the students to put in a pile all of the cases that addressed the reasonableness of the detention. Many of the cases addressed both the probable cause and the reasonableness factors. We then completed the chart in the same manner as we did for the first factor.

"When viewing the completed chart from left to right, the students were immediately able to see how a discussion of the law should be organized."

When viewing the completed chart from left to right, the students were immediately able to see how a discussion of the law should be organized. They were able to compare the fact patterns of the cases and develop theses upon which to organize their discussions. For example, when addressing the probable cause factor, the students looked at the chart and were able to see that in situations where a security guard witnesses the theft or is informed of the theft by a third party, probable cause will be present. Rather than consider each case individually, the grouping of similar cases seemed to flow naturally from the chart.

While this revised concept chart will likely be lengthier than the traditional case chart and will require a bit more advance preparation, I believe that the results are well worth the extra effort. After completing the chart, the students understood how much more sense it made and how relatively easy it is to organize by concept rather than by case.

Top 10 Ways to Use Humor in Teaching Legal Writing[1]

BY SHEILA SIMON

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Brutal Choices in Curricular Design ... *is a regular feature of* Perspectives*, designed to explore the difficult curricular decisions that teachers of legal research and writing courses are often forced to make in light of the realities of limited budgets, time, personnel, and other resources. Readers are invited to comment on the opinions expressed in this column and to suggest other "brutal choices" that should be considered in future issues. Please submit material to* Helene Shapo, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611, phone: (312) 503-8454, or to Mary Lawrence, University of Oregon School of Law, 1515 Agate Street, Eugene, OR 97403, phone: (541) 346-3848.

Hey—think on a gut level with me for just a minute. Do you do a better job as a teacher when you're having fun? Of course! And do your students learn better if they're having fun? Sure! I'll get to the pointy-headed stuff later, but for now keep going with your instincts and check out my top 10 ways of using humor in the legal writing classroom:

10. Question of the Day

Instead of taking attendance I ask the students a question at the start of each class. It takes some time, but it helps me to get to know each student. When I can, I match the question to the class topic. On the first day of class I ask for the best book they read in the last year. It makes a perfect introduction to our topic for the first day, reading the law. When there's no direct match I ask something I'm curious about, like what job would the student do if she or he couldn't be a lawyer. Although I started this process for my own benefit, the students enjoy it as well. They come to my class knowing they will be called upon, and that they will know the answer. That's a good confidence booster for a first-year student.

9. Cast a Case

Students have to be good legal readers before they can be good legal writers. One of the ways I encourage careful reading is to have students cast the movie of the case.[2] Is the plaintiff a Danny DeVito or maybe a Denzel Washington? Is the defendant a Jennifer Lopez or a Helen Mirren? It takes just a few minutes of class time and it pays off. Each student now has a tool to use to make the facts of any case more vivid.

8. Who Wants to Be a Citationaire?

What's more exciting than learning the citation manual? Just about anything. To make paying attention to the detail in the *ALWD Citation Manual* a bit more interesting, we have our students compete in a *Who Wants to Be a Millionaire* format game show. They compete for tacky prizes provided by research service vendors. Game show formats are nothing new. Professors James Duggan and Frank Houdek here at Southern Illinois University have produced *Jeopardy*-style games before. Currently I'm mulling over a weekly citation game—*Survivor: Summer Associate*. People could be eliminated from the firm when they fail a citation challenge. Kind of a spelling bee grown up and on steroids.

7. Food Analogies

The comparison of the structure of legal writing and lasagna is probably obvious, but I'll explain it anyway. Lasagna is a layered food. When we order lasagna we expect that there will be certain ingredients and that they will be layered. But what if you ordered lasagna and got a pile of noodles on the right, cheese on the left, and some spinach on a separate saucer? Or, worse yet, what if all the lasagna ingredients were put into a blender! This analogy helps students understand that having all the right ingredients for a memo means pretty little

> "Do you do a better job as a teacher when you're having fun? Of course!"

[1] This paper was prepared in connection with a presentation at the Legal Writing Institute conference in May 2002, in Knoxville, Tennessee.

[2] For a more complete explanation of how to cast a case in class see Sheila Simon, *Teaching Active Reading*, The Law Teacher 11 (Spring 2001).

"Do you try to keep your students from writing things that can be interpreted more than one way? Of course."

without the structure that the legal reader is expecting.

How to deliver this lasagna message is the next question. The visual nature of the message seemed to lend itself to still pictures. Check out <www.law.siu.edu/ssimon/sheila.htm> for pictures of my extremely cooperative husband serving up lasagna in regular, disorganized, and blender formats. Taking this idea a step further, Professor Kenneth Chestek actually made lasagna for his class this fall.

Another tasty analogy comes from Professor Sophie Sparrow. She tells students that a first draft is like a club sandwich. Revising a first draft is not as simple as adding a little mustard. It can be remaking the sandwich into a casserole. Mmmmm.

6. Real Examples of Reader Error

Do you try to keep your students from writing things that can be interpreted more than one way? Of course. One way I demonstrate how this kind of reader error happens is with an example of me as the thoughtless reader. I read to the students an e-mail message from Professor Richard Neumann on the legal writing e-mail discussion list. I explain to the students that Professor Neumann is a top dog[3] and I'm going to read every word of his message. The message started like this:

> " The following **rap** [emphasis added to show the exact moment of reader error] helps, if delivered in the first class of the semester and then repeated (as though it were tape recorded and the 'play' button had been pushed) every time a student is heard saying something self-indulgent."
>
> So I'm ready to read on:
>
> "No matter what you do for a living, people will pay you money only if your work adds value to a situation. To earn a professional's salary, you have to add professional value. ... "

But where's the rhyme scheme? Where's the meter? This guy writes a fine text but he really stinks as a rap artist ... oh ... he didn't mean that kind of rap. Never mind. This helps me explain the writer's oath: first, generate no unintended belly laughs.

5. Real Examples of Poor Editing

Everyone has examples of poor editing from practice. My two favorites come from my days as an assistant state's attorney. First, I show a motion to suppress based on an officer's failure to provide a "memoranda warning." That kind of warning might be appropriate for us to give at the beginning of the semester, but it's rarely useful to a drunk driver. Second, I describe how one defense attorney submitted a "motion for continence." The students appreciate how much fun I had standing up in court and stating, "The people have no objection to continence."

4. The Legal Reader

Many students have no earthly idea of how a lawyer or judge reads a memo or brief, so I give students an image from outer space—Mystery Theater 3000. If you've ever wasted time surfing channels late at night you may have seen the silhouetted figures that comment on old sci-fi movies as the movies are shown. The characters make comments like, "Love the pants," and "I can't believe those sideburns!" One flash of this image and students have a more complete understanding of their audience. The legal reader might say, "Look at the misplaced apostrophe!"

3. Plunge into Persuasion

To help students shift from objective to persuasive writing, I start the spring semester with an exercise in which students use ordinary, everyday persuasion.[4] The first student is told that she is a babysitter, and she must get a child to go to bed. The next student is told that she is the parent and she must get the child to bed. It turns out that everyone understands the difference in levels of authority! By changing the scenarios slightly from one student to the next, the students' own

[3] Richard K. Neumann Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* (4th ed., Aspen Law & Business 2001).

[4] For more explanation on how to use this persuasion exercise, see Sheila Simon, *Take My Garbage—Please! Teaching Persuasion Through Arguments Anyone Can Make* 16 The Second Draft, Bulletin of the Legal Writing Institute 7 (December 2001).

arguments show that they come equipped with an understanding of concepts like levels of authority, selection of key facts, and when sometimes the best course is to choose not to argue a sure loser.

2. Use Fun Movie Clips

Movie clips can help introduce new skills. I use a set of clips to introduce appellate argument. First I show two clips of a common image of lawyers making an argument—closing statements made by Atticus Finch in *To Kill a Mockingbird* and a closing argument from the *Saturday Night Live* skit "Unfrozen Cave Man Lawyer." Those clips get students hooked in and thinking of their images of lawyers at work in the courtroom. Then I give students a more accurate picture of appellate advocacy. I show part of an argument from one of the Florida Supreme Court bouts with *Bush v. Gore*. The clip is short, but it has a good sampling of questions from the bench and answers from the attorney. This gives the students a visual model from a case that they know was significant.

1. Sing Your Syllabus

Singing your syllabus is the key to an accurate first impression. Nothing says, "I'm an approachable person" quite so well as a banjo strapped to your shoulder. Who cares if you can't sing. This year the SIU Lawyering Skills Chorale[5] sang "These Skills Were Made for You and Me" at first-year orientation. With apologies to Woody Guthrie, students and faculty joined in on the chorus, which goes as follows:

These skills are your skills, these skills are my skills
From basic reading, to the case you try skills
From handy guidebooks, to good authority,
These skills were made for you and me.

Show the students that you are willing to laugh with them, and at yourself when it's appropriate.

And now, as promised, a note for the pointy-headed. Fun isn't just for fun—it helps your students learn. There is no doubt that stress is a part of law school, a big fat negative part of law school. Professors Lawrence Krieger and Ruth Ann McKinney have written about the particular pressures that law schools choose to impose on people, and how we can begin to make some better choices.[6] And Professor James Levy has identified teacher enthusiasm as a key to student learning.[7] But the easiest way to measure how humor can help in the classroom is to use the list that Professor Gerry Hess has developed for creating an effective learning environment.[8] The elements of a good learning environment are respect, expectation, support, collaboration, inclusion, engagement, delight, and feedback.[9] Just about all of the top 10 methods described here provide delight—a sense of enthusiasm that can be contagious. Inclusion and engagement are an important part of casting a case, playing the Citationaire game, and doing persuasion exercises. And the question of the day is all about respect. Through one question in each class, you can learn more than just the students' names; you can learn a little bit about what motivates the students. And the students learn that you focus on them.

Consider this top 10 list as a starter, like that sourdough you got from a friend. Let it sit around for a while, then make something of your own out of it. Use humor as it fits your personality and your syllabus. Go have some fun already!

> "The elements of a good learning environment are respect, expectation, support, collaboration, inclusion, engagement, delight, and feedback."

[5] The Lawyering Skills Chorale, composed of Sue Liemer, Adria Olmi, Melissa Shafer, Laurel Wendt, and the author, is available for any events where legal research and writing skills are prized and musical talent is less significant.

[6] Lawrence Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. Legal Educ. 112 (2002), and Ruth Ann McKinney, *Depression and Anxiety in Law Students: Searching for Solutions*, 8 Legal Writing ___ (forthcoming).

[7] James Levy, *The Cobbler Wears No Shoes: A Lesson for Research Instruction*, 51 J. Legal Educ. 39 (2001).

[8] Gerry Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. Legal Educ. 75 (2002). Gerry wrote such a good article that you should read it right now; well, maybe just after you finish reading this one.

[9] *Id.* at 87.

WRITING TIPS ...

SWEATING THE SMALL STUFF

BY STEPHEN V. ARMSTRONG AND TIMOTHY P. TERRELL

Stephen V. Armstrong is the Director of Career Development at Wilmer, Cutler, & Pickering, a law firm based in Washington, D.C. He is a former English professor and journalist. Timothy P. Terrell is a Professor of Law at Emory University in Atlanta, Ga., and former Director of Professional Development at the law firm of King & Spalding in Atlanta. Together, they are the authors of Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing *(1992; second edition forthcoming in 2003 from the Practising Law Institute). They are regular contributors to the* **Writing Tips** *column in* Perspectives.

Over years of working with newly graduated lawyers to improve their writing, we have spent more time than we like to remember asking them to pay less attention to trivia such as passive voice and more to the big organizational and rhetorical issues they'd prefer to ignore. When associates show up with drafts in their hands, many of them say they're interested only in a few tips for writing jazzier sentences. Everything else, they have under control. As a result, we often have to begin coaching sessions by disabusing them of that blissful delusion. This requires forcing them to raise their noses higher than six inches above the page, so they can instead look at a draft from a distance at which its organizational and rhetorical problems become visible.

In this effort, our credibility sometimes suffers because we can't help becoming obsessive about some micro-level problems, ones so "small" that many writers have trouble seeing them even when we point them out. What upsets us about these problems, we have finally realized, is not the problems themselves. Truth be known, they are seldom fatal. Instead, what bothers us is the underlying attitude they suggest: A sentence is just a loose assemblage of words and, as long as each word ends up in roughly the right neighborhood, it doesn't much matter exactly where it goes. That's a sloppy and dangerous attitude, especially for lawyers. Instead, we try to tell them, writers should regard a sentence as a bridge: If it is to remain standing while carrying substantial weight, each word has to fit into one and only one place. Of course, any sentence can be constructed in several ways. But, once you've chosen the best structure, each word should click precisely into its slot. In fact, so should each punctuation mark.

To drive this lesson home, we often seize on the following "micro" problems to make the larger point. Each involves the links between pieces of information.

A Misplaced Conjunction

This problem usually shows up when a writer lists a series of items (a, b, and c, for example), one of which is itself a multipart series (a, b-1 and b-2, and c). The danger is significant because it sometimes arises from conceptual sloppiness, not just stylistic clumsiness. The sentence below, from a memorandum of law in a discovery motion, is written as if it contains an "a, b, or c" series:

> **Before:**
> Megacorp objects to the Request because it is [a] overbroad, [b] unduly burdensome, and [c] asks for material which is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

It is written, in other words, as if three items follow the verb "is." In fact, only two follow "is"; the third follows another verb, "asks." To fix the syntax, then, the sentence should be revised to read:

> **Revision 1:**
> Megacorp objects to the Request because it [a] is [a-1] overbroad and [a-2] unduly burdensome, and [b] asks for material which is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

But this revision does not go far enough. While it solves the syntactical problem, it fails to cure the underlying conceptual fuzziness, which resulted from the rote repetition of a formulaic objection. Conceptually, into how many categories do Megacorp's objections fall? The answer depends on the specifics of the document request and Megacorp's tactics for opposing it. Is it objecting for three separate reasons? Or really for only two reasons, because the request's burdensomeness

arises from its overbroad scope? If the latter, then the sentence should read as follows:

> **Revision 2:**
> Megacorp objects to the Request because it is overbroad and therefore unduly burdensome, and because it asks for material which is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

The addition of "therefore" binds together the parts of the first objection; the repetition of "because it" more clearly separates the first from the second.

This problem is worth lingering over for two reasons. First, even good writers often have trouble spotting it. Second, it can sometimes lead to drastic consequences for a document's organization, as the next example demonstrates.

> **Before:**
> Generally, the capital and surplus restrictions require that at least 60 percent of the minimum capital or surplus investments be made in obligations of the United States; any state; any of New York State's counties, districts, or municipalities; or certain mortgage loans on property in New York.

Judging by the placement of "or," this sentence lists four kinds of obligations: obligations of 1) the United States, 2) any state, 3) any of New York State's counties, districts, or municipalities, or 4) certain mortgage loans on property in New York. But the fourth makes no sense—"obligations of certain mortgage loans"? Instead, these loans are obviously a different category of investment:

> **Revision 1:**
> Generally, the capital and surplus restrictions require that at least 60 percent of the minimum capital or surplus investments be made either in obligations of the United States; any state; *or* any of New York State's counties, districts, or municipalities; *or* in certain mortgage loans on property in New York.
>
> **Revision 2:**
> Generally, the capital and surplus restrictions require that at least 60 percent of the minimum capital or surplus investments be made in either
> - obligations of the United States, any state, or any of New York State's counties, districts, or municipalities, or
> - certain mortgage loans on property in New York.

A final example:

> **Before:**
> Rule 11f-6(c) is generally a basis for arguments *either* asserting that the proposal would require the registrant to violate its existing obligations or that the proposal's objective is too broad.
>
> **After:**
> Rule 11f-6(c) is generally a basis for arguments asserting *either* that the proposal would require the registrant to violate its existing obligations or that the proposal's objective is too broad.

A Misplaced "Only"

The word "only" is especially likely to float loose from its proper place:

> **Before:**
> To prove yourself, you only have to jump through the first two hoops … .

So far, this sentence means the victim has to jump through the hoops as an alternative to doing something else (say, signing a pledge to bill 3,000 hours a year). But the rest of the sentence says: " … not all six." What the writer means, then, should have been expressed as:

> **After:**
> To prove yourself, you have to jump through only the first two hoops, not all six.

Unimaginative Punctuation

We assume, of course, that your students know all the rules of punctuation and never violate them. Even so, they probably miss opportunities to use punctuation more imaginatively, and in particular for two purposes: to change a sentence's rhythm or to clarify its structure. (These two purposes often go hand in hand.)

For example:

> **Version 1:**
> To implement the proposal, Widget Corp. would have to change its source of raw material and therefore to breach existing contracts.

Version 2:
To implement the proposal, Widget Corp. would have to change its source of raw material, and therefore to breach existing contracts.

By rule, the final comma in Version 2 has no business being there. But it is helpful: Because it slows readers down a little, they land with a little more emphasis on the sentence's final words, which deserve that extra attention.

Another example, of a different kind:

Before:
Assume that one Megabank entity, for example, a nonbank subsidiary of the bank holding company, purchases a limited partnership interest in a real estate limited partnership while a second, affiliated Megabank entity, for example, a bank, makes a loan to the limited partnership.

After:
Assume that one Megabank entity (for example, a nonbank subsidiary of the bank holding company) purchases a limited partnership interest in a real estate limited partnership while a second, affiliated Megabank entity (for example, a bank) makes a loan to the limited partnership.

In the revision, the parentheses make it easier to see that the examples are, in fact, parentheticals, and to separate them out from the sentence's primary substance.

Lack of Parallelism

We know, we know: This problem should have been cured in eighth grade. But it shows up in drafts we read with disconcerting frequency. It most often arises when a writer fails to put parallel ideas into the same kind of grammatical container. The first may go into an independent clause, the second into a dependent clause, and so forth.

Before:
Courts have cited the following factors: 1) the assignment was contained in the granting clause of the mortgage; 2) the deed of trust was not explicit in stating that the creditor need not take possession or make demand before becoming entitled to the rents; and [here comes the problem] 3) the use of the words "as additional security," "for the purpose of securing," or their equivalents.

For the sake of parallelism, the third item, like the first two, should be inside an independent clause, not a phrase:

After:
… and (3) the mortgage or deed of trust contained the words "as additional security," "for the purpose of securing," or their equivalents.

In addition to keeping the grammatical forms parallel, try to keep the wording as similar as possible:

Before:
The primary questions are: 1) whether the individual is a New York domiciliary, 2) if he has a permanent place of abode in New York, and 3) the number of days he is physically present in New York.

After:
The primary questions are whether: 1) the individual is a New York domiciliary, 2) he has a permanent place of abode in New York, and 3) he is physically present in New York for more than 180 days.

Here is a less obvious example of the problem:

Before:
The issue of good faith is most frequently raised in connection with a limited partnership debtor formed to invest in real property and which holds only one substantial asset.

This sentence could be reformed in several ways, based on substantive decisions about its content. Here are two possibilities:

Version 1:
The issue of good faith is most frequently raised in connection with a limited partnership debtor formed to invest in real property that holds only one substantial asset.

Version 2:
The issue of good faith is most frequently raised in connection with a limited partnership debtor that was formed to invest in real property and that holds only one substantial asset. *[The second "that" could be omitted, still leaving the*

parallel structure of two verbs ("was formed" and "holds") following the first "that."]

The first version implies that we have already been discussing a real estate investment partnership, and are now adding "one substantial asset" as a feature of the partnership. The second indicates instead that we have been discussing a limited partnership to which we are now attributing two specific characteristics—investing in real estate and holding one substantial asset.

* * * *

As we said at the start, none of these problems is serious enough to lose sleep over. Even the ones that involve grammatical violations seldom prevent a reader from understanding what a sentence means. But if you can persuade writers to focus on problems of this scale, and to take them seriously, the result is a discipline that pays off in other ways: They begin to "see" sentences more precisely, not as haphazard assemblages of words, but as miracles of careful engineering designed to sustain a heavy logical weight.

ON THE LIGHTER SIDE . . .

EINE KLEINE LEGALRESEARCHMUSIK[1]

BY JAMES R. FOX

James R. Fox is the Director of the Law Library and Professor of Law at Dickinson School of Law of The Pennsylvania State University in Carlisle.

"By setting a form or discipline, we can force ourselves to be creative and interesting for at least two or three minutes in a two-hour legal research class."

For some of us who have taught legal research forever, the task may become a sterile exercise and any trickery to bring life to the exercise bears consideration. Most artists have, until the last century, used a form to discipline and channel their creativity. Poets follow the form of the sonnet or haiku. Musicians compose waltzes or classical symphonies. Adopting a form or discipline guides, and can inspire, the creativity of the artist. The poet has to find a clever rhyme, the musician the resonant counterpoint. By setting a form or discipline, we can force ourselves to be creative and interesting for at least two or three minutes in a two-hour legal research class. Not quite the composition of a sonnet, my Advanced Legal Research class discipline for the last several years has been the use of theme music for each class. Here are a few (actually most) of the themes I have conjured up for my classes.

Japanese flute music[2] introduces my first class, which looks at sources of law used by different legal systems. The flute music is to the Western classical idea of music as common law and civil law are to Chinese law. In the West we look for practical rules, while other systems look to divine revelation in order to behave as the Creator wishes (Muslim law) or to an ideal of societal behavior in which law plays a marginal role (Chinese law). But we see that our system has some things in common with these other systems. For the next class students are assigned to use LexisNexis™ or Westlaw® to find an example where a judge in the United States has cited an unusual source such as rock lyrics, or quotes from movies or the Bible.

Before the first class a short assignment has the students find if blasphemy is still a crime in England, the common law definition of blasphemy (using Blackstone's *Commentaries*), and when it was last prosecuted in a U.S. state of their choice. Should blasphemy be a crime? I then play "Oh Lord, Won't You Buy Me a Mercedes Benz," by Janis Joplin.[3] Is it blasphemous?

Early in the semester the class takes up the problem of how we organize information. The students are given a list of book titles to alphabetize. Which goes first: *Aardvark, My Pal* or *A. A. Milne, a Biography*? It becomes obvious that alphabetizing involves a number of arbitrary rules that, if ignored, can lead to not finding what you want. To drive home the point, six Chinese characters are presented to be ordered and the students are challenged to develop rules for their ordering. The class goes on to an examination of menus such as the Yahoo menu and the hierarchical outlines used in digests. The obvious choice of a theme for the class is something by Mozart or Bach, *Eine Kleine Nachtmusik* or the *Goldberg Variations* played by Glenn Gould.[4] Indexing is a fugue.

Lest you think I am a classic-loving nerd librarian, my next selection is "Godzilla" by Blue Oyster Cult.[5] "History shows again and again, how Nature points out the folly of man, Godzilla." Relying on technology can be our downfall is the message of a class about how media affect research techniques. A review of various information storage media questions their reliability for archival purposes. Will your great-granddaughter be able to read the personal narrative you stored on a floppy disk? Interestingly, on the cover of the album, Blue Oyster Cult poses in front of a bookcase full of old law reports, a great graphic for your PowerPoint presentation.

The most obvious rock music theme for a class is John Cougar Mellencamp's "Authority Song." "I fight authority, authority always wins." This goes with a class on court reports, court rules (particularly, rules about what gets published), depublication, stare decisis, and all that.

The Internet and, in particular, NORML (the National Organization for the Reform of

[1] A longer, incomprehensible version of this article, "A Hermeneutic on the Utilization of Polyphony as an Ancillary Tool in Legal Research Instruction," will not be published anywhere.

[2] *Japan Shakuhachi–The Japanese Flute*, Kohachiro Miyata, shakuhachi (CD, Electra Nonesuch 9 72076-2).

[3] *Pearl*, Janis Joplin (CD, Sony/Columbia B00000K2VZ).

[4] Johann Sebastian Bach, *Goldberg Variations*, Glenn Gould (CD, BWV 988/Sony Classics SMK 52 594).

[5] *Spectres*, Blue Oyster Cult (CD, Sony/Columbia, B0000025BW).

Marijuana Laws) has ruined a great statutory law exercise that I used for years. How much marijuana must I possess in California before I have committed a felony? With no obvious starting place in the index under marijuana, this question sent students to several different places in the code. One needs to determine both the amount of marijuana and the definition of a felony. Unfortunately, NORML's Web site answers the question with links to all the relevant statutory cites.[6] The theme for this class was the Red Hot Chili Peppers' *Californication*.[7] I have to go back to the drawing board on this class. Wanting to keep the Chili Peppers in my repertoire, this summer I will look for another California criminal statute that does the trick. I still have "Supercallousmeanandnastyrightwinglegislation" by the Capitol Steps[8] to introduce the legislative history class. I have a life-size cutout of Newt, our guest "speaker" for the class, but he is fast becoming ancient history.[9]

Not all of the musical themes come from mainstream commercial sources. At least one comes from a distinctively nonmainstream yet commercial source. Back in the good old days when West was West, Bill Lindberg and his cohorts in the Law School group produced entertaining shows at the American Association of Law Libraries annual meetings with parodies such as "Old-Fashioned Book" or "Walt's Waltz." (You remember the WALT terminal don't you?)

So there are some of the themes that I use. But the challenge is for you to be creative and match other themes to your classes. Vonda Shepard's songs from *Ally McBeal* come to mind as a fertile resource ("I've been down this road"?).[10] It is helpful to have a teenager in the house and actually listen to the music (after the obligatory admonition to turn the volume down). Next year I am determined to work in a song by my son's favorite group, Weezer.[11]

In my favorite class I tap into my collection of fiddle tunes and other real country music on Rounder Records.[12] I live on a small farm five miles west of Carlisle, Pennsylvania, and have one class there with a picnic thrown in. The farm provides a setting for some unusual topics. Before the class the students go to the courthouse to do a deed search on the property. They check the property information available on LexisNexis or other online databases. When the students arrive they "field" research about 10 questions about the farm (How many outbuildings? Where is the septic system? How far is the house from the road?). Professor Noel Potter of the Dickinson College Geology Department demonstrates how a survey is done and we discuss the fact that the metes and bounds in the deed description do not close. This leads to questions about practice materials—how do we correct the mistake? Plat books and local historical maps answer questions about reference points used in older descriptions of the property. U.S. Geological Soil Survey material raises questions about the development taking place around the farm. In turn, questions of local codes and ordinances arise. Then we eat.

You may choose another rule to add a little je ne sais quoi to your classes. In Air and Space Law I try to pepper my PowerPoint presentations with visual art. Most people miss the tiny figure of Icarus falling into the sea in Brueghel's *The Fall of Icarus*. As I visit museums I am always on the lookout for a painting to use, just as a tune may find its way into an Advanced Legal Research class, if I am a little creative.

Finally, the last class ends with Roy and Dale singing "Happy Trails."[13]

"It is helpful to have a teenager in the house and actually listen to the music (after the obligatory admonition to turn the volume down)."

[6] <www.norml.org>.

[7] *Californication*, Red Hot Chili Peppers (CD, Wea/Warner Bros., B00000J7JO).

[8] *A Whole Newt World*, The Capitol Steps (audiotape, Capitol Steps Productions, CSC1015).

[9] Life-size cardboard figures are available from <www.elifesize.com> or <www.cardboardcutouts.com>.

[10] "Searchin' My Soul," *Songs from Ally McBeal Featuring Vonda Shepard* (CD, Sony/550 B00000608D).

[11] *Weezer* (Green Album), Weezer (CD, Uni/Geffen, B000051CAW) (a cut called "Simple Pages" may have possibilities).

[12] E.g., *The Fuzzy Mountain String Band* (LP, Rounder Records 0010).

[13] *Happy Trails: The Roy Rogers Collection*, 1937–1990 [Box Set] (CD, Wea/Rhino B000001Q18) or download the clip of the song from <www.amazon.com>.

LEGAL RESEARCH AND WRITING RESOURCES: RECENT PUBLICATIONS

COMPILED BY DONALD J. DUNN

Donald J. Dunn is the 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.

John R. Bunker, Essay, *"You Could Look It Up": The Judicial Opinions of Sol Wachtler on the New York Court of Appeals*, 52 Syracuse L. Rev. 847 (2002).

An examination of the major opinions (including dissents) of Judge Wachtler in the areas of right to die, torts, constitutional law, and criminal law.

Barbara J. Busharis & Suzanne E. Rowe, *Florida Legal Research: Sources, Process, and Analysis*, 2d ed., 2002 [Durham, NC: Carolina Academic Press, 246 p.]

Designed primarily for use in conducting research in Florida law. Does not use sample pages.

Canadian Guide to Uniform Legal Citation [Manuel Canadien de la Reference Juridique], 5th ed., 2002 [Ontario: Carswell Company Ltd., 450 p.]

Covers case law, legislation, government documents, periodicals, monographs, and other secondary sources. In French and English.

Herbert E. Cihak & Joan S. Howland eds. *Leadership Roles for Librarians*, 2002 [Buffalo, NY: William S. Hein & Co., 264 p.]

A series of essays from prominent law librarians on what it takes to be an effective leader, e.g., as mentor, as coach, and as liberator. American Association of Law Libraries (AALL) Publications Series, no. 66.

David Crump, *Against Plain English: The Case for a Functional Approach to Legal Document Preparation*, 33 Rutgers L.J. 713 (2002).

Suggests that it is not always a wise practice to attempt to write every legal document in plain English because it may be uneconomical and unwise since some of these documents that use detailed legal language have withstood the tests of time.

Paul Duguid, *The Social Life of Legal Information: First Impressions*, First Monday, Issue 9, Sept. 2002, <www.firstmonday.org/issues/issue7_9/duguid/index.html>.

Argues that as information becomes increasingly electronic, it is more important, not less important, that libraries continue to exist. In addition to being places for storing information, libraries are important for a meeting place for ideas and for socializing.

Stephen Elias & Susan Levinkind, *Legal Research: How to Find and Understand the Law*, 10th ed. [Berkeley, CA: Nolo Press, various pagings]

Another revision (the previous one was in 2001) of a work designed for use by pro ses and others not in law school or with legal training.

Tom Goldstein & Jethro Lieberman, *The Lawyer's Guide to Writing Well*, 2d ed., 2002 [Berkeley, CA: University of California Press, 284 p.]

Discusses the causes and consequences of bad writing and details straightforward remedies that will make writing more readable.

F. Allan Hanson, *From Key Numbers to Keywords: How Automation Has Transformed the Law*, 94 Law Libr. J. 563 (2002).

A discussion of the consequences of automated information management of legal materials. Concludes that "research in print sources is conducive to a view of the law as a hierarchical system … while automated research pulls in the opposite direction." *Id.* at 597.

Harvard University. Board of Student Advisors, *Introduction to Advocacy: Research, Writing and Argument*, 7th ed. [New York, NY: Foundation Press, 210 p.]

A longtime standard that has been updated after more than six years. Now intended to serve as a text for moot courts as well as a companion for any introductory lawyering course taught from a litigation perspective.

Frank G. Houdek ed., *State Practice Materials: Annotated Bibliographies*, 2002– [Buffalo, NY: William S. Hein & Co., 1 vol., looseleaf]

"[T]he primary intent … is to ensure that researchers can quickly find information about the sources they need to conduct state law research by providing up-to-date, annotated bibliographies of the basic legal practice tools for each of the fifty states and the District of Columbia in a single, easily accessible source." *Id.* at xi. AALL Publications Series, no. 63.

Diana C. Jaque & Lee Neugebauer comps., *Legal Reference Books Review*, 94 Law Libr. J. 645 (2002).

Succinct reviews of nine legal reference books published in 2001. Continues the reviews from earlier issues of *Law Library Journal*.

John P. Joergensen, *The New Jersey Courts Publishing Project of the Rutgers-Camden Law Library*, 94 Law Libr. J. 673 (2002).

A review of the history, purpose, implementation, and progress of the New Jersey Courts Publishing Project. Suggests improvements that should be made.

Robert Laurence, *Casebooks Are Toast*, 26 Seattle U. L. Rev. 1 (2002).

Argues that Web-based course materials (the virtual casebook) soon will replace the traditional print casebook.

Richard A. Leiter ed., *National Survey of State Laws*, 4th ed., 2002 [Farmington Hill, MI: Gale Group, 700 p.]

An updated state-by-state comparison of current laws on subjects ranging from abortion to employment discrimination and child custody to interest rates. Covers consumer, family, criminal, real estate, and employment law.

Elizabeth A. Martin, *A Dictionary of Law*, 5th ed., 2002 [Cary, NC: Oxford University Press, 551 p.]

A standard law dictionary that focuses on the law in Great Britain.

Mary F. Miller comp., *Recommended Publications for Legal Research*, 2001, 2002 [Buffalo, NY: William S. Hein & Co., 167 p.]

Selected from titles announced in 2001 and arranged alphabetically by main entry. Contains a listing of the subjects and a main entry index. Annual.

Robert A. Pikowsky, *An Overview of the Law of Electronic Surveillance Post September 11, 2001*, 94 Law Libr. J. 601 (2002).

"[E]xamines the significance of the USA PATRIOT Act, enacted in the wake of the September 11 terrorist attack, on the law of electronic surveillance [and] … discusses the likely effects of the Act on universities and libraries." *Id.*

Bernard D. Reams Jr. & Christopher T. Anglim comps., *USA PATRIOT Act: A Legislative History of the Uniting and Strengthening of America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, Public Law No. 107-56 (2001)*, 2002 [Buffalo, NY: William S. Hein & Co., 5 vols.]

A collection of legislative histories of the statutes enacted by Congress to protect the lives and property of Americans following the attacks of September 11, 2001. Has ramifications for library records. The first title in the publisher's new Domestic Law Series.

Roget's International Thesaurus, 6th ed., Barbara Ann Kipfer, ed., 2001 [New York, NY: HarperResource, 1,248 p.]

While not a law book, this is a source that should be in every law library. It is helpful if all one is trying to do is find a word to use other than "thesaurus."

Howard T. Senzel, *Looseleafing the Flow: An Anecdotal History of One Technology for Updating*, 44 Am. J. Leg. Hist. 115 (2000).

An extensive, erudite, and interesting discussion of the development of looseleaf publications. Over 80 pages with more than 550 footnotes.

Amy E. Sloan & Steven Schwinn, *Basic Legal Research Workbook*, 2002 [New York, NY: Aspen Publishers, 160 p.]

Designed to complement the authors' *Basic Legal Research: Tools and Strategies*. Provides practice with key print and electronic sources, using four-tiered exercises that progress from guided practice to independent research skills.

Michael R. Smith, *Advanced Legal Writing: Theories and Strategies in Persuasive Writing*, 2002 [New York, NY: Aspen Law & Business, 360 p.]

Divided into five main parts: literary allusion; the three basic processes of persuasion (logic and rational argument, emotional argument, and establishing credibility); rhetorical styles; persuasive writing strategies based on psychology theory; and the moral implications of being an effective persuasive writer.

Ronald F. Wright & Paul Huck, *Counting Cases About Milk, Our "Most Nearly Perfect" Food*, 1860–1940, 36 Law & Soc'y Rev. 51 (2002).

An article that discusses the challenges of providing safe milk. Provides references to approximately 450 cases relating to milk and milk products.

Aleksandra Zivanovic, *Guide to Electronic Legal Research*, 2d ed., 2002 [Markham Ontario: Butterworths Canada, 264 p.]

Covers techniques for searching the Web, an overview of online legal databases, and references to various Web sites. Deals with the law in Canada.

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