Perspectives
Teaching Legal Research and Writing

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Legal Research? And Writing? In a *Property* Class?

By Diane J. Klein

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Quick—recall your first-year property course. Was it something like this: an old gasbag droning on and on, many rows below you, about the Rule Against Perpetuities, and covenants that run with the land, and inverse condemnation … interrupted intermittently by moments of terror in which you were asked some inscrutable question about race-notice recording statutes? Maybe livened up with a little takings clause jurisprudence? Or maybe you went to one of those "liberal" schools, where property meant rent control, environmental protection, and protecting the coast?

In any event, for most of us, the property course required studying, not "research" (research what? the Rule in Shelley's Case?), and the only "writing" was frantic scribbling in a notebook (now, frantic typing on a laptop), followed a few months later by frantic scribbling in a blue book. I teach property, and I teach the Rule Against Perpetuities, covenants that run with the land, inverse condemnation, and race-notice recording statutes—*and* I require my students to do real research and writing—right there in the property course. I am convinced that legal research and writing can usefully be incorporated into first-year substantive courses, specifically property, benefiting students and professors alike. Let me explain first how, and then why, I am committed to including this component in my courses.

In my year-long property course, the students complete approximately 10 writing assignments, five each semester. Some of these are straightforward problem sets (for example, involving the Rule Against Perpetuities). Others, however, require actual legal research and writing, typically resulting in a written product limited to 300 words. When institutional rules permit, scores on these assignments may count for up to 10 percent of a student's grade; otherwise, they are treated as a completion requirement for the course but not graded.

In property, where the law varies so widely by state, a writing assignment often requires students to research the specific law of our jurisdiction (California), after class discussion has focused on casebook cases and "majority rules." For example, after we completed our unit on the real estate transaction, including warranties of title, students were required to answer one of the following

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In This Issue

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From the Editor: A New Look

With this first issue of volume 14, we unveil a new design for *Perspectives*. Our goal is to continue to provide a balanced forum for a lively exchange of ideas and opinions about teaching legal research and writing, now presented with an updated, fresh, and more readable design.

As always, I welcome your comments and suggestions about the journal—whether about the content or the design.

—Mary A. Hotchkiss

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questions in an essay of no more than 300 words, plus proper case and/or statutory citations:

1. Does California law require disclosure by the seller of real property of the fact that a registered sex offender lives on the same block? If so, under what circumstances (or under all circumstances)? If not, how would you argue that it should? If you believe the law is unclear or undecided, choose a side and support it.

2. What is the current status under California law of "merger by deed"?

3. What is the current status under California law of the implied warranty of quality? Is a disclaimer of this warranty enforceable? If so, under what circumstances?

4. Under California law, does a latent violation of a restrictive land use statute or ordinance, which exists at the time the fee is conveyed, constitute a breach of the warranty deed covenant against encumbrances?

5. Under California law, does the covenant of seisin run with the land? In other words, if A conveys to B, who conveys to C, can C sue A for breach of the covenant of seisin?

6. Does California have an antideficiency statute? If so, please attach it, and summarize its provisions. If not, should it? Why or why not?

Each of these questions is designed (very roughly) to approximate a summer associate-type assignment, and students are given between one and two weeks to complete it (much longer than they would have at a law firm!). Such an assignment is also "friendlier" to students than a work assignment because it gives students a choice of subject matter, and even the option of switching from one topic to another if the first turns out to be too hard to research.

Still, one of the first things I discovered was that I had to turn back a significant fraction (close to one-third) of the student submissions as nonresponsive. Many of my first-year law students, even after a semester of legal research and writing, still seemed to have the college student's sense that any words they put on paper (and printed out from a computer), constitute an "answer." Too few had made the shift to the lawyer's understanding that you have not yet answered the question under a particular jurisdiction's law *until you have found the relevant case and/or statute* (even if you have to stay in the library until long after your favorite show comes on!). Many of them gave up entirely too easily, and submitted, not so much memos, but apologias for their failure to write memos ("After six hours of research, I couldn't find any case that … "). Others answered a question *close* to the question asked, but not close enough. As unhappy as many of them were to learn that the assignment they thought they had done had to be re-done, I'm convinced that the classroom is a decidedly better place to deal with this misunderstanding than a first job. Helping students avoid that potential pitfall is the first of the reasons why my students write for me all year long.

The second reason also relates to preparation for professional life. Most civil lawyers communicate

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"One reason my students write is to help make me a better teacher for them, and for their successors."

in writing most of the time, and the value of literacy in one's native tongue (or second language, as the case may be) cannot be overstated. Text-messaging and the ubiquitous instant messaging may have brought back writing—but they have not brought back literacy. As Truman Capote remarked on the three weeks it took Jack Kerouac to write *On the Road*, "That's not writing, that's typing." Only practice and consistent feedback can bring most students to the minimum levels of literacy necessary for the competent practice of our profession. A final exam provides no opportunity for this, first, because students are writing under extraordinary stress, and second, because exam-grading does not provide genuine feedback (from which the student might benefit), but only evaluation.

My third reason is pedagogical, rather than professional. Especially in larger classes (I have taught a property class of more than 100 students), the time I spend grading a student's written work, even of just one page, may be the only few minutes each week I spend wholly in intellectual communion with an individual student, paying attention to nothing but what that student is saying. I do not rely on "volunteers" in class—everyone gets called on. But even so, questions and answers in class are always subject to that day's agenda, pressures of coverage, and whether a student prepared. As for office hours, we know that no more than a small fraction of students attend, or even e-mail me with questions. Regular, required written work brings each student into my presence, and inevitably, the most articulate or prepared in class are not always strongest on the page. For that reason among others, nothing can replace reading and grading a paper as the "royal road" to a student's nascent legal thought processes. (And yes, it is time-consuming. With a class of more than 100, I often spent close to one full day each week drafting, and then grading, assignments.) By writing for me, each student was assured of undivided attention for at least as long as I spent grading and commenting on his or her work, and I think my students deserve that.

The final reason is, in a sense, a selfish one. Because my students do research and write about material I (believe I) have taught, their work provides me with regular feedback about whether anyone is actually learning anything. As a new teacher, I might have anticipated that I would not still need that feedback five years later. I would have been wrong. Some teachers may be able to look out at rows of students and tell by the look in their eyes whether they understand the elements of adverse possession, or the difference between a race and a race-notice recording statute. I lack that power, and don't see myself acquiring it anytime soon. Until I do, I find I am better served by what is, in effect, an ongoing teaching evaluation, provided by students who either do or do not understand what I have been going on and on about (and can't fake it by looking attentive). One reason my students write is to help make me a better teacher for them, and for their successors.

To me, most of the foregoing is obvious, even embarrassingly so. It is hard to believe that even now, some regard it as a "radical" strategy to require students in first-year substantive courses to write during the term. One of my older colleagues at another institution, in what was apparently intended to be a decisive condemnation of my practice, asked sneeringly, "Is that the way they taught you at Harvard?" As a matter of fact, it wasn't, although my property professor, a visitor from another (elite) institution, does require his students in his home institution to write for him on a regular basis. But perhaps it should have been.

Law Students Performing at a Class Near You

By Rhea Ballard-Thrower

Rhea Ballard-Thrower is an Associate Professor and the Director of the Law Library at Howard University School of Law in Washington, D.C.

For several years I taught first-year legal bibliography, and most recently, I have taught advanced legal research. At the end of each academic year, course evaluations arrive and I carefully read each one. Overall, the comments are very positive. The students remark how much they have learned, although in the same breath they consistently state that the course requires—and I quote—"an insane amount of work." I have to admit that my courses are quite demanding, but as other legal bibliography instructors can attest, there is so much information to teach and just too little time in a semester. Despite the fact that legal resources have not changed much over the years, I find I must alter a few things in the way I teach the course every semester. However, the biggest change to my course took place in 1995. That was a watershed year for me in that I decided to get the students in my section actively involved in teaching legal bibliography.

October 3, 1995, is a day that I will always remember exactly where I was, for that was the day when the decision in the O.J. Simpson trial was announced. So, what does O.J. Simpson have to do with legal bibliography? Well, I figured that if Mr. Cochran could organize a "dream team" for Mr. Simpson's legal representation, then I could do the same thing for legal bibliography. In the spring semester of the following year, I organized the students into legal bibliography dream teams. Each team was required to present a legal bibliography topic to their classmates. The presentations were to be between 25 to 30 minutes long. I told the students they could be as imaginative as they wanted. I have to admit; I thought the students would do a typical show-and-tell of the resources with a PowerPoint presentation. To my surprise, the students were way more creative. Given the opportunity to be the "instructor for the moment," the students took their responsibility quite seriously. Each team had to meet with me at least three weeks before their presentation to the class. During that meeting we reviewed their project theme, discussed which legal resources would be presented, made sure the team members had a clear understanding of how to use the resources, and reviewed the resources handout that each team had to prepare for their particular topic. In the years to follow, I learned the hard way that in the conference meeting, I also needed to cover such issues as the use of profanity, appropriate dress, and the consumption of generally not-considered-edible foods. But, those were only minor glitches. On the day of the presentations, I started the class by introducing the team's topic. Using the traditional Socratic method, I reviewed with the students the various legal resources for that day's discussion. After answering any remaining questions, the dream team for that day was then allowed to perform. So, what did the students showcase? What follows are brief descriptions of some of my favorite presentations.

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The Goodfellas and the Waste Management Business

A group of "Goodfellas" uses the *United States Code* and *United States Code Annotated*®, as well as other federal statutory materials to determine whether they will violate federal law if they form and operate a "waste management business" (otherwise known as a gambling venture).

Survivors of the Titanic

As their cardboard cutout of the Titanic is sinking, passengers rock back and forth on the ill-fated voyage discussing how to use the *American Law Reports* to locate information on the topic "carriage of passengers."

"Who knew that first-year law students could be such creative teachers of legal bibliography when given the chance?"

Updating the Simple Life

For their latest adventure, team members Paris and Nicole are reference assistants at a law library. The two have difficulties updating case law. Fortunately, the law librarians are available to help the trust-fund beneficiaries understand not only how to use *Shepard's*® in print and online, but also how to use KeyCite®.

Starr Trek

Captain's log stardate 2098.1.7.23—Federal Regulations Officer Kenneth Starr arrives on the ship to investigate possible regulatory violations. Officer Starr demonstrates how the *Code of Federal Regulations, Federal Register, List of CFR Sections Affected*, and other resources can be used for federal regulatory research.

Oprah's Favorite Things

Team audience members are shocked to learn that they are a part of Oprah's "My Favorite Things–Secondary Sources" television episode. Recipients react with hysterics as Oprah explains and then gives away to those in the audience copies of law reviews, legal newspapers, and her other favorite secondary sources.

The Blair Witch Digest

This presentation was unique in that a video was delivered to me at the beginning of the class. The following message was attached to the videotape: "On August 26, 10 law students entered the law library to film a documentary on digests, focusing on the topic of witchcraft. None of the students has been heard from since. This morning, this footage was found on top of a *Decennial Digest*." Keeping with that theme, the members of the team were not in class that day. On the video, frightened team members ran through the library at night (after closing) explaining how to use the digest system. For the final scene there was a scream as a volume of the *Decennial Digest* falls to the floor.

Pulp Fiction Robbery

In a re-enactment of the well-known movie scene, a couple of misguided team members named Pumpkin and Honey Bunny start to rob a coffee shop. Eventually, Pumpkin points a gun at Jules, Jules points a gun at Pumpkin, Honey Bunny points a gun at Jules, and Vincent points a gun at Honey Bunny. Jules resolves the conflict by explaining how to use the state codes, digests, and other state legal resources to locate information on the topic "robbery." After Pumpkin and Honey Bunny indicate that they now have a thorough grasp of state legal research, Jules decides to let them go.

So, there you have it. Who knew that first-year law students could be such creative teachers of legal bibliography when given the chance? My only regret is that I did not videotape the presentations. The presentations could have been used to teach others that legal bibliography can be presented in a fun, yet informative way.

Lights! Camera! Action!

Using Ethical Problems in First-Year Skills Courses

By Philip M. Frost

Philip Frost is Clinical Assistant Professor and Associate Director of the Legal Practice Program at the University of Michigan Law School in Ann Arbor.

Can instructors effectively introduce ethics in a first-year research, reasoning, and writing course without sacrificing other course priorities? I believe they can not only do so, but they can even enhance writing instruction through a writing assignment involving an issue under the rules of professional conduct.[1] This article describes my experience in using such an assignment, its advantages for writing and ethics instruction, and some concerns.

The Assignment

The ethics and writing assignment that I have most often used is a brief on a motion to disqualify a law firm from representing a party in a lawsuit. The fact scenario involves a new attorney in a firm who previously did work for a client now being sued by a party represented by the new firm. In such a situation the new attorney has a conflict of interest and would be disqualified from representing the new firm's client if the previous work involved confidential information related to the case and the former client did not consent.[2] The disqualification would normally extend or be "imputed" to all attorneys in the new firm.[3]

However, the rules of professional conduct in several states allow a firm to avoid disqualification if it creates a timely "ethical screen" to isolate the disqualified attorney from those working on the case.[4] Such a screen generally includes segregation of firm files and instructions to the screened attorney and firm personnel to avoid communication about the case.[5] It must be implemented as soon as practical.[6] The main issue I have generally asked students to consider is whether the screen was timely if it was implemented after some brief delay. Additional or alternative issues can be the sufficiency of the screen or the relation of the prior work to the current litigation. An alternative fact pattern can be used in a state that only permits screening of attorneys moving from government to private practice.

Advantages

Such an assignment has a number of advantages for teaching ethics as well as research, analysis, and writing. One advantage is that it involves an interesting combination of rules, ethical principles, and the realities of practice. The facts and authorities engage students' interest because they deal with lawyers' actions, mistakes, and the consequences of those mistakes. The consequences can include a disqualified law firm, a dissatisfied client who must change lawyers, a new lawyer who is partly responsible for the firm losing a representation, and even a judge publicly criticizing a firm.[7] Students can also easily relate to the new

"The facts and authorities engage students' interest because they deal with lawyers' actions, mistakes, and the consequences of those mistakes."

[1] I have used state rules based on the American Bar Association Model Rules of Professional Conduct rather than the former Model Code of Professional Responsibility. As of 2004 43 states and the District of Columbia used some version of the Model Rules. Steven Gillers & Roy D. Simon, *Regulation of Lawyers: Statutes and Standards* 3 (2005 ed.).

[2] Model Rules of Prof'l Conduct R. 1.9 (1983) (amended 2003).

[3] Model Rules of Prof'l Conduct R. 1.10.

[4] *See* Gillers & Simon, *supra* note 1, at 124–25, 132. For example, the rules in Michigan and Illinois permit such screens. *Id.*; Mich. Rules of Prof'l Conduct R. 1.10 (1988); ILCS S. Ct. Rules of Prof'l Conduct R. 1.10 (1990). The Model Rules do not expressly permit such screens except as to attorneys moving from government employment. Model Rules of Prof'l Conduct R. 1.9, R. 1.10, R. 1.11.

[5] Model Rules of Prof'l Conduct R. 1.0 (k) and cmt. [9].

[6] *Id.*; Mich. Rules of Prof'l Conduct R. 1.10.

[7] *See, e.g.*, Cobb Publishing, Inc. v. Hearst Corp., 907 F. Supp. 1038 (E.D. Mich. 1995).

lawyer, which facilitates persuasive writing. Finally, the brief gives students an opportunity to organize and present a combination of rule and case analysis and policy arguments.

The substantive issues are also interesting and important for the study of ethics. They include such fundamental concepts as confidential client information, attorney loyalty, and conflicts of interest in a law firm.[8] These are all issues that would be difficult to introduce in an abstract way. To complete the assignment students must deal in depth with these concepts using rules, rule comments, cases, and opinions from state ethics regulatory bodies or the ABA.

They cannot treat such concepts as mere abstractions. Rather, they must focus on what they mean in practice, apply them to a concrete fact situation, and write about them. This is a much more intensive and effective way to teach ethics than simply citing or discussing rules and cases, or doing a class exercise.

Concerns

The main concern with such an assignment is that it can be complex. As noted, students must consider rule text and comment, cases, nonjudicial ethics opinions, and the underlying rule principles. The rules and principles will generally be new to students, and there are some cross-references within rules that must be sorted out.[9] However, the complexity can be reduced by limiting the issues, and the Model Rules Preamble and Comments give good short introductions and summaries of rule principles.[10] The authorities can also be reasonably limited by focusing on one jurisdiction.

While the complexity of the problem is a challenge for a shorter assignment, it can be an advantage for a longer one. It gives instructors an opportunity to teach students how to analyze ethics rules, opinions, and policies, and how to organize and persuasively present this analysis in writing. It gives students the opportunity to apply this instruction in depth. A larger version of the assignment can also use authority from other jurisdictions with similar rules, and address more of the issues noted above. And the underlying rule principles are certainly significant enough to merit deep analysis and discussion.

Another concern with such an assignment is that students must research in new sources, including ethics rules and nonjudicial opinions interpreting the rules. However, additional research experience is always useful, and once the relevant materials or computer libraries are located, the research techniques are not new.[11] This is also a good area to compare print and computer research. Online research in ethics sources is more efficient and effective than print research in light of the difficulty in locating current print sources of state ethics rules and opinions. State ethics rules can be found in rule "deskbooks,"[12] but these are generally published only once a year, and may become outdated in light of ongoing state rule amendments following ABA ethics rules changes.[13] Many state ethics opinions are published only in bar journals and are difficult to find in print. But online sources for state ethics rules and opinions are current and relatively easy to locate.[14]

"While the complexity of the problem is a challenge for a shorter assignment, it can be an advantage for a longer one."

[8] *See* Model Rules of Prof'l Conduct R. 1.6, R. 1.9, R. 1.10.

[9] *See* Model Rules of Prof'l Conduct R. 1.10 (disqualifying firm if one of its lawyers practicing alone would be disqualified under Rules 1.7 or 1.9); Mich. Rules of Prof'l Conduct R. 1.10 (allowing screen to avoid firm disqualification where one of its lawyers is disqualified under Mich. Rules of Prof'l Conduct 1.7, 1.8, 1.9, or 2.2).

[10] *See* Model Rules of Prof'l Conduct Preamble: A Lawyer's Responsibilities, R. 1.9 cmt, R. 1.10 cmt.

[11] *See* Christina L. Kunz et al., *The Process of Legal Research* 350–63 (6th ed. 2004).

[12] *Id.* at 352.

[13] *See* Gillers & Simon, *supra* note 1, at 3 et seq. (noting frequent amendments to ABA Model Rules of Professional Conduct and containing text of Model Rules with amendments through August 2004); *See also* <courts.michigan.gov/supremecourt/Resources/Administrative/2003-62.pdf> (last visited July 13, 2005) (containing proposed revisions to Michigan Rules of Professional Conduct).

[14] *See* Kunz, *supra* note 11, at 353. A good online source to locate current state rules of professional conduct is the American Bar Association Center for Professional Responsibility Web site, which contains links to state rules of professional conduct and ethics opinions. *See* <www.abanet.org/cpr/links.html> (last visited July 13, 2005).

Conclusion

A writing assignment involving ethical issues is an effective way to teach ethics as well as research, analysis, and writing. It involves interesting rules, cases, and policy issues that challenge students' organizational, analytical, and writing skills. It is an effective way to teach ethics because students must engage deeply with ethics principles and apply them to an interesting fact setting to complete the assignment. The inclusion of ethics issues in a major writing assignment also signals the importance of such issues early in students' law school careers. In sum, for those looking for a way to integrate ethics and writing instruction, the ethical problem can be the answer.

"The inclusion of ethics issues in a major writing assignment also signals the importance of such issues early in students' law school careers."

Selected Resources for Ethics Research Assignments

(Descriptions provided by the publishers)

Monroe H. Freedman & Abbe Smith, Understanding Lawyers' Ethics, 3d ed. (2004) [Newark, NJ : LexisNexis].

> "This Understanding treatise presents a systematic position on lawyers' ethics. The authors argue that lawyers' ethics is rooted in the Bill of Rights and in the autonomy and the dignity of the individual. This traditionalist, client-centered view of the lawyer's role in an adversary system corresponds to the ethical standards that are held by a large proportion of the practicing bar."

James L. Kelley, Lawyers Crossing Lines: Nine Stories (2001) [Durham, NC: Carolina Academic Press, 190 p.]

> "This book is a collection of true stories about lawyers who broke the rules ended up being sued for malpractice, disbarred, or prosecuted. Intended as supplemental reading for students in professional responsibility, ethics, or lawyering classes, it contains stories that come directly from the courtroom, revealing the gritty realities of lawyers in trouble."

Deborah L. Rhode, editor, Ethics in Practice: Lawyers' Roles, Responsibilities, and Regulation (2000) [New York: Oxford University Press, 294 p.]

> "Lawyers' ethics have been condemned for centuries, but they received little scholarly scrutiny until the last few decades. Ethics in Practice brings together leading experts in the emerging field of legal ethics to discuss the central dilemmas of practicing law."

Ronald D. Rotunda and John S. Dzienkowski, editors, Legal Ethics: The Lawyer's Deskbook on Professional Responsibility, 2005–2006 edition; the Center for Professional Responsibility, American Bar Association (2005) [St. Paul, MN: Thomson/West, 1973 p.]

> "This [deskbook] combines Rotunda and Dzienkowski's thorough understanding of the current ethical climate, with the authors' all-encompassing commentary and discussions, and references to the American Law Institute's new Restatement of the Law, 3d–Law Governing Lawyers."

American Bar Association: Center for Professional Responsibility <www.abanet.org/cpr/ethics.html>

> "Since 1978, the Center for Professional Responsibility has provided national leadership and vision in developing and interpreting standards and scholarly resources in legal ethics, professional regulation, competence, professionalism and client protection mechanisms."

American Legal Ethics Library, Cornell Legal Information Institute <www.law.cornell.edu/ethics>

> "This digital library contains both the codes or rules setting standards for the professional conduct of lawyers and commentary on the law governing lawyers, organized on a state by state basis."

Legalethics.com <www.legalethics.com/index.law>

> "LegalEthics.com currently provides users with access to a collection of Internet resources relating to ethics and the law, including articles and links to Internet resources."

Teaching 1Ls to Think Like Lawyers by Assigning Memo Problems with No Clear Conclusions

"An important early step toward thinking like a lawyer is recognizing and articulating counter-arguments."

Brutal Choices in Curricular Design ... *is a regular feature of* Perspectives, *designed to explore the difficult curricular decisions that teachers of legal research and writing courses are often forced to make in light of the realities of limited budgets, time, personnel, and other resources. Readers are invited to comment on the opinions expressed in this column and to suggest other "brutal choices" that should be considered in future issues. Please submit material to* Helene Shapo, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611, phone: (312) 503-8454, fax: (312) 503-2035.

By Sarah E. Ricks

Sarah E. Ricks is a member of the Legal Writing Faculty and Co-Coordinator of the Pro Bono Research Project at Rutgers School of Law-Camden in Camden, N.J.

It is hard for many first-year students to recognize that a fact pattern can be susceptible to more than one legal interpretation under the binding law. While "thinking like a lawyer" has no precise meaning, it generally refers to "the ability to analyze facts and appreciate the shifting legal results produced by factual nuances, to separate a complicated problem into its component parts, to assemble facts into a meaningful whole; and, in running through it all, a capacity of ferreting out of a problem those features relevant to its resolution."[1] Students entering law school "are surprised at the rigor—and ambiguity—associated with legal analysis."[2] With experience, students learn that legal analysis "is an art form, infused with imagination and creativity, with rarely only a single conclusion or only a single path to that conclusion."[3] An important early step toward thinking like a lawyer is recognizing and articulating counter-arguments. In their legal writing classes, starting 1Ls with a memo problem in which the client's case likely does not state a claim can help students to make that step.

Hurdles to Recognizing Counterarguments New Law Students Must Overcome

Students need guidance to appreciate that a fact pattern can be susceptible to more than one interpretation under the binding law. When I began teaching, fresh from 11 years of law practice, the first memo I assigned involved a seriously injured, sympathetic plaintiff who likely could not state a tort claim. I assigned the entire class to represent the sympathetic plaintiff. I naively thought that at least some students would react as experienced practicing lawyers by noting arguments on both sides, but concluding that the law would not favor their sympathetic client. I was baffled when every student predicted "good news" for the client—she could state a claim. Upon reflection, I realized I needed to more effectively teach students how to identify counterarguments.

In constructing an initial memo assignment, it helps to recall the hurdles a brand new law student must overcome in order to recognize plausible counterarguments. Some first-year students overlook counterarguments in their eagerness to find a remedy for an injured person. Some think the memo's "yes" or "no" prediction is the main event

[1] David T. ButleRitchie, *Situating "Thinking Like a Lawyer" Within Legal Pedagogy*, 50 Clev. St. L. Rev. 29, 38 (2002–2003); *see also* Jay Feinman, Law 101, 337 (2000) (what judges, lawyers, and law students do is "[i]dentify the issues involved, consider the arguments on both sides, and come to a conclusion about how the issues should be resolved").

[2] Kathleene Magone & Steven I. Friedland, *The Paradox of Creative Legal Analysis: Venturing into the Wilderness*, 79 U. Det. Mercy L. Rev. 571, 571 (2002).

[3] *Id.* at 572.

and the analytical steps to the answer are not important. Others think their job is not to predict the likely outcome but to tell the client what the client wants to hear. Others think that any fact pattern a teacher supplies must fit the requirements of the relevant legal claim. Many skim the surface of the law, focusing on the words alone and not the underlying reasons for the rules. Many skim the surface of the facts, noticing only those that support their predictions.

Teaching Goals Served by Assigning a Problem That Likely Does Not State a Claim

Assigning a memo problem that likely does not state a claim early in a law student's career can help new students overcome each of these hurdles. Starting with facts that might not state a claim makes it more likely that students will notice that there can be multiple ways to apply the law to the facts. Requiring students to analyze borderline fact patterns at the outset of law school can help students "to see the malleability and ambiguity of law, illustrating for them how argumentation, persuasion and sagacity can literally form opinion and reality."[4]

Before a student can articulate and refute a counterargument, the student has to spot the counterargument. Starting with facts that tip toward not stating a claim means not only that there are good arguments on both sides but that some students will spot them. As students think through the legal analysis, and confront other students' views of the same analysis, the likelihood increases that they will realize that a legal rule may be susceptible to more than a single reading. While I limit memo assignments to legal tests with defined elements, I choose legal tests with inherent ambiguities to provide rich opportunities for students to explore how the words of the test draw meaning from how they've been applied to the differing facts of the binding cases. For example, under the binding case law, what makes conduct "reasonable" or a change in circumstances "material"?

As students think through the legal analysis for early memo assignments, they begin to realize that the policies underlying the rules—the reasons for the rule—provide useful guidance in predicting the application of the rule to borderline facts. While "many beginning law students arrive at law school blissfully unaware of the importance of language in their newly chosen endeavor… [t]he sooner first year law students appreciate the ambiguity of language, the sooner they can grasp the vital role that policy, the name lawyers often give to the reason underlying a rule, plays in resolving the ambiguities of language."[5] For example, whether a borderline fact pattern states a tort claim may depend on why the state adopted the tort. In a borderline statutory fact pattern, how the legislature intended the statute to be construed may tip the scale.

Starting with a memo problem that likely does not state a claim also helps students appreciate factual nuance in the record they're given. Different students notice different facts. Students realize through exposure to their peers' differing analyses of the same facts that another student views a fact they have overlooked as the basis of a solid counterargument—or even as potentially dispositive.

Laying the Groundwork for Students to Recognize and Articulate Counterarguments

Transparency in the learning process can encourage students to entertain the possibility that a fact pattern is susceptible to more than one legal interpretation. I tell students up front that the legal problems they'll confront in my class are designed to be realistic law practice simulations, for which

"Transparency in the learning process can encourage students to entertain the possibility that a fact pattern is susceptible to more than one legal interpretation."

[4] ButleRitchie, *supra* note 1, at 47.

[5] Howard A. Denemark, *How to Alert New Law Students to the Ambiguity of Language and the Need for Policy Analysis Using a Few Minutes and the Directions on a Bottle of Salad Dressing*, 36 Gonz. L. Rev. 423, 424 (2000–2001).

"The time to confront plausible alternative views of the legal analysis is before, not after, the recommendation to the client."

there is no "right" answer. Like the complex legal problems they will confront in legal practice, the answers "yes" and "no" are both plausible, and students should focus on the steps in the analysis.

Being told openly that the depth of the analysis is what matters—rather than the ultimate answer—helps students resist the temptation to superficially analyze the problem by declaring the first similar case they read to be dispositive. Rather, regardless of which position he or she stakes out, each student is aware that there are powerful arguments for the opposite position and that the predicted result depends on which aspects of the law and facts the analysis emphasizes.

To further set the stage for exploring counter-arguments, I banish "clearly," "obviously," and similar words from student memos. Throughout the first semester, I call the students' attention to Linda Edwards' admonition to banish words that ignore the complexities of legal analysis.[6] Students learn that words such as "clearly" are red flags for logical leaps, signals to the reader that the writer has not done the hard work of wrestling with ambiguity and has instead taken refuge in the written equivalent of shouting. As Professor Edwards warns, such words have developed a connotation exactly opposite their original meanings.[7]

To further prepare students to recognize the possibility of alternate applications of the law, I try to give the opposing view a physical presence in the classroom. One way is by splitting the representation. For two memo problems in the fall (and the appellate brief problem in the spring), half the class represents the plaintiff and the other half represents the defendant. Knowing that the student in the adjacent seat represents the other side reminds students to contemplate the possibility of alternate views of how the law might apply to the same set of facts. Splitting the representation helps counteract the common 1L tendency to see a remedy for a sympathetic plaintiff, regardless of the law.

Once students have spent time analyzing the problem, and opinions are beginning to gel, I encourage students to consider alternate views by giving them tangible evidence that different people can view the analysis differently. As my first semester students are drafting and redrafting their research memos, I periodically ask the class for a show of hands for how many students predict the plaintiff will prevail and how many predict the defendant will prevail. Each year, the class splits about down the middle. Students who are tempted to skim the surface of a legal analysis by viewing it in only one way are confronted by the hands of those in the class who take the opposite view. Those hands are visual reminders that the legal analysis is not self-evident and that the student may be missing some legal or factual nuance if he or she has not refuted plausible counterarguments.

Finally, to help 1Ls overcome the natural inclination to tell people what they want to hear, I try to focus the students' attention on the purpose of a memo: to help the supervising attorney and client to make an expensive decision. I tell them not to hide bad news from a client because that shortsighted eagerness to please ultimately will cost the client time and money. Neither the plaintiff nor the supervising attorney will thank the junior attorney for recommending a lawsuit that a court tosses on a motion to dismiss. Neither the defendant nor the supervising attorney will thank the junior attorney for failing to tell them that a court is likely to allow a complaint to go forward when an early settlement would have been cheaper. The time to confront plausible alternative views of the legal analysis is before, not after, the recommendation to the client.

Exposure to Different Students' Analysis of the Same Facts

In predicting a likely outcome, applying even a limited body of law to a borderline set of facts can "involve a variety of inferences, deductions and connections ... [and] application can be unique from

[6] Linda H. Edwards, *Legal Writing and Analysis* 277 (2003).

[7] *Id.*

one person to the next, depending on thought processes, perspective, background and the like."[8]

Students can learn to recognize alternative ways to apply the law to the same facts by being exposed to a different student's analysis of the identical record. Some methods to expose students to alternative views are requiring students:

1. to read fellow students' memos;
2. to perform and observe oral law practice simulations; and
3. to participate in classroom drafting exercises.

Peer editing. At Rutgers-Camden, 1Ls anonymously exchange draft discussion sections of their first memo with two other students to "peer edit" each memo before returning it to the writer, using a questionnaire to guide the editing process.[9] When a memo problem involves borderline facts, each student "editor" is likely to peer edit a draft predicting the opposite result, based on a counterargument the student editor either rejected as unpersuasive or perhaps overlooked entirely in drafting his or her own analysis.

In-class oral law practice simulations. Students can identify counterarguments in oral law practice simulations if they explore other students' views of the analysis. As students work through the analysis for their first legal memo, I require them to role-play the law practice simulation of a junior attorney briefing a supervising attorney. Requiring a student to verbally defend the memo's prediction can help the student appreciate nuance in the facts and law and confront previously elusive counterarguments. Oral questioning can be an opportunity to explore whether the memo's prediction is consistent with the reasons underlying the rules. Students may learn that facts they overlooked could be outcome determinative.

My class does a "brief the supervising attorney" role play three times. First, after they have completed a draft of the memo, all students do an in-class, one-on-one role play: a student "junior attorney" briefs a student "supervising attorney" on the issue, answering questions and defending the junior attorney's prediction. This 10-minute simulation may involve two students with opposite views of the likely outcome and differing views of the law and facts likely to be emphasized by a court.[10]

Second, immediately after the whole class completes the one-on-one simulation, one pair of students comes to the front of the room to switch roles and do the simulation again, this time in front of the class. In a later class, after the students have turned in revised drafts of the memo, we revisit the "brief the supervising attorney" simulation on the same analysis a third time. This time, I play the supervising attorney and two students stand in front of the class as a team to answer my skeptical questions. This allows the class to hear two additional views of the likely legal analysis, further fleshing out counterarguments students may have missed when first grappling with the problem.

In-class written law practice simulations. Finally, my students are exposed to other students' analyses of the same facts during an in-class drafting exercise, collectively outlining a motion to dismiss the claim. Some students can't recognize that a fact pattern is susceptible to more than one legal interpretation until they have been recast in a different role and asked to reanalyze the problem. For example, after the students have turned in revised drafts of the first memo, I ask the entire class to become the attorney for the defendant assigned to draft a motion to dismiss the claim. The class brainstorms different potential

"Oral questioning can be an opportunity to explore whether the memo's prediction is consistent with the reasons underlying the rules."

[8] Magone & Friedland, *supra* note 2, at 574–75.

[9] The peer edit exercise was part of the existing Rutgers–Camden curriculum when I began teaching and was adapted from Villanova University School of Law. The exercise asks editors to evaluate both analysis and writing style. At Rutgers-Camden, editing guidelines include identifying strengths and weaknesses of the large-scale organization, e.g., "use of roadmap paragraph, headings, CRAC, overall logical organization," and of the small-scale organization, e.g., "discussion of all elements, use of thesis sentences."

[10] The useful model of the one-on-one "brief the partner" simulation between students was part of the existing Rutgers-Camden curriculum when I began teaching and I expanded it as described below.

"The process of writing … can deepen a student's understanding of the law and its differing, plausible applications to the facts."

arguments as I jot them on the board. The board fills quickly. After several minutes, I stand back and ask the students whether the memos that predicted the facts *would* state a claim anticipated and refuted each of the likely counterarguments. I ask whether each memo that predicted the facts *would not* state a claim had thoroughly explained why.

Additional in-class drafting exercises could further require students to grapple with the ambiguities in the application of the law to the facts. Shifting focus to what *new* facts would help the client, students could brainstorm about what evidence a defendant might need to successfully move for summary judgment. To compile that evidence, what documents would the defendant want to see and what interrogatories could be posed to the plaintiff? Which witnesses would the defendant want to depose, and what would some of the questions be?[11] What questions could be asked of the client or of the client's employees? Would an expert be useful? This could be a valuable opportunity for students to grasp that facts in real life do not come prepackaged but instead can be developed by creative thinking and research. Class brainstorming on these next steps in the litigation process could be incorporated into a recommendations section of the memo, encouraging students to reflect on their counselor role and to take ownership of the client's legal problem.[12]

Writing and Rewriting

The process of writing itself can deepen a student's understanding of the law and its differing, plausible applications to the facts. "Writing is a thinking process that tests whether one's thoughts are clear to a reader unfamiliar with the facts, the issue, or the cited legal authority."[13] As they write about a legal problem, "students are apt to discover the reciprocal relation of writing and thinking."[14]

My students rewrite their first predictive analysis after receiving feedback from multiple sources: written feedback from me, written feedback from two student/peer editors, and oral feedback from the "brief the supervising attorney" simulation, in addition to witnessing two students perform the simulation in front of the class. At varying stages in the process, different students will see that there is more than one path to a logical conclusion.[15] Showing the class client letters explaining the conclusions, or requiring students to draft their own, would provide opportunities to explore plain language, ethics, and tone when communicating predictions to a client.

Evidence That These Techniques Work

There is some evidence that these techniques can be effective in teaching students to recognize that there is no single, obvious application of the binding law to the client's facts. Each year, I weight the first research memo toward not stating a claim for a sympathetic plaintiff and each year, the class splits about down the middle on whether the facts state a claim.

Some students change their initial predictions as they learn more about the law and perceive the potential relevance of previously overlooked facts in the file, which consists of realistic litigation documents. Last fall, for example, 15 of my 42 students changed their mind about the predicted outcome at least once. Not all students tell the client "good news," resisting the temptation to shade the

[11] *See* Nancy L. Schultz, *How Do Lawyers Really Think?*, 42 J. Legal Educ. 57, 68 (1992) (outlining in-class discovery exercise).

[12] To demonstrate how these additional steps can reshape the factual record, an upper-level student could be brought into class to role play the "client" in an oral interview with the class of attorneys.

[13] Barbara J. Busharis & Suzanne E. Rowe, *The Gordian Knot: Uniting Skills and Substance in Employment Discrimination and Federal Taxation Courses*, 33 J. Marshall L. Rev. 303, 314 (2000).

[14] Shultz, *supra* note 11, at 67; *see* Busharis & Rowe, *supra* note 13, at 311 ("[T]he act of writing creates understanding. … [W]riting is … a creative process, in which new ideas are constructed as the writer seeks to express his understanding of the matter at issue").

[15] Magone & Friedland, *supra* note 2, at 572.

analysis to tell the client what the student thinks the client wants to hear. Seventeen of my 42 students delivered bad news to their assigned clients on the first memo.

These results stand in sharp contrast to my first semester of teaching when, as I recounted at the beginning of this essay, not a single one of my students recognized that the sympathetic plaintiff likely couldn't state a tort claim. Now I start the fall semester by telling the students that in real life the answer to a memo rarely will be clear because if it were, the supervising attorney would not need the junior attorney to draft a research memo. By the middle of the semester, I think most students accept that often-repeated statement because they have started to recognize the ambiguities inherent in the memo problems they're analyzing. By the end of the fall semester, I hope that students have started to appreciate that ambiguity is opportunity: if a fact pattern is susceptible to more than one legal interpretation, that uncertainty in how the law will apply to their clients' facts can be an opportunity for their clients to prevail. I tell students that if the answers to legal questions were obvious, no one would need lawyers to help figure it out—and lawyers would be robbed of the fun and creativity of legal analysis.[16]

"I tell students that if the answers to legal questions were obvious, no one would need lawyers to help figure it out—and lawyers would be robbed of the fun and creativity of legal analysis."

Another **Perspective**

"The problems with which lawyers must deal are infinitely varied, as are the possible solutions or answers, but many of the problems fall within one category: those requiring a reliable prediction of the probable legal consequences of a particular state of affairs. This text is primarily concerned with the skills required to work with this category of problems. Simplistically, reliable prediction requires identification of five problem elements (not necessarily in the order given): the raw facts, the law that may *possibly* control, the legal question or questions, the legally significant facts, and the law that will *probably* control."

—Marjorie D. Rombauer, *Legal Problem Solving: Analysis, Research and Writing* 1 (4th ed. 1983).

[16] *Id.*

To Quote or Not to Quote

"The skillful quoter seamlessly meshes the author's words with those of supporting voices."

Writers' Toolbox … *is a regular feature of* Perspectives. *In each issue, Professor Anne Enquist offers suggestions on how to teach specific writing skills, either in writing conferences or in class. Her articles share tools and techniques used by writing specialists working with diverse audiences, such as J.D. students, ESL students, and practitioners. Readers are invited to contact Professor Enquist at* **ame@seattleu.edu**.

By Anne Enquist

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Of the many skills legal writers must have and hone, knowing what to quote and how to integrate quotations into a piece of writing is one of the most useful. Unskillful quoting creates clunky prose that reads like a cut-and-paste collage of other people's words and ideas. Skillful quoting, by contrast, is a mark of an effective writer. The skillful quoter seamlessly meshes the author's words with those of supporting voices. The blend seems natural, even effortless; the quote enhances rather than interrupts the writing's smooth progression.

As legal writing professors, we are sometimes surprised that law students struggle with what and how to quote, but I suppose we shouldn't be. As novices in the profession, some law students show their insecurity about what they are saying by over-quoting, which is a form of "playing it safe" by hiding behind the authority of the law. Others may show their lack of sophisticated analysis by picking the wrong things to quote. They are still groping in the dark analytically and are unsure what to emphasize. And still others have not mastered simple things, such as when to use single and double quotation marks. Fortunately, a well-crafted lesson on quoting can fill in lots of these gaps and help students at the top, middle, and bottom of the class take the next steps in their development as writers and legal thinkers.

The key to teaching effective quoting is to organize several examples around a few principles.

Principle 1: Quote Only When Your Reader Will Want the Exact Wording from the Source

Legal readers want to see the exact language of statutes, regulations, municipal codes, constitutions, amendments—any language that is "the law." Consequently, legal writers can rest assured that a direct quotation, not a paraphrase, is the right choice when they are setting out enacted law.

For example, quoting the exact language of the Antiterrorism and Effective Death Penalty Act (AEDPA) is an essential first step in an office memorandum about whether individuals violate the Act when they provide foreign terrorist organizations with humanitarian aid.[1] For the AEDPA memo example, the relevant subsection reads as follows:

> § 2339B. Providing material support or resources to designated foreign terrorist organizations
>
> (a) Prohibited activities.
>
> (1) Unlawful conduct. Whoever knowingly provides material support or resources to a

[1] Thanks to Professors Laurel Oates and Connie Krontz, who assigned the AEDPA memo and who, along with Professors Susan McClellan, Janet Chung, and Jessie Grearson, commented on this column.

> foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act [8 U.S.C.A. § 1182(a)(3)(B)]), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 [22 U.S.C.A. § 2656f(d)(2)]).
>
> 18 U.S.C.A. § 2339B (West, Westlaw® through Pub. L. No. 109-12).[2]

Just now, when you saw that long block quote, were you tempted to skip over it? Many readers are. Showing students a lengthy block quote and letting them experience their own reader reaction to it helps them see writing through the eyes of their readers. Once they identify with their readers, they will understand why, as writers, they need to think through how much of the Act to quote.

OK, so how much of the Act to quote? The answer is always the same: only as much as the reader needs. If the writer quotes too much of the Act, the reader is left with the tough job of hunting through a thicket of statutory prose for the parts that are relevant to the current issue. This is the writer's job. Through the judicious use of ellipses and brackets, the writer should trim the statute down in a way that focuses the reader's attention on what will matter in this case.

> Section 2339B(a)(1) provides that "[w]hoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization … , that the organization has engaged or engages in terrorist activity … , or that the organization has engaged or engages in terrorism …."
>
> 18 U.S.C.A. § 2339B (West, Westlaw through Pub. L. No. 109-12).

Principle 2: Use All the Quotation Devices—Ellipses, Brackets, "Emphasis Added," the Formal Lead-In—Judiciously

Like any sharp tool, ellipses and brackets must be used with care. To make that point, have students compare a couple of ways a writer may have edited the statute: (1) the statute trimmed to what is relevant by selective use of ellipses and brackets; (2) the statute massacred or skewed by overuse of ellipses and brackets.

You may also want to include one or more versions that italicize, underline, or bold key words or phrases and include an "emphasis added" at the end of the citation. Once again, you can demonstrate both appropriate use and overuse of the "emphasis added" option.

Appropriate Use of Emphasis Added

> Congress found that "foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that **any contribution** to such an organization facilitates that conduct." *See Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104-132, 110 Stat. 1214, 1247 (1996) (emphasis added).[3]

"Like any sharp tool, ellipses and brackets must be used with care."

[2] The students cited to the unofficial code because at the time they were writing their memos, the new language was not yet included in the official code. *See Bluebook* Rule 12.2.1 and the *ALWD Citation Manual* Rule 14.1(c).

[3] Although the *Bluebook* seems to suggest (see examples for Rule 12.3.1) that a title of the statute is not italicized in situations such as this quotation, the *ALWD Citation Manual Rule* 14.7(h) says that it should be italicized.

> "Ultimately what we really want students to know is the answer to the question, 'What makes something quotable language?'"

Overuse of Emphasis Added

> Congress found that "foreign organizations that engage in terrorist activity are **so tainted** by their criminal conduct that **any contribution** to such an organization **facilitates that conduct**." *See Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104-132, 110 Stat. 1214, 1247 (1996) (emphasis added).

With each version, ask your students how readers are likely to react. Excessive use of ellipses and brackets may make readers wonder if important things had been cut. Excessive use of emphasis added tends to make readers feel a bit browbeaten. Look at this, the writing screams, and this, and this! The goal is for students to learn to think through how readers may react to their choices, to see their writing through the eyes of their readers, and to develop good judgment about what those readers want and need.

Students will also need to see that Principles 1 and 2 apply to more than just statutory or regulatory language; legal readers may want to look at specific language in a lease, a contract, a letter, an e-mail, a corporate policy, or any other document that is at the heart of a legal issue. Similarly, it is often effective to quote exact language from a trial record, police reports, or witnesses' testimony. Consequently, you may want to reprise the "what to quote" lesson when the class has moved from objective to persuasive writing.

The other half of Principle 1 is knowing what not to quote. In fact, for every student who does not understand the importance of quoting a statute, contract, or testimony, there seem to be two students who quote excessively. And it is not just that they include more of a statute or a cross-examination than they need. Excessive quoters include mundane language from court opinions that should be paraphrased, not quoted, and they are prone to including long quotations from law review articles that arguably provide helpful background but are more likely to wear on the patience of busy readers.

This is not to say that courts and law review articles should never be quoted. Sometimes they should be quoted, but more often than not, they should be paraphrased (and cited, of course). Here again, the trick is for students to develop judgment about what is quotable and what is not. And here again, examples from cases or secondary sources the students are using in their current assignment will generate a rich discussion of which words, phrases, and sentences can be effectively quoted and which are better paraphrased.

Start with a key case in front of them and ask questions such as, "Is there any language in the opinion that captures the essence of the court's reasoning?" "What phrasing strikes you as particularly apt or memorable?" "Are there key words or phrases that later courts adopt, use, quote?" Ultimately what we really want students to know is the answer to the question, "What makes something quotable language?"

Another essential point in any quoting lesson concerns the mechanics of quoting. Most students have picked up some of this information along the way, but many are insecure about whether they are "doing it right." Rather than leave this step to chance, consider having an explicit discussion about the two ways of including quotations in writing: (1) quotes that are formally introduced and (2) quotes that are structurally integrated into the writer's sentence. Be sure the discussion includes specifics about how and where to place citations for both types of quotations, and be prepared for nitpicky questions such as whether to space between, as well as before and after, the periods in the ellipsis[4] and when to use four periods.[5]

For both types of quotations, show a few examples of better and worse attempts[6] and open the floor to discussing why they are more successful or less successful. For example, consider showing an

[4] See *Bluebook* Rule 5.3 and *ALWD Citation Manual* Rule 49.2.

[5] See *Bluebook* Rule 5.3 and ALWD *Citation Manual* Rule 49.4.

[6] You may want to use real student examples for the effective versions and write representative ineffective ones yourself.

example of a formally introduced quotation that does little more than insert the quote into the text with a "then the court said" lead-in. Contrast that example with several other examples of formally introduced quotes that are more skillfully executed, noting how the writer's lead-in to the quotation prepares the reader for the quoted material, often foreshadowing what the reader should find significant in the quote.[7]

Formally Introduced Quotation—Weak Lead-In

A district court in the Eleventh Circuit said the following: "[T]he government must show that the defendant knew (had a specific intent) that the support would further the illegal activities of a FTO." *See United States v. Al-Arian*, 308 F. Supp. 2d 1322, 1339 (M.D. Fla. 2004).

Formally Introduced Quotation—Improved Lead-In

A district court in the Eleventh Circuit construed § 2339B to require the same level of *mens rea* as § 2339A : "[T]he government must show that the defendant knew (had a specific intent) that the support would further the illegal activities of a FTO." *See United States v. Al-Arian*, 308 F. Supp. 2d 1322, 1339 (M.D. Fla. 2004).

Adding an example of an overdone lead-in that virtually repeats the point in the quotation should help underscore the idea that each of the quotation devices—ellipses, brackets, emphasis added, and the formal lead in—can be ineffective if overused.

Formally Introduced Quotation—Repetitive Lead-In

A district court in the Eleventh Circuit said that under § 2339B the government had to prove that the defendant knew its support would further the FTO's illegal activities: "[T]he government must show that the defendant knew (had a specific intent) that the support would further the illegal activities of a FTO." *See United States v. Al-Arian*, 308 F. Supp. 2d 1322, 1337–39 (M.D. Fla. 2004).

Principle 3: Quotations Should Mesh Naturally with the Writer's Own Words

In your discussion of the second type of quotations, quotations that are integrated into the writer's sentence, the most helpful tip you can share with your students is to read those sentences aloud. If the students do, they will hear when the structure of their sentence does and does not mesh with the structure of the quotation. When a quotation is skillfully integrated into the writer's sentence, someone listening to the sentence read aloud should not be able to tell when the writer's own words ended and the quoted material began. The desired effect is a natural integration of both content and sentence structure.

Structurally Integrated Quotes—Ineffective Blend

The current definition of "material support" is "(1) the term 'material support or resources' means any property … or service, including currency or monetary instruments … , lodging, training, expert advice or assistance, … communications equipment, facilities, weapons, lethal substances, explosives, personnel … , and transportation, except medicine or religious materials …." 18 U.S.C.A. § 2339A (West, Westlaw through Pub. L. No. 109-4).

Structurally Integrated Quotes—Effective Blend

The court in *HLP* presumed that Congress intended § 2339B to have a broad reach, regardless of a violator's intent, because "giving support intended to aid an organization's peaceful activities frees up resources that can be used for terrorist acts." *See id*.

The court might allow the donation of humanitarian aid on policy grounds because groups designated as FTOs "often do much more than commit terrorist acts. They also

"The desired effect is a natural integration of both content and sentence structure."

[7] If one of your examples of formally introduced quotations is 50 words are more, that example will create a natural opportunity to mention the rules about single spacing and indenting block quotations, placing the citation, and omitting the quotation marks. See *Bluebook* Rule 5.1 or *ALWD Citation Manual* Rule 47.5.

undertake important and worthwhile charitable, humanitarian, educational, or political activities." Randolph N. Jonakait, *The Mens Rea for the Crime of Providing Material Resources to a Foreign Terrorist Organization*, 56 Baylor L. Rev. 861, 870 (2004).

As with the earlier examples of formally introduced quotations, be sure to insert quick lessons about how to cite when a quotation is integrated into the writer's own sentence structure. Include at least one example in which the citation applies only to the first part of the sentence. This type of example will allow you to discuss how to correct the common error of placing the citation at the end of the sentence when the citation does not support the whole sentence.

Incorrect—Citation Supports Only the First Half of Sentence

While one commentator has noted that "[c]haritable giving will have taken on previously unknown risks," the government will argue that donors have no way of knowing how a foreign terrorist organization will use any given donation. Jonakait, *supra*, at 873.

Corrected

While one commentator has noted that "[c]haritable giving will have taken on previously unknown risks," Jonakait, *supra* at 873, the government will argue that donors have no way of knowing how a foreign terrorist organization will use any given donation.

The "principles plus examples" approach, particularly when the examples come from the students' current assignment, is a surefire way to keep students engaged while conveying foundational concepts that can be applied to other writing projects. Some professors may prefer the inductive version of the approach—discuss the examples from which the class then draws the principle—and others may feel more comfortable with the deductive version—here's the principle, now let's see how it applies in these examples. Either way, students will immediately see how they can use what they are learning and enjoy taking the quoting skills they brought with them to law school to the next level.

> "The 'principles plus examples' approach, particularly when the examples come from the students' current assignment, is a surefire way to keep students engaged … "

The Art of Indirection

By Elizabeth Fajans and Mary R. Falk

Elizabeth Fajans and Mary R. Falk are both Associate Professors of Legal Writing at Brooklyn Law School in Brooklyn, New York. They have collaborated on several articles in the area of cognitive theory and language and the law. Professors Fajans and Falk co-authored Writing for Law Practice *published by Foundation Press (2004) and the widely used reference text,* Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers *(3d ed. 2005).*

One mantra of the legal writing profession is that persuasion is best achieved through clear and direct writing. Yet there are situations when clarity conflicts with civility and when implication is more effective than confrontation. Indirect expression can be face-saving[1]—that is why an attorney might write, "To date, we have not received the tuition payments you said you mailed last month," rather than "We don't believe for one minute that you mailed that check." Instead of being so offensive as to cause antagonism and resistance, you can leave room for the addressee to remedy the situation. The skillful use of indirection and implication should thus be part of a legal writer's repertoire.

How is it then that writers are able to communicate thoughts and attitudes they do not explicitly state? How can they convey more than their sentences literally denote? The answer lies in the fact that communication is a cooperative endeavor.[2]

Because listeners and readers assume each sentence is purposeful, they assume there is a reason for an indirect statement and try to figure out why the communicator is being indirect and what is being implied. Suppose, for example, that we ask a trial lawyer how his case is going. The lawyer answers, "Well, the judge hasn't held me in contempt yet." We might infer from this indirect response that while the trial has proceeded thus far without conflict, the judge is not happy with the attorney's representation. But why does the attorney answer indirectly? He does so to save face—to make light of the situation and thereby minimize his worry, disappointment, or lack of success. Yet the statement, while indirect, is not deceitful. The reference to contempt enables us to infer the true state of affairs. We are able to connect the reply to the original question: we get the implication.

In writing as well as in speech, indirection can be an effective way to preserve the dignity of the communicator or the addressee—especially in client and advocacy letters. In fact, indirection is often more effective than head-on demands and refusals, which are likely to give offense. There are three strategies of "indirection": first, soften a demand or refusal by using implication; second, soften a demand by avoiding the imperative; and third, soften a refusal by explaining why a demand cannot be fulfilled.

First, demands and refusals can be softened if they are implied rather than explicit. For example, counsel involved in a divorce negotiation might write "acceptance of the child support and maintenance provisions are contingent upon our review of Mr. Smith's current income and assets." Since the figures cannot be reviewed unless they are supplied, the clear implication is a demand for the figures—but the expression is far less confrontational.

"In writing as well as in speech, indirection can be an effective way to preserve the dignity of the communicator or the addressee—especially in client and advocacy letters."

[1] *See* Kathryn Riley, *Conversational Implicature and Unstated Meaning in Professional Communication*, 15 Technical Writing Teacher 94 (1988), discussing Penelope Brown and Stephen C. Levinson, *Universals in Language Usage: Politeness Phenomena, in* Questions and Politeness: Strategies in Social Interaction 56 (1987). According to Brown and Levinson, "'[A]ny rational agent will seek to avoid ... face-threatening acts, or will employ certain strategies to minimize the threat.' In terms of discourse, the goal of saving face means that indirectness will often take precedence over efficiency. ... " Riley, quoting Brown and Levinson at 73.

[2] *See* H.P. Grice, *Logic and Conversation*, 3 Syntax and Semantics 41 (Peter Cole & Jerry L. Morgan, eds. 1975).

"Some situations call for implication and indirection. They allow a writer to reconcile clarity and courtesy …"

Second, demands can often be reframed to avoid the imperative and thereby lessen their negative impact. In syntactic terms, the demand to "turn over a list of your assets" is an imperative. But if we reframe it as a question or a declarative sentence, the perceived affront is muted, as seen in the examples below. [3]

- Can you supply a list of Mr. Smith's assets for the past tax year? ("yes-no" question)
- When do you think a list of Mr. Smith's assets will be available? ("wh**" question)
- We would welcome the opportunity to review Mr. Smith's assets. (declarative sentence)

Finally, in order to refuse a demand without losing the good will of the party making it, a writer can reply obliquely by questioning the validity or viability of the demand itself. There are five strategies for refusing a demand politely.[4]

1. Deny that the subject of the request exists. ("A list of assets has not yet been compiled.")

2. Deny that the recipient of the demand has the power to comply. ("Mr. Smith has not yet forwarded to me the material you request.")

3. Deny that the act requested is a necessary act ("The figures can be extrapolated from the data we provided at our last meeting.")

4. Give reasons why the demand cannot be met. ("We are upgrading our software and cannot retrieve the information just now.")

5. Give reasons why the party making the demand may not in fact want the demand met. ("Last year's income is atypical and will not be a good predictor of future income.")

Of course, these five indirect refusal strategies are not appropriate to every situation—we are not suggesting that lawyers invent reasons to avoid complying with valid demands. Nonetheless, using this template to assess the validity of a demand may well point the way to a tactful response.

Some situations call for implication and indirection. They allow a writer to reconcile clarity and courtesy—to calibrate the force of a plea, assertion, demand, request, or refusal to the audience. These techniques belong in every legal writer's repertoire.

[3] *See* Kathryn Riley, *Speech Act Theory and Degrees of Directness in Professional Writing, in* 15 Technical Writing Teacher 5–6 (1988).

[4] *See* Kim S. Campbell, *Explanations in Negative Messages: More Insights from Speech Act Theory*, 27 J. Bus. Comm. 357 (1990).

Electronic Resources or Print Resources:
Some Observations on Where to Search

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

By Barbara Bintliff[1]

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

A perplexing aspect of legal research is the multiplicity of sources in electronic and print formats. Having so much information in several formats, sometimes duplicative, often makes understanding already complicated legal resources more difficult. Decisions that should be straightforward can become complex.

One such decision is fundamental to every research project: where to look for the information needed. Most people do not consider how book and computer research differ and they use the resources interchangeably, or use one format exclusively. It is understandable that a researcher would assume there is no difference between looking for information in electronic sources and using print. Many information resource vendors and even some research instructors send the message that virtually all research can be done using print resources exclusively or electronic resources exclusively. Since the same information often appears in both print and online, either format ought logically to yield the same results.

However, searching in the "optimum" format saves time and money, and increases efficiency. Electronic and print resources differ significantly in their search protocols, each mode having both strengths and limitations. Experienced researchers develop an almost intuitive sense of which format to use in a given situation, and consult both print and electronic resources in the course of a research project.

Differences

Many researchers believe that electronic resources are superior to print for retrieving "known" items. That is, computer searching allows for efficient retrieval of discrete information for which there is a clear identifier or that can be described with specificity. Examples include pending legislation; telephone numbers, addresses, and other directory information; or reports from interest groups or government entities. If the correct title or a unique numerical identifier is available, or if the needed information can be described with exactness by keywords, retrieval via an electronic source is fast and effective.

Most search engines and interfaces are designed primarily for word-based searches. Most databases offer "full-text" searching, allowing entire documents to be scanned for the requested words. Documents meeting the search request can be quickly pinpointed. If a case or article is needed that has as its topic, for example, bankruptcy proceedings for dog trainers, electronic searches should quickly

"Most people do not consider how book and computer research differ and they use the resources interchangeably, or use one format exclusively."

[1] The author acknowledges with appreciation the considerable editing assistance of Don Ford, Reference Librarian at the University of Colorado Law Library.

"Print resources will remain better for certain purposes until more effective electronic multi-tasking is possible and until monitors are vastly improved to make online reading easier."

retrieve the requested information. In addition, limiting or narrowing large quantities of research to those that feature specific facts or important words in a specified relationship (such as within the same paragraph or within five words of each other, or corresponding to a given date) is a tremendous strength of electronic research. Most subscription databases offer some form of Boolean searching for this purpose, and most other subscription resources and Internet sources offer "advanced" searching with some of these capabilities.

Breaking news, recent updates to legal documents, and emerging trends are much easier to find electronically. Database content can be added to (or taken away from) instantly, allowing for rapid—and invisible—modification or updating. Print indexes and sources will always be slower, whether by a day or several months. By the time a print source is available the trend may have come and gone or the filing deadline passed, and the needed information will not have been found.

On the other hand, researchers turn to print for broad, conceptual research, or background information. Print resources have hierarchical indexes and tables of contents that place words and concepts in an overall, intellectual context. This allows for quick, almost unconscious, expansion and narrowing of searches to locate applicable information. Terms of art, important concepts, and related topics are readily located in print indexes, with their controlled vocabularies and syndetic structures. With books you can better expand and narrow searches; computers often leave the user with not enough feedback on whether a search retrieved the information sought and no guidance on how to proceed.

Flipping back and forth between sections and consulting several sources at once is much easier with print sources. While some online resources, especially subscription research databases, are beginning to incorporate indexes and tables of contents in their services, their manipulation remains difficult. Statutory research in particular is more effective in print resources. Print resources will remain better for certain purposes until more effective electronic multitasking is possible and until monitors are vastly improved to make online reading easier.

Print sources can be changed or updated only by reprinting, supplementation, or errata inserts. Modifications to print sources are almost always visible, which is one reason many courts and law journals still consider the print version the official source. On a more esoteric level, using print resources makes for a more deliberate research process, incorporating reflection and reassessment. Computers emphasize "one-click" information retrieval. There is often a sense of urgency in searching electronic resources, whether it is because time is money or because of the speedy results. Databases, unlike print resources, are not conducive to browsing.

Some Preliminary Guidelines for Choosing Specific Formats

Search interfaces and database contents change rapidly and vary tremendously, both for the "free" Internet and subscription databases. Print resources also differ in structure and features. Thus, the following considerations are *guidelines*, not hard-and-fast rules. These guidelines do, however, apply to both legal and general research. With that caution, here are some basic guidelines on choosing formats.

Search electronically when:

1. The research allows use of a **unique or unusual word or phrase**. For example, electronic resources are excellent at finding documents that include the proper name of an individual or corporate body (examples of proper names include Justice Antonin Scalia, Bill Gates, Arnold & Porter, the American Cancer Society), a specific product (Beano or aluminum foil), or a geographic location (Schenectady, New York); Latin maxims (*res ipsa loquitur*); unusual items or facts (Chilean flamingoes or moon launches); terms of art (Newtonian physics); exact quotations or phrases ("the truly fearless think of themselves as normal" or "divine intervention"); or any other unique words or word combinations.

2. The research involves **new developments or emerging trends** (nanotechnology, P2P file sharing). This includes citation-checking in KeyCite® or Shepard's®, updating, or verifying information.

3. The **most recent information or news available** will almost always be electronic (current weather reports or stock prices, the Thomson CEO's speech from this morning, a verdict handed down today).

4. The research should result in **a specific answer** (size in square kilometers of the city of São Paulo, Brazil, or the phone number for the White House switchboard).

5. **Information needs to be manipulated** in a way that is extremely difficult using print resources. For example, it would take hundreds of hours to locate all of Justice William O. Douglas' dissenting opinions in print sources, but just a single search online in the right database provides this list. Searching by field or segment, or using date, word order, or proximity limits, is especially effective with electronic resources.

6. A **specific citation** is available for a case, statute, regulation, report, or other identifiable document. The text of the 2004 House of Representative's Report 108-796 (the conference report for the Intelligence Reform and Terrorism Prevention Act) is readily available electronically in a number of databases and on the Web using its citation (H.R. 108-796).

7. Following preliminary research, you have a very **sophisticated search query** that combines facts and concepts.

Search with print resources when:

1. The issue is described using **common or ambiguous** terms (court, judgment, plaintiff). These words are "stop words" in some legal databases (or the "common words" of other electronic resources). Their use electronically could retrieve thousands of documents. Print indexes or tables of contents provide context and hierarchy that allow for a more precise understanding of the word's use, and thus more efficient searching. Many sophisticated researchers prefer print sources to research **procedural issues** for this reason: many of the most important terms for both civil and criminal procedure (jurisdiction, plaintiff, pleading) are too generic for electronic searches.

Likewise, if many synonyms are needed to express a key fact (child, infant, minor, boy, girl, toddler, teenager, etc.), then the broader coverage of print resources is preferable because the likelihood of missing a key document due to omission of a single synonym is virtually eliminated.

2. The research involves **concepts or theories** (burden of proof, mistake, negligence). Print resources are generally arranged by concept or theory, making their context easier to understand. Tables of contents and indexes also demonstrate the framework of the concept, and suggest ways to narrow searches, whether through more specific terminology or by alternative terms.

3. Research for factually similar scenarios has been unsuccessful, and the search has broadened to include a quest for **analogous authority**. The specificity of electronic searching does not lend itself to finding broader, less focused, information useful as an analogy. The more inclusive coverage of print resources, however, can suggest similar fact situations or related theories.

4. Unfamiliarity with the topic requires an **overview or background information, or a review**, before research in any source will be effective.

Of course, it doesn't matter what format is selected if the resource does not cover the subject or date span needed. Many information resources are similarly named, as illustrated by the *Pacific Reporter®*, now with a first, second, and third series, or the *Supreme Court Review* and the *Supreme Court Reporter®*. Researchers must always understand the scope of the resource being used.

And while print offers complexity and context and electronics offer specificity and speed, nothing can replace 10 to 15 minutes spent on developing a research strategy. Thinking about the problem, identifying important facts, words, and concepts, and separating a large research project into smaller segments will lead naturally to the selection of optimum formats.

"And while print offers complexity and context and electronics offer specificity and speed, nothing can replace 10 to 15 minutes spent on developing a research strategy."

Making Practice Oral Arguments Interesting

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.

By Kathleen Miller

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"May it please the court. …" "Humm … Ah … " Oral arguments are *scary* and no fun according to the typical first-year student. However, all that can change with a little help from Toastmasters—the largest international public speaking club.

Several years ago, I went to a Toastmasters meeting. What I liked about the club was that everyone seemed to enjoy public speaking. Studies have shown that most people fear public speaking more than death.

One of the requirements of Toastmasters is that everyone is active and involved in the speaking. Another requirement is that each member helps the other members. Specifically, some members are oralists; some are judges; some members are "timers"; some sound the "clicker"; but everyone is involved. (A clicker is a small metal one-inch device that makes a clicking sound.) In addition, members of the group vote by secret ballot for the best oralist; each member also votes for the best judge. Ribbons are awarded for achievement. A Toastmasters meeting is usually one hour.

Toastmasters includes "Table Topics," or extemporaneous speaking—that is, picking an object from a hat and giving a spur-of-the-moment speech about it. Again, awards are given for the best Table Topic. Members are also assigned topics to research and then make them the subject of speeches.

Before I went to the Toastmasters meeting, I had been thinking about how to make my oral argument classes more interesting, specifically making the practice oral argument classes more fun. When I was listening to the speakers at the Toastmasters meeting, it dawned on me that I could use the group's techniques in my classes.

So, I began to use Toastmasters' techniques in my class. In one particular class, each student had to "practice" his or her oral argument for six minutes. I had advised the students to cut the facts and procedural history, and proceed directly to the argument. I also assigned the day that students would make a practice argument.

While a student was giving an argument, designated students acted as judges, and asked the oralist questions. Each student had to come to class prepared with a half a dozen questions.

During the actual arguments, one student was in charge of the horn, or clicker. The clicker sounded when a student said "humm" or "ah" during the argument. Everyone laughed and laughed when the clicker sounded.

By the time the class was finished, about six of the 15 students had argued, and six of the students had served as judges. Of course, the teacher can also critique the students. This exercise can be completed in two classes if all the students argue and receive critiques, or in one class if only some of the students speak.

After each speaker, the entire class critiqued the argument in a "brotherly/sisterly" fashion. When all the students were finished arguing, each student voted by secret ballot to select the best oralist and the best judge. The winners received paper ribbons. Peer review works wonders!

I was surprised how seriously the students participated in the class. After this class, one student was always referred to as "judge." I heard that the students displayed the paper ribbons on their binders and school carrels. Some even pinned the ribbons to their shirts. A light bulb went off in the students' heads. They realized oral arguments could actually be fun!

Another Toastmaster idea is to have the students do a Table Topic, or extemporaneous talk before actually doing the practice oral argument. I usually introduce the extemporaneous speaking by having the students pick an object out of a hat, and talk for two minutes. One of the best spur-of-the-moment talks was about an old handle, and how handles help us in our daily lives. Usually, the Table Topics are a lot of fun.

Thus, Toastmasters' techniques helped the students learn how to work together to benefit each other, how to speak without fear, how to do an oral argument, and how to be good judges.

Another **Perspective**

"For good teaching rests neither in accumulating a shelfful of knowledge nor in developing a repertoire of skills. In the end, good teaching lies in a willingness to attend and care for what happens in our students, ourselves, and the space between us. Good teaching is a certain kind of stance, I think. It is a stance of receptivity, of attunement, of listening."

—Laurent A. Daloz, *Effective Teaching and Mentoring*, ch. 9 (1986).

Armed with More Than a Red Pen:
A Novice Grader's Journey to Success with Rubrics

"How do I limit my comments so that the student does not become overwhelmed and discouraged?"

By Karen J. Sneddon

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Introduction

Armed with a red pen, I embarked on one of the most nerve-racking experiences of my life: grading memos! After grabbing a memo from the toppling stack of memos on my desk, my pen hovered over the student's typewritten words. Sweat glistened on my forehead as my pen tentatively scratched "missing heading" upon the smooth paper. At that exact moment, my worst fear as a first-year teacher came true. I realized I had no idea what I really wanted to write on the memo at all. What was I looking for exactly? What types of comments lead a student to see the error of her or his ways and sidestep those errors in the future? How do I limit my comments so that the student does not become overwhelmed and discouraged? How many points are strong topic sentences really worth? How many points should be deducted for spelling my name wrong? How can I ensure that my grading is consistent? And, how can I mark meaningful comments on 60 memos and distribute such memos before the students forget about the assignment completely?

These questions kept bubbling in my brain. To conquer my grading, I clearly needed to be armed with more than just the ubiquitous red pen. My husband, who was taking graduate education courses, actually gave me the rest of my arsenal in response to a nightmare. For each of the three nights following my first attempt at grading, I woke my husband with a shriek. For the first two nights, my husband was sympathetic to my nightmare, which included drowning in an ocean of memos as my students watched gleefully from a jury box suspended in the air. After the third night, my husband muttered, "Why don't you just use a rubric and start grading already?"

So, I threw away my red pen for a more student-friendly purple pen, and after a hesitant start, I began my grading journey armed with a rubric.[1] This article will define rubrics, discuss the creation of rubrics, and address the concerns regarding the use of rubrics. Also included are insights I gleaned from the experience of grading my first stack of memos.

Definition

Rubrics are "detailed written grading criteria, which describe both what students should learn and how they will be evaluated."[2] Rubrics have been used by instructors in primary education and are increasingly gaining a foothold in higher education.[3] Even at the 2005 Annual Meeting of the Association of American Law Schools (AALS), the use of rubrics was discussed.[4]

Creating Rubrics

The first step to creating a rubric is to decide the form for the rubric. While rubrics have no set form, they are generally created in a chart format. The chart indicates the specific skills to be assessed and

[1] Some educators have become concerned about the psychological harshness of using red ink to mark errors. Such educators are increasingly using purple ink. *See* Naomi Aoki, *Harshness of Red Marks Has Students Seeing Purple*, Boston Globe, August 23, 2004, at A1; Karen Bair, *Purple Pens Get a Wealth of Praise from Teachers*, Herald, Rock Hill, S.C., September 13, 2004, at 1.

[2] Sophie M. Sparrow, *Describing the Ball: Improve Teaching By Using Rubrics–Explicit Grading Criteria*, 2004 Mich. St. L. Rev. 1, 6.

[3] For discussion of the pedagogy behind rubrics, *see* Sparrow, *supra* note 2. Such discussion is beyond the scope of this article.

[4] Sophie M. Sparrow presented "Creating Rubrics, Practicing Discreet Skills, and Taking Time to Reflect" during the Teaching Methods session at the 2005 AALS Annual Meeting in San Francisco, California, on January 8, 2005.

displays the range of possible responses. Rubrics can also be created in the form of a list. For legal writing, I favor rubrics in the form of a chart. Since the chart describes the range of responses, the student can review the specific skills assessed and her or his current level of skill mastery.

Some of the most helpful resources to create a rubric can be found on the Internet.[5] While many resources are geared toward instructors of younger learners than law students, guidance can nonetheless be divined from such resources.[6] I have included a complete open universe office memo rubric at the end of this article.

After the form is decided, the skills that will be assessed must be listed. If the chart rubric is used, the instructor must also define the range of responses. To describe the skills to be assessed, I list all the components of the assignment, such as the sections in a memo. Skills generally are exclusive to certain components. If a component encompasses multiple skills, I subdivide the component. I also include citation, style, and grammar mechanics as separate components. For example, for the closed universe memo rubric, I list the following components: format and heading, question presented, brief answer, statement of facts, large-scale organization of the discussion, small-scale organization of the discussion, analysis in the discussion, conclusion, research, citation, style, and grammar mechanics. For each component, I create responses for each of the following categories: highly proficient, proficient, acceptable, and unacceptable.[7]

Then, the points must be allocated. Rubrics offer two alternatives. Each component can be weighted equally. For example, using a 100-point scale, if the rubric contains 10 components, each component is worth 10 points. However, under such a system, components assessing straightforward skills, such as format, may be disproportionately weighted compared to components involving complicated skills, such as analysis. Alternatively, each component can be weighted depending on the value the instructor places on the mastery of particular skills. For instance, four points could be allocated to the format. Eleven points could be allocated to the analysis in the rule application section of the discussion.

After the point allocation for each component is established, the point scale within each component should be established. Points can be divided equally. For example, if the conclusion is worth four points, a highly proficient performance will earn four points, a proficient performance will earn three points, an acceptable performance will earn two points, and an unacceptable performance will earn zero to one point. However, the point scale may also be divided unequally on a sliding scale. For example, for the large-scale organization of the discussion section of an office memorandum, a highly proficient performance could earn 10 points, a proficient performance could earn eight to nine points, an acceptable performance could earn five to seven points, and an unacceptable performance could earn zero to four points.

Rubrics can be modified as the semester progresses. New components can be incorporated in the rubric. As the students' mastery of skills increases, point allocation can be modified. For example, the large-scale organization of the discussion may be worth 12 points for the first assignment when students are focusing on this skill but be worth only eight points for the third assignment when most students have grasped large-scale organization.[8]

"To describe the skills to be assessed, I list all the components of the assignment, such as the sections in a memo."

[5] Performing an Internet search locates many Web sites. The following are helpful Web sites that I visited: <rubistar4teachers.org> (permitting teachers to generate rubrics for free); <www.teachnology.com/web_tools/rubrics/> (permitting teachers to generate rubrics for free, primarily for younger learners); <www.rubrics.com> (selling rubric software); and <www2.gsu.edu/~mstnrhx/457/rubric.htm> (providing examples of rubrics).

[6] For a description of the use of rubrics in the law school setting, *see* Sparrow, *supra* note 2.

[7] I adopted these category names from Sparrow, *supra* note 2. These categories roughly correlate to the letter grades A, B, C, and D. I find the descriptions to be more meaningful to students than the letter grade label.

[8] For a discussion of how rubrics can be used for substantive courses, *see* Sparrow, *supra* note 2.

"I acknowledge that rubrics are somewhat formulaic. However, rubrics ensure grading consistency and further the aims of a first-year writing course."

Once the rubric has been drafted, the next step is to share the rubric with colleagues. The instructor can ascertain whether she or he has included all the relevant material and has realistic expectations of student responses.

While rubrics are typically distributed to students only with the graded assignment, draft rubrics can be distributed to the students when the assignment is actually assigned. These draft rubrics identify the skills that will be assessed, but may not detail specific content, such as the specific authorities that should be used for an open universe memorandum. The instructor should stress that the rubrics may be modified during the grading process. (This should also be written in bold in the heading of the draft rubric.) Even if the rubric is modified during the grading process, the draft rubrics provide a helpful checklist for the student. Without the draft rubric, first-year students, who are bombarded with new skills, may not recognize the skills that the instructor will be assessing. The point allocation on the draft rubric helps time-pressured first-year students budget their time. If the cover page of the appellate brief is worth four points and the large-scale organization of the argument section is worth 10 points, a student can budget the time she or he devotes to each component appropriately.

Concerns Regarding the Use of Rubrics

While I have found rubrics to be invaluable, the use of rubrics does raise some concerns. One objection that I have received from a colleague is that the underlying assumption of rubrics is false. Grading cannot be quantified. However, grades are earned based on the student's mastery of skills covered in class and the assigned material. For example, one student begins the discussion section of an office memorandum with an overview paragraph identifying the relevant standard and uses clear, strong topic sentences and transitions to guide the reader through the discussion. However, another student fails to clearly identify the relevant standard in the discussion section and uses weak topic sentences and ineffectual transitions that distract the reader from the material. There is a quantifiable difference between the two students' performances. Grading should not be subjective but as objective as possible to measure a student's performance. Rubrics help both the instructor and the student adhere to a scale.

I acknowledge that rubrics are somewhat formulaic. However, rubrics ensure grading consistency and further the aims of a first-year writing course. The goal of any basic writing is to teach students the conventions. If the student does not learn the rules, the student cannot break them effectively. Moreover, rubrics do not eliminate individual comments. Rubrics simply eliminate the need to write comments appearing on the rubric. The instructor then personalizes comments on the assignment. As a result, the student will not receive an assignment with so many comments that she or he will be overwhelmed by the red-ink-saturated assignment.

Rather than being juvenile as claimed by some critics, rubrics are appropriate for law students. Rubrics make student conferences more productive. With a rubric in hand, the student does not simply state that she or he is an "A" student because she or he has always earned an A on undergraduate research papers. Instead, the student can acknowledge disappointment and then focus on a concrete discussion of the skills that should be improved on the next assignment. In addition, higher education has often included concepts from the rubrics. For example, my father, a university chemistry professor, informs his students of the specific skills an exam will assess. On the exam, he lists the number of points an exam question is worth. This is similar to the goals of the distribution of a draft rubric.

Another concern about rubrics is the amount of time required to create a rubric. While some time must be spent creating the rubric, such effort forces the instructor to evaluate the assignment and crystallizes her or his expectations for the assignment. The instructor is forced to determine what specific skills the student should demonstrate. In addition, the instructor must consider whether demonstration of skills learned in previous assignments should be modified.

Conclusion

Only with the help of rubrics was I able to successfully complete my grading journey. The students' memos were returned within three quick weeks, and I have never had to either inundate my students with red-ink-saturated memos or have the nightmare about drowning in an ocean of memos ever again.

> "Only with the help of rubrics was I able to successfully complete my grading journey."

Sample Open Universe Office Memo Rubric

	Highly Proficient	Proficient	Acceptable	Unacceptable
Format and Heading	Stapled, double-spaced on 8½" by 11" paper, 12-point Times New Roman, page numbers in bottom center of each page (other than the first page); memo has all required sections in the correct order; heading has all required sections, and subject line is brief. 4	Format and heading conform to most of the highly proficient criteria. 3	Format and heading conform to some of the highly proficient criteria. 2	Format and heading conform to few of the highly proficient criteria. 2
Question Presented	Is written in the form of a question, is general, and can be understood in one reading; reference to relevant law is neither too broad nor too narrow; correctly identifies relevant legal principle; includes key facts. 4	Is written in the form of a question, is general, and can be understood in one reading; one of the following is incorrect: reference to relevant law is neither too broad nor too narrow; correctly identifies relevant legal principle, and includes key facts. 3	Is written in the form of a question but is either not general or cannot be understood in one reading; two of the following are incorrect: reference to relevant law is neither too broad nor too narrow; correctly identifies relevant legal principle, and includes key facts. 2	Is written in the form of a question but is either not general or cannot be understood in one reading; reference to relevant law is either too broad or too narrow; relevant legal principle is not identified; missing some key facts. 1–0
Brief Answer	Starts with short answer; followed by brief explanation; no reference to authority. 5	Starts with short answer; followed by somewhat lengthy explanation; no reference to authority. 4–3	Starts with short answer; followed by lengthy explanation; includes reference to authority. 2	Does not start with short answer; followed by lengthy explanation; includes reference to authority. 1–0
Statement of Facts	Includes all legally relevant facts, relevant background facts, emotionally relevant facts, and unknown facts; excludes unnecessary facts; does not include legal conclusions; objective tone used throughout. 6	Includes most legally relevant facts, relevant background facts, emotionally relevant facts, and unknown facts; excludes unnecessary facts; does not include legal conclusions; objective tone used throughout. 5–4	Includes some legally relevant facts, relevant background facts, emotionally relevant facts, and unknown facts; includes most of the facts applied in the rule application section; excludes some unnecessary facts; includes some legal conclusions; objective tone not used in instances. 3–2	Does not include many of the legally relevant facts, relevant background facts, emotionally relevant facts, and unknown facts; does not include many of the facts applied in the rule application section; does not exclude unnecessary facts; includes many legal conclusions; objective tone not used in many instances. 1–0

	Highly Proficient	Proficient	Acceptable	Unacceptable
Discussion Large-Scale Organization	Begins with overview paragraph identifying governing rule; structure of discussion obvious through clear, strong topic sentences; well-constructed paragraphs are appropriate length; effective transitions used. 12–11	Begins with governing rule; structure of discussion is clear through topic sentences; well-constructed paragraphs are appropriate length; transitions used somewhat effectively. 10–8	Begins with governing rule; structure of discussion is not clear because of weak topic sentences; some paragraphs are well-constructed and appropriate length; some transitions used. 7–3	Does not begin with governing rule; structure of discussion is not clear because of extremely weak or nonexistent topic sentences; few paragraphs are well-constructed and appropriate length; few transitions used. 2–0
Discussion Small-Scale Organization	IRAC strictly adhered to (identifies rule; examines rule in relevant authorities; rule applied to the facts; arguments/counterarguments presented). 15–14	IRAC is not strictly adhered to in a few instances. 13–10	IRAC is not adhered to in several instances. 9–4	IRAC is not adhered to in many instances. 3–0
Discussion Analysis Rule and Authorities	Clearly identifies relevant authorities; accurately handles authorities throughout; fully examines all of relevant authorities (for cases include key facts, court's holding, and the court's reasoning); judicious use of quotes. 11–10	Meets almost all of the highly proficient criteria. 9–7	Identifies relevant authorities but not clearly; misstates authorities in some instances; fully examines some of the relevant authorities; overuses quotes. 6–3	Does not clearly identify relevant authorities; misstate authorities in several instances; does not fully examine most of the relevant authorities; uses quotes and parentheticals as a substitute for analysis. 2–0
Discussion Analysis Rule Application Arguments and Counter-arguments	Thoroughly and clearly demonstrates how the authorities and facts relate; Includes *many* analogies/distinctions that are explicit and obvious; authorities and facts are used to support insightful and creative arguments/counterarguments. 11–10	Meets almost all of the highly proficient criteria. 9–7	Demonstrates how the authorities and the facts relate; includes *some* analogies and distinctions that are not explicit and obvious; authorities and facts used to support some arguments/counterarguments. 6–3	Does not demonstrate how the facts compare to the rules and precedent; includes *few* analogies and distinctions; arguments/counter-arguments are not supported by authorities or facts. 2–0
Research	Includes *all* required sources; additional sources used effectively. 12–11	Includes *most* required sources; additional sources used effectively. 10–7	Includes *some* required sources and additional sources are used effectively; or includes *most* required sources but fails to use additional sources effectively. 6–3	Includes *few* required sources; few or no additional sources used effectively. 2–0

	Highly Proficient	Proficient	Acceptable	Unacceptable
Conclusion	First sentence clearly predicts the outcome; reasons supporting prediction are summarized in one paragraph; does not include reference to authority. 4	First sentence clearly predicts the outcome; reasons supporting prediction are summarized in more than one paragraph; does not include reference to authority. 3	First sentence predicts the outcome; reasons supporting prediction are elaborately discussed or "new" information included; does not include reference to authority. 2	First sentence does not predict the outcome; reasons supporting prediction are elaborately discussed and "new" information included; includes reference to authority. 1–0
Citation Format	All citations (including full citations, short citations, correct reporter used, use of pinpoints, use of signal, use of *Id.*, and typeface) are accurate. 6	Most citations accurate. 5–4	Some citations accurate. 3–2	Most citations inaccurate. 1–0
Use of Citations and Quotes	All non-original ideas attributed to appropriate source; quotes are accurate; all direct quotes of less than 50 words surrounded by quotation marks; all direct quotes of more than 50 words are blocked. 4	Most non-original ideas attributed to appropriate source; quotes are accurate and correctly cited. 3	Some non-original ideas attributed to appropriate source; quotes are accurate; most quotes are correctly cited. 2	Few non-original ideas attributed to appropriate source; some quotes are not accurate; some quotes are correctly cited. 1–0
Writing Style	Uses active voice throughout; unnecessary words eliminated and legalese avoided; word choice precise and concise throughout. 4	Uses some passive voice; contains some unnecessary words or legalese; word choice is mostly precise and concise. 3	Uses lots of passive voice; contains unnecessary words or legalese; word choice is sometimes awkward. 2	Uses solely passive voice; unnecessary words or legalese used throughout; word choice is often awkward. 1–0
Writing Mechanics	Grammar correct throughout; no typos. 2	Few grammar errors; few typos. 1.5	Several grammar errors; some typos. 1	Many grammar errors; numerous typos. 0.5–0

Total Points: _____ / 100

Legal Research and Writing Resources: Recent Publications

Compiled by Donald J. Dunn

Donald J. Dunn is Dean and Professor of Law at the University of La Verne College of Law in Ontario, Calif. 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.

Michael Abramowicz & Maxwell Stearns, *Defining Dicta*, 57 Stan. L. Rev. 953 (2005).

The "aim [of this article] is not to produce a holding-dicta code book but instead a straightforward definition of the terms 'holding' and 'dicta.'" *Id*. at 959. Provides a framework for making a distinction between the two.

Luis M. Acosta, *The Legal History of the District of Columbia Prior to Home Rule: A Bibliographic Essay*, Legal Reference Services Q., No. 4, 2004, at 43.

"[C]overs the legal history of the District of Columbia prior to the passage of the District of Columbia Home Rule Act in 1973" including "a chronological description of the various legal and political structures that created local law in the District during the pre-home rule era …, the complex history of the court system in the district [and] the resources for researching the pre-home rule law and legal history in the district." Abstract at 43.

Duncan E. Alford, *European Union Legal Materials: A Guide for Infrequent Users*, 97 Law Libr. J. 49 (2005).

A guide designed to assist the occasional user of European Union materials to locate sources of its law and official documents. Also provides a listing of research guides for use by the expert or experienced researcher.

American Association of Law Libraries, Citation Formats Committee, Universal Citation Guide, 2d ed. (2004) [Buffalo, NY: William S. Hein & Co., Inc., 133 p.]

Designed to create a common citation system. Provides guidance and suggestions for courts and practitioners on recommended methods of formatting, as well as on how to cite legal material in law-related documents.

Carol M. Bast & Susan W. Harrell, *Ethical Obligations: Performing Adequate Legal Research and Legal Writing*, 29 Nova L. Rev. 49 (2004).

"[P]rovide[s] a discussion of specific parts of the *ABA Model Rules of Professional Conduct* that relate to the attorney's legal research and writing obligations. … [I]ntroduce[s] the reader to a Model Rule, or a portion of a Model Rule, and suppl[ies] case law examples of the sanctions meted out to attorneys found to be in violation of the rules." *Id*. at 50.

Michael Les Benedict & John F. Winkler eds., The History of Ohio Law (2004) [Chicago, IL: Ohio University Press, 2 vols., 946 p.]

The first history of Ohio law in 70 years. Arranged under 22 topics that range from the history of Ohio's constitutional conventions and legal institutions to the history of civil procedure, evidence, land use, civil liberties, and utility regulation.

The Bluebook: A Uniform System of Citation, 18th ed. (2005) [Cambridge, MA: Harvard Law Review Association, 415 p.]

Yep, it's happened again … (for the 18th time) and just when I had learned some of the rules in the previous edition. Yipes!

Deborah E. Bouchoux, Aspen Handbook for Legal Writers: A Practical Reference (2005) [New York, NY: Aspen Publishers, 336 p.]

Focuses on the rules of grammar, style, and usage. Includes samples of a letter, memorandum, trial brief, appellate brief, and transactional document. Provides examples of good and bad writing.

William C. Bradford, *International Legal Compliance: An Annotated Bibliography*, 30 N.C. J. Int'l & Com. Reg. 379 (2004).

Alphabetically arranged. Identifies 10 themes and multiple subcategories, with each entry receiving one or more numbers corresponding to the list of major international legal compliance themes.

Kevin D. Collins, Note, *The Use of Plain-Language Principles in Texas Litigation Formbooks*, 24 Rev. Litig. 429 (2005).

> "[P]rovides some history on the plain-language movement and identifies some common mistakes in legal writing. … [Describes the] emergence of formbooks in Texas. … [P]resents the PEER Review model for evaluating legal forms and applies the model to a sample of forms. … [Draws] conclusions … about whether formbooks embrace plain-language principles." *Id*.

Teresa Conaway et al., *Jury Nullification: A Selective, Annotated Bibliography*, 39 Val. U. L. Rev. 393 (2004).

> Covers primary and secondary authority, including books and articles. Articles are organized under categories: General; Offers Solutions; Gender/Race & Jury Nullification; Jury Nullification in Political & Policy-Making Contexts; Death Penalty; United States v. Thomas; Civil Jury Nullification; State Specific; The Fully Informed Jury Association ("FIJA"); and Dissertations, Theses, & Jury Studies.

Vincent M. Cox, Note, *Freeing Unpublished Opinions from Exile: Going Beyond the Citation Permitted by Proposed Federal Rule of Appellate Procedure 32.1*, 44 Washburn L.J. 105 (2004).

> "[P]resents the arguments on both sides of the ongoing debate surrounding PFRAP 32.1 and its treatment of some appellate opinions as unpublished and non-binding." *Id*. Includes a discussion of the history and development of unpublished opinions.

Anne Enquist & Laurel Currie Oates, Just Writing: Grammar, Punctuation, and Style for the Legal Writer, 2d ed. (2005) [New York, NY: Aspen Publishers, approx. 400 p.]

> Covers the principles of good legal writing, including style, grammar, punctuation, and other mechanics of writing. Includes tips on planning, drafting, revising, editing, and proofreading. Contains a chapter on legal writing for English-as-a-second-language (ESL) writers.

Elizabeth Fajans & Mary R. Falk, Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers, 3d ed. (2005) [St. Paul, MN: Thomson-West 221 p.]

> Aimed at helping students write successful law review articles and seminar papers. Contains more information than the previous edition on choosing a subject, developing a thesis, and testing the thesis. Also discusses the evaluation of sources and the ethical use of sources.

Judith D. Fischer, Pleasing the Court: Writing Ethical and Effective Briefs (2005) [Durham, NC: Carolina Academic Press, 112 p.]

> Examines ethical and effective legal writing by providing more than 200 examples of judges' reactions to errors in lawyers' writing.

Bryan A. Garner, *Don't Know Much About Punctuation: Notes on a Stickler Wannabe* (reviewing Lynne Truss, Eats, Shoots & Leaves: The Zero Tolerance Approach to Punctuation), 83 Tex. L. Rev. 1443 (2005).

> A highly critical review of a best seller on punctuation by one of America's leading authorities on style and punctuation. Basically, Garner has a "zero tolerance" of the Truss book.

Paul Hellyer, *Assessing the Influence of Computer-Assisted Legal Research: A Study of California Supreme Court Opinions*, 97 Law Libr. J. 285 (2005).

> "[R]eviews the literature regarding CALR and identifies several hypotheses regarding quantitative differences in the results of print-based research and CALR. [A]nalyzes California Supreme Court opinions to determine CALR's effect on the quantity, recency, and types of legal authority cited by the court. The data fail to support the commentators' hypotheses." Abstract.

William A. Hilyerd, *Using the Law Library: A Guide for Educators Part III: Oh, Statute (or Regulation), Where Art Thou?* 34 J. L. & Educ. 101 (2005).

> The third in a planned series of six articles for educators. Focuses on locating statutes and regulations by citation or popular name.

Paul E. Howard & Renee Y. Rastorfer, *Do We Still Need Books? A Selected Annotated Bibliography*, 97 Law Libr. J. 257 (2005).

A listing of books and articles published since 1995, plus Internet sources, intended to assist the users to explore the uneasy coexistence of print and electronic information.

Nancy P. Johnson & Susan T. Phillips, Legal Research Exercises, Following the Bluebook: A Uniform System of Citation, 9th ed. (2005) [St. Paul, MN: Thomson-West, 191 p.]

Assignments cover cases, digests, citators, federal statutes, regulations, secondary sources, Westlaw®, and LexisNexis®.

Yale Kamisar, *Why I Write (And Why I Think Law Professors Generally Should Write)*, 41 San Diego L. Rev. 1747 (2004).

One of this country's great legal scholars provides his reasons for writing and describes why he believes it is important for all law professors to write. Part of a symposium issue on the topic of why professors write.

Thomas Keefe, *Teaching Legal Research from the Inside Out*, 97 Law Libr. J. 117 (2005).

Presents the argument that because today's students tend to use the online databases and the Internet, research instruction should begin with electronic resources rather than the traditional print ones.

Paul M. Kurtz, *Annual Survey of Periodical Literature*, 38 Fam. L.Q. 981 (2005).

A topically arranged, annotated bibliography of family law literature covering articles written between November 1, 2003, and November 1, 2004.

Jethro K. Lieberman, *Bad Writing: Some Thoughts on the Abuse of Scholarly Rhetoric*, 49 N.Y.L. Sch. L. Rev. 649 (2005).

Discusses, among other bad traits, ineptness, pretentiousness, obfuscation, dishonesty, and verbosity in legal writing. Provides examples of bad writing.

Stephen G. Margeton, *Law Library Design Bookshelf–An Annotated Bibliography*, 97 Law Libr. J. 77 (2005).

A topically arranged and annotated bibliography relating to library design. Includes books, book chapters, reports, and articles.

Robert J. Martineau & Michael B. Salerno, Legal, Legislative, and Rule Drafting in Plain English (2005) [St. Paul, MN: Thomson-West, 186 p.]

Looks at the problem and cure of poor drafting of legislation and rules; examines the legislative process and sources of proposed legislation; defines statutory construction and relation between legislative drafting; explains formal federal, state, and local requirements and limitations; covers administrative and court rules; reviews drafting principles regarding the who and what; provides general principles on readability; and describes specific rules and the organization and subdivision of a bill.

David B. McGinty, *Writing for a Student-Edited U.S. Law Review: A Guide for Non-U.S. and ESL Legal Scholars*, 7 N.Y. City L. Rev. 39 (2004).

Discusses the makeup of a typical law review and the purposes it serves in society, describes the editorial process, and provides tips to non-U.S. and ESL legal scholars seeking to publish in an American law review.

Betty McNeal & Rhys Stevens, *Internet Gambling: Introduction and Bibliography*, 9 UNLV Gaming Res. & Rev. J. 61 (2005).

A bibliography designed to assist prospective authors who want to write on Internet gambling, also known as online gambling, virtual gambling, and e-gambling.

Richard K. Neumann Jr., Legal Reasoning and Legal Writing: Structure, Strategy, and Style, 5th ed. (2005) [New York, NY: Aspen Publishers, 544 p.]

Focuses on writing an office memo, a motion memo, and an appellate brief. Includes chapters on oral argument, client letters, and client interviewing. The chapter "Organizing Proof of a Conclusion of Law" has been divided into four chapters. Includes a new chapter on demand letters.

Laurel Currie Oates & Anne Enquist, Just Research (2005) [New York, NY: Aspen Publishers, 340 p.]

Instructs on the best source for a project, emphasizes electronic research, uses a problem-based organization that focuses on categories of legal issues, and provides an introduction to the essentials of legal research. Includes illustrations, practice pointers, and exercises.

Amy Beckham Osborne, *Baseball and the Law: A Selected Annotated Bibliography*, 1990–2004, 97 Law Libr. J. 335 (2005).

A listing of books and articles (with the articles arranged by subject) intended to help users find current information (1990–2004) on the law and its implications for baseball. A bibliography that Frank Houdek and my son Kevin will appreciate.

Matthew Parry & Melinda A. Parry, *Theirs Not to Reason Why, Theirs but to Make Law Review or Die: A Critique of the Law Review System and Annotated Bibliography*, Legal Reference Services Q., No. 4, 2004, at 29.

A bibliography arranged according to Critiques of Law Reviews, Critiques of Law Review Students, History of Law Reviews and Legal Periodicals, Citation Trends for Law Reviews (Bibliometrics), and Miscellaneous.

Publications by Professor Yale Kamisar, 102 Mich. L. Rev. 1776 (2004).

A listing of books and monographs; articles, article-length tributes, and essays; book reviews; and magazine and newspaper articles, short book reviews, and op-ed pieces. Published as part of an issue devoted to recognizing Professor Kamisar's contributions to law and legal education.

Laura Krugman Ray, *Lives of the Justices: Supreme Court Autobiographies*, 37 Conn. L. Rev. 233 (2004).

A lengthy and scholarly discussion and description of the books and essays written by the Justices of the U.S. Supreme Court about themselves. Arranged chronologically.

Mary Barnard Ray & Jill J. Ramsfield, Legal Writing: Getting It Right and Getting It Written, 4th ed. (2005) [St. Paul, MN: Thomson-West, approx. 450 p.]

Designed as a desktop reference for legal writers. Provides reference material and guidance on improving one's legal writing, including usage questions. Contains new information on e-mail, graphics, symbols, and tone in e-mail and text messaging, faxing, and voice mail. Part of the American Casebook Series.

Edward D. Re & Joseph R. Re, Brief Writing and Oral Argument, 9th ed. (2005) [Dobbs Ferry, NY: Oceana Publications, Inc., 350 p.]

Covers general principles of legal writing, opinion and claim or demand letters, appellate brief writing, oral argument, and citation of authorities. Integrates information on electronic legal research. Contains numerous illustrative appendixes.

Recent Books and Articles on Commercial Arbitration, 15 Am. Rev. Int'l Arb. 187 (2004).

An annual annotated bibliography that groups recent publications under 10 categories relating to commercial arbitration.

Ruthann Robson, *Law Students as Legal Scholars*, 7 N.Y. City L. Rev. 195 (2004) (reviewing Elizabeth Fajans & Mary Falk, Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers, 2d ed.; and Eugene Volokh, Academic Legal Writing: Law Review Articles, Student Notes, and Seminar Papers).

A comparative review that concludes that a student seeking to become "a (published) legal scholar" should "use Volokh's [text], especially with regard to legal argument, and Fajans and Falk's [text], especially with regard to legal writing and process." *Id*. at 211.

Mary Rumsey & April Schwartz, *Paper Versus Electronic Sources for Law Review Cite Checking: Should Paper Be the Gold Standard?* 97 Law Libr. J. 31 (2005).

Argues that electronic citation checking is an acceptable means of citation verification and

that law reviews should stop insisting on the use of print sources. Criticizes Rule 18 of *The Bluebook* for seemingly mandating the use of print sources in light of a survey conducted by the authors.

Lee Sims, *Academic Law Library Web Sites: A Source of Service to the Pro Se User*, Legal Reference Services Q., No. 4, 2004, at 1.

"[D]iscusses Web features that would be of value to the *pro se* patron, surveys the numbers of academic law libraries offering those features, gives examples of Web sites specifically designed with the *pro se* patron in mind, and offers suggestions on how to structure the Web site to provide services for these patrons." Abstract at 1.

Amy E. Sloan & Steven D. Schwinn, Basic Legal Research Workbook, 2d ed. (2005) [New York, NY: Aspen Publishers, 208 p.]

Designed to familiarize students with basic research sources. Chapters incorporate questions at four levels, progressing from basic source features to advanced research skills.

Candice Spurlin, *Permanent Public Access to Electronic Government Documents: South Dakota's Response to a National Dilemma*, 50 S.D. L. Rev. 113 (2005).

Calls upon the South Dakota Legislature to become more proactive in providing electronic access to the state's documents and seeing to it that these documents are preserved.

Karen M. Staller, *The Structure of Federal Policy: Deciphering the United States Code*, 24 J. Teaching Soc. Work, No. 3/4, 2004, at 47.

Designed to acquaint social workers with how to conduct research in the *United States Code* by using examples from Social Security, welfare reform, and charitable choice.

Charles J. Ten Brink, *A Jurisprudential Approach to Teaching Legal Research*, 39 New Eng. L. Rev. 307 (2005).

Argues that "the dichotomy between the 'practical' and the 'theoretical' is false," *id*. [and that] "[e]ffective teaching of ALR [advanced legal research] requires an integration of basic jurisprudence with the practical 'how to' list of research nuts and bolts." *Id*. at 308. Describes how jurisprudence can be incorporated into an ALR course.

Beatrice A. Tice, *Foreign Official Gazettes: Solving a Collection Conundrum*, 97 Law Libr. J. 299 (2005).

Describes why foreign official gazettes are important as sources of legal information and then details the difficulties associated with acquiring, maintaining, and using them.

Sarah E. Valentine, *Ruth Bader Ginsburg: An Annotated Bibliography*, 7 N.Y. City L. Rev. 391 (2004).

An annotated, topically arranged bibliography that includes works both by and about Ruth Bader Ginsburg.

Stephen L. Wasby, *Unpublished Court of Appeals Decisions: A Hard Look at the Process*, 14 S. Cal. Interdisc. L.J. 67 (2004).

Briefly discusses the criticisms and justifications employed in the unpublished disposition of cases and then focuses on "decisionmaking concerning unpublished dispositions at each of the stages of the process, from pre-argument through the period after dispositions are filed." *Id.* at 69.

Mary Whisner, *What's in a Statute Name?*, 97 Law Libr. J. 169 (2005).

An entertaining excursion into the development of popular names for statutes and the more recent trend of creating acronyms that spell out or suggest the focus of the act, e.g., CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003).

Michelle M. Wu, *Why Print and Electronic Resources Are Essential to the Academic Law Library*, 97 Law Libr. J. 233 (2005).

Examines the competing opinions about whether it is necessary to maintain sources in multiple formats and concludes that "abandoning either format would translate into a failure of service to patrons, both present and future." Abstract at 233.

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Teaching Legal Research and Writing

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