Perspectives
Teaching Legal Research and Writing

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Lessons from the Other Side—

What I Learned About Teaching Legal Writing by Teaching Professional Responsibility

By Allison Martin

Allison Martin is Clinical Associate Professor of Law at Indiana University School of Law in Indianapolis.

It's great to be a student again—the preparation for class, the butterflies if you get asked a question, the intellectual exchange of ideas—but, wait, I am the teacher! And I am not teaching one of my comfortable legal writing courses; I am teaching professional responsibility. Although being a student again and teaching a "casebook" course are two perspectives of legal education different from mine as a legal writing professor, I learned much about teaching legal writing from both.

To teach professional responsibility for the first time, I had to become a student again—relearning old rules and studying new ones. Indeed, it had been 15 years since I had taken professional responsibility in law school and passed the Multistate Professional Responsibility Examination (MPRE). The challenge made me a bit nervous. I wondered, what if I cannot master the material well enough to be a good teacher? What if I cannot present the material in a logical and understandable way? What if the students ask me questions to which I do not know the answers? What if I just freeze in the face of 60-plus students, a class size much larger than my legal writing classes? I felt so many uncertainties—much like I did as an entering first-year law student. Reliving these feelings made me acutely aware of the student experience again. Just as doctors should become patients once in awhile to remind them of how to provide quality care to patients, law professors should become students occasionally to remind us of how to provide quality education to students.

My first lesson was a reminder to be patient with students. After immersing myself in professional responsibility materials and taking wise advice from colleagues, I gained more confidence. I was no expert in the field, however, often mastering the material one class ahead of my students. Recognizing my own limitations as a first-time teacher, I decided ahead of time to respond honestly when asked a question to which I did not know the answer, which meant that sometimes I would have to say, "I don't know." Although concerned about losing students' respect at first, I decided that, on balance, this response was better for me, personally, than to try to fake answers or dodge questions.

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From the Editor: Transitions and Legacies

Three of our long-term editorial board members are stepping down this year: Frank G. Houdek, Mary S. Lawrence, and Louis J. Sirico, Jr. Frank joined the original board in 1992, and Mary and Lou joined the board in 1995. Their distinguished service has been marked with energy and enthusiasm. Frank served as the Editor from 1994 to 2000, and compiled the "Best of Perspectives" volume. Mary solicited and edited scores of articles for *Perspectives* taking primary responsibility for the Brutal Choices column. Lou solicited and edited numerous articles for the Teachable Moments for Teachers column. Each have encouraged and inspired generations of legal research and writing faculty and law librarians.

Frank Houdek is moving from law librarianship to become the Associate Dean for Academic Affairs at Southern Illinois University School of Law. Mary Lawrence served as Director of the Legal Research and Writing Program at the University of Oregon Law School from 1978 to 2000; she continues to be active as an emeritus professor. Louis Sirico has served as the Director of the Legal Writing Program at Villanova Law School since 1985. In 2007 he was awarded the Thomas F. Blackwell Memorial Award in recognition of his outstanding contributions to the field of legal writing.

We owe a debt of gratitude for their service on *Perspectives* and their work in the legal community. I thank Frank, Mary, and Lou for their many contributions.

—Mary A. Hotchkiss, *Perspectives* Editor

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Inevitably the day came when I was asked a good question to which I did not know the answer. I gave my gut reaction followed by an honest admission of my uncertainty and a promise to get back to them in the next class. How did the students respond? Patiently. They were patient with me. Knowing that I had never before taught this course, they accepted my occasional gut response. I was reminded that I, too, need to be patient with my entering first-year students who have never before taken a legal writing course.

The lesson here also went beyond patience. Over time, I learned that the students actually did not expect me to know the answer to every question they might raise. Their expectations of me were more reasonable; as a result, my expectations of myself became more reasonable. Once I accepted that I could not anticipate every question, my comfort level increased. I then began answering some questions by responding to the student or class with a follow-up question, such as, "What do you think?" or, "It depends. On what should it depend?" These moments often led to our most interesting discussions. Indeed, at times, not knowing "the answer" became a great teaching tool. It became clear that an important part of my job is to teach students not necessarily what I, the teacher, know, but how they, the students, can learn. Modeling for them how to find answers to, or at least how to define parameters of, new legal problems is important in casebook courses—and equally important in legal writing courses.

Teaching professional responsibility also reminded me of how important it is to respond to student questions with timely, clear responses. While teaching conflicts of interest, which was particularly challenging at times, I encountered questions of my own. Fortunately, a former colleague is an expert in the field. When I would e-mail her questions, she responded promptly and clearly. I thought, how fortunate her students are. Her responses reminded me of how important it is to

“Teaching a new subject opened my mind to new routines, new hypotheticals, and new answers.”

give timely, clear responses to student questions, as she had done with mine. The importance of this feedback goes beyond just satisfying students' desires, too. Providing such responses models good lawyer traits; the legal profession values both speed and clarity. My legal writing course presents a perfect opportunity, again, to model these important professional values.

I was also reminded to bring more flexibility to my legal writing course. Having taught legal writing for 10 years, I find it easy to fall into the same routine, teaching the same way and expecting the same results. Teaching a new subject opened my mind to new routines, new hypotheticals, and new answers. The experience was energizing. With this energy, I hope to be more flexible in my legal writing course—by teaching the organization of legal writing in a new way or tweaking a trusty old legal writing problem into a new challenge.

As a practical matter, I also hope to create new legal writing problems based on issues in professional responsibility. There is a wealth of good topics for first-year legal writing problems in this area. For example, in certain circumstances, an attorney may have a common law duty to warn an identifiable victim of danger even if a client's confidentiality would be compromised. I can imagine a good office memorandum assignment involving this legal standard, perhaps even using *Tarasoff v. Regents of the Univ. of Cal.,* 551 P.2d 334 (Cal. 1976) as persuasive authority. The assignment would tie torts and professional responsibility together, making students aware of attorneys' ethical obligations as they coexist with attorneys' common law obligations. Such an assignment would force students to begin thinking about their ethical and legal obligations as lawyers.

Furthermore, creating legal writing problems based on professional conduct codes would give students more practice with analyzing rules. Because I had no prior exams on file to help students prepare for my final exam, I handed out a sample essay question and, later, a sample answer. After all, modeling good writing is just as important in casebook courses as it is in legal writing courses.

When the students were reviewing the sample answer, some asked, “So, you expect us to provide the applicable rule when answering the question?” I, of course, answered yes, but tried to investigate the source of this question; the answer seemed so obvious to me. Apparently, some students were thinking of the rules more like general guidelines; they mistakenly believed that they could simply state broad ideas and apply them to their facts instead of identifying the specific rule and its requirements first. Even on the final exam, some students made this mistake. Based on this experience, I realized that first-year law students would benefit from a legal writing experience requiring this type of rules analysis.

Basing at least one problem in legal writing on professional responsibility issues also supports the movement to teach ethics throughout the law school curriculum. Deborah Rhode, a pioneer of this movement, argues that law schools should discuss professional responsibility issues throughout their curriculum rather than relegating them to specialized courses. See Deborah Rhode, *Ethics by the Pervasive Method,* 42 J. Legal Educ. 31 (1992), for a discussion of pervasive ethics in a law school curriculum. Even if total integration is not achieved, students benefit from learning and writing about ethical concepts early, especially when a specialized course is not taught in the first-year curriculum.

Another of my lessons was how important it is to stretch my legal mind. Although teaching legal writing is challenging, the legal topics chosen for first-year writing assignments, especially in the first semester, are not as intellectually challenging as, say, conflicts of interest. Of course, choosing less challenging topics for beginning legal writers has sound pedagogical reasons. But sometimes I, personally, want to wrestle with tougher questions in law. Teaching a course with more complicated legal topics, like professional responsibility, to upper-level students gave me this opportunity.

Further, the experience recharged my “grading” batteries. Although I spent an enormous amount of time preparing for class and, with help, creating a final exam and detailed answer key, the course did not require the same type of heavy grading that my

legal writing course does. Even grading more than 60 final exams was not as draining as grading in my legal writing course. Can we legal writing professors learn from the grading structure of casebook courses? Is there a way to restructure grading in legal writing to make the teaching just as effective but keep the grading at a more manageable level? For example, could we assign small pass/fail writing exercises throughout the semester, which would allow for quick and extensive feedback, and then merely grade a final draft, providing a detailed answer key for those students with questions about their grades? These questions have been, and should continue to be, explored. In any event, teaching professional responsibility refreshed my grading spirit, the importance of which cannot be overstated, especially after years of teaching legal writing.

One superficial lesson I learned related to clothing. Because I wanted to feel more confident while teaching a new course, I "suited up" for every class. Wearing a professional suit while teaching professional responsibility seemed only fitting, and the suit made me feel more polished and in control. It did not even occur to me that the students would notice. But to my surprise, the students did notice and reacted positively to my professional appearance, making comments after class and on student evaluations. As a result, I plan to add suits to my regular clothing rotation in my legal writing class—another opportunity to model professionalism.

The final lesson relates to others' attitudes. Students and even some casebook faculty seem to like the fact that I have taught a casebook course. Do they feel more confident in a professor's ability to teach legal writing if that professor has also taught a casebook course? Do they perceive legal writing professors as more competent if they have also taught a casebook course? Do they just feel more comfortable in realizing that a legal writing professor has other interests? The reasons for their attitudes are probably numerous and worth exploring. But for now, whatever the reasons, I hope that the students' attitude will help foster a good legal writing environment for learning. In addition, a favorable attitude from some casebook faculty may help to raise the profile of legal writing professors and the entire legal writing program.

Being a student again and teaching a casebook course reminded me how to treat my students and taught me how to be more engaged and energized as a legal writing professor. The importance of modeling professional values and behavior was also a significant lesson. By teaching professional responsibility, in particular, I learned that first-year students can benefit greatly from being assigned at least one legal writing problem in this area—and there are many good choices. Some of these lessons I intend to implement immediately; others are food for more thought. All of them have enriched my perspective as a legal writing professor.

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"Being a student again and teaching a casebook course reminded me how to treat my students and taught me how to be more engaged and energized as a legal writing professor."

Another **Perspective**

"My ultimate good-writing test is whether I think readers will enjoy a piece even if they could care less about the subject. That is not to say that I discount the importance of subject or have abandoned the goal of providing useful and important information to *Journal* readers. Just that good writing is so interesting that it keeps a reader engrossed even where the subject matter does not. Or maybe that the writing enhances a latent (or perhaps previously unknown) interest in the subject on part of the reader. Anyway, good writing will get you to the end, and, maybe even in spite of yourself, you will have been both informed and entertained."

— Frank G. Houdek, *From the Editor: Good Writing*, 88 Law Libr. J. 333 (1986).

The Legal News Portfolio:

Building Professionalism Through Student Engagement in "Off-Topic" Course Content

"Successful teaching methods do not present themselves out of whole cloth the first time a teacher enters a classroom."

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* Perspectives: Mary A. Hotchkiss, University of Washington School of Law, William H. Gates Hall, Box 353020, Seattle, WA 98195-3020, phone: (206) 616-9333, e-mail: **hotchma@u.washington.edu.**

By Kathryn A. Sampson

Kathryn A. Sampson is Associate Clinical Professor at the University of Arkansas School of Law in Fayetteville.

In my several roles as "table parent" for a local youth group, another adult and I take on the primary roles of relationship building and crowd control, with a group of fifth-graders. We share dinner once a week, on an international theme. We have used chopsticks, twice, for ports of call in Hong Kong and Japan. Both times, our fifth-grade boys, hungry and impatiently waiting for the food to be served, have wanted to convert their eating utensils to drum sticks, or "body art," requiring the table parents to make such uses off-limits. In "Japan," one of the boys at our table, realizing he was, indeed, limited in his available choices for chopsticks and plastic cups, turned to me and asked: "What are you going to take next: my dignity?"

He offered an insight into the mind of a captive.

His honest and direct question went to the heart of any formal relationship that involves a "leader" and a "follower." "Where is my dignity?" Implicit in the question is a statement that it is the leader's role to preserve a safe harbor, and to provide some flexibility in the experience. Also implicit in the question is the captive's demand that the leader allow for the measure of dignity that accompanies self-determined choices.

In a sense, the captive mind is present in every required law school course, in which teaching has its peculiar set of specific challenges. When those challenges are met, successful teaching methods have been employed. The methods are successful, in part, because the students have experienced certainty but also flexibility that accommodates their individuality and helps them learn new skills and concepts. Successful teaching methods do not present themselves out of whole cloth the first time a teacher enters a classroom. They evolve through a process of negotiation between students and teacher. For the teacher, each semester offers a new opportunity to refine the terms of the negotiation, by learning from prior good (and bad) experiences and adopting methods that reach students more effectively.

Thus, the question is repeatedly, and freshly, put: "Where is the safe harbor, and where is dignity?"[1]

[1] This quest is an ongoing pursuit, for both teacher and student. Recognizing that lawyers, as a matter of self-preservation, have an ongoing need for civility, safe harbor, dignity—in their careers and in their lives—significant institutional and scholarly attention has emerged. *See, e.g.*, Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness,* 11 Clinical L. Rev. 425 (2005); Angela Olivia Burton, *Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences Paradigm into the Clinical Setting,* 11 Clinical L. Rev. 15, 15 (2004) ("focusing almost exclusively on rule-based inductive, deductive, and categorical reasoning processes and linguistic precision, traditional law school pedagogy neglects other kinds of intellectual activity such as narrative, interpersonal, intrapersonal, and strategizing work, all of which are essential to the exercise of sound legal judgment"); Robert J. Araujo, *Humanitarian Jurisprudence: The Quest for Civility*, 40 St. Louis U. L.J. 715 (1996); Jack L. Sammons Jr. & Linda H. Edwards,

As the teacher of three required writing courses for first- and second-year law students, I have made several observations, interacting with my students and addressing my teaching challenges. In this ongoing process, I have recognized that a routine teacher-directed environment works effectively for first-year law students, for whom matter-of-fact, and undivided attention to tightly limited course content helps them acclimate to the strange culture of law and law school.

Early into the second year, however, those former first-year students, as they survey their choices, sometimes develop a critical eye with respect to required coursework and may question curricular design options. When they do, the confident perspective of a law-trained mind informs the critique. Students communicate their appraisals in overt and less direct ways, pressing their instructors to reconfigure their thinking about best teaching practices. So, too, the mindful teacher, when working with an advanced group, calibrates the teaching focus, in response to fundamental changes that take place in the students' perspectives as they progress through law school.

An informal survey of the second-year "third-semester" population reveals this student is a member of a various species. In the process of teaching more than 30 sections of a required advanced writing course, I have recognized some recurring themes among the members of this group, based on the timing of enrollment. A requirement that must be completed in the student's second year of law school, the course has three enrollment options: first and second summer session, 2L fall semester, and 2L spring semester. The timing of the students' participation in the course makes a noticeable difference in the orientation of the students it attracts and also, potentially, in the general attitude of the class in which they will participate.

The classroom culture in a third-semester writing course tracks the adage: "first year, they scare you to death; second year, they work you to death; third year, they bore you to death."

In either of the summer sessions, the third-semester student retains some of the receptivity and malleability of the first-year student, having not quite finished a first-year clerkship or having elected to fully enroll in summer school. This student, well acclimated to the classroom setting and to a teacher-directed environment, maintains dignity in a classroom that is focused exclusively on the formal advanced writing curriculum.[2]

In the fall, which is the second timing option for this requirement, the student is often in the "work you to death" mode and is also likely to have finished a summer clerkship or a summer abroad before entering the advanced writing course. This student's dignity is often tied to finding a clear path to the completion of the next project. Given the average student's hectic slate of activities, another deadline is imminent.

"The classroom culture in a third-semester writing course tracks the adage: 'first year, they scare you to death; second year, they work you to death; third year, they bore you to death.'"

Honoring the Law in Communities of Force: Terrell and Wildman's Teleology of Practice, 41 Emory L.J. 489 (1992); Timothy P. Terrell & James H. Wildman, *Rethinking "Professionalism,"* 41 Emory L.J. 403 (1992).

The work of Prof. Lawrence Krieger has resulted in a developing institutional commitment to humanistic principles. See Florida State University College of Law, *Humanizing Law School,* <www.law.fsu.edu/academic_programs/humanizing_lawschool/humanizing_lawschool.html> (accessed February 7, 2007). The bar is also mindful of these concerns, which are fully discussed in Benjamin Sells, *The Soul of the Law* (1996) (analyzing, from a lawyer-turned-psychologist perspective, law-as-institution dysfunctions that contribute to lawyer alienation). *See also*, *e.g.*, Steven Keeva, *Problematic Perfectionism*, A.B.A. J., April 2006, at 80; Alan F. Blakly, *Law Practice: Healthy Challenges or Unhealthy Stress*, Fed. Law., Feb. 2006, at 18; Rebecca Nerison, *So You're a Lawyer. Can You Be Happy?*, 21 No. 7 GPSolo 62 (2004); Coe Swobe, *Dealing with the Difficult Lawyer: Stress, Addictions, Success Fatigue,* Nev. Law., Feb. 2004, at 24; Ellen Ostrow, *The Lawyer's Life: Clear the Obstacles to a Balanced Life,* Trial, July 2003, at 27; George W. Kaufman, *The Lawyer's Guide to Balancing Life and Work: Taking the Stress Out of Success* (2d ed. 2006).

[2] At the University of Arkansas School of Law, the advanced required writing course focuses on pretrial practice, with research and writing assignments in client counseling, pleading, and motion practice. This course has been in place since 1993. Thanks to my colleagues Kim Coats, Angela Doss, Ann Killenbeck, and Karen Koch, who inspired this discussion and suggested helpful editorial enhancements to its written form.

"A designed opportunity to individually contribute to an ongoing group project may reduce unconscious resistance to the required third-semester course."

In the spring, which is the last timing option, the course attracts those who have delayed enrollment for various reasons, and this third-semester student may well be in the "bore you to death" mode. The spring semester students are often working and attending law school; they are students who have wound their way through several extracurricular options, and students who have participated in the on-campus job search. All these experiences will have introduced them to a taste of independence and self-determination, coupled with a developing sense of professionalism and awareness of standards and practices in the legal profession and in the subterranean law school culture. This group possesses a large store of legal information and resources, beyond the legal research and writing instructor's advanced writing projects. The dignity of these students has a connection to increased opportunities for sharing that knowledge and those insights.

Of course, every group of advanced writing students—in the summer, spring, and fall—includes some combination of these stereotypes. A teacher does her best to teach, to a shared need for new information and skills, lessons that reach the entire group. What these students share is a first-year curriculum, a round of academic advising for selection of upper-level coursework, and a developing idea of who they, individually, are becoming as law-trained professionals. Their diversity, and their collective information and insight, can easily be disregarded in an upper-level course designed for, and taught to, the hypothetical neophyte. These students present a changed, and changing, landscape.

A designed opportunity to individually contribute to an ongoing group project may reduce unconscious resistance to the required third-semester course. In this regard, students in my advanced writing course take turns presenting oral and written "legal news shorts," broadly defined to include legal topics not addressed in the core syllabus. These presentations offer students the opportunity to share information they care about, to gain respect from their colleagues, and to make meaningful contributions to the course. Not incidentally, this exercise allows students to practice their oral, analytic, and writing skills, and to develop core professionalism values.[3] The impact on the standard course material is minimal; these short oral presentations take about 8 percent of the total semester minutes allocated to instruction for the two-hour course. "What's in the legal news?" is launched the first day of class, and includes a formal writing requirement that incorporates the project into the course teaching priorities and curricular standards.[4]

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[3] *See supra*, note 1. The American Bar Association has recognized an essential supportive characteristic of the professional lawyer is the "[c]apacity for self-scrutiny and for moral dialogue with clients and other individuals involved in the justice system." ABA Sec. Legal Educ. & Admission to the B., *Teaching and Learning Professionalism, Report of the Professionalism Committee* 6–7 (1996). The ABA recommends law schools develop "additional perspective[s] [on] professionalism issues such as the strengths and weaknesses of our justice system, the role of lawyers in our society, and the sociology of lawyers and law firms." *Id*. at 21. While the ABA recommendation focuses on the development of entire courses on perspectives topics, the legal news exercise provides a taste of the variety of issues that affect lawyers, and highlights strengths and weaknesses of the justice system.

[4] The ABA's MacCrate Report broadly defines the types of communication skills a competent member of the legal profession must possess, and its general prerequisites focus on the ability to organize a presentation; express ideas or views with precision, clarity, logic, and economy; and attend to detail. ABA Sec. Legal Educ. & Admission to the B., *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development: An Educational Continuum*, 5.2(a)(i) (1992). An important concomitant skill is the ability to accurately perceive and interpret the communication of others: "reading, listening and observing receptively; and responding appropriately." *Id*. at (a)(ii).

The *1997 Sourcebook on Legal Writing Programs* reflects on the pedagogical value in programs that move beyond a first-year curriculum, recognizing the potential value in upper-level research and writing courses that are designed to allow students "to research and write in areas of law in which they are interested," and noting "[s]tudents will tend to work harder and retain longer the skills and knowledge acquired by their own efforts." ABA Sec. Legal Educ. & Admission to the B., *Sourcebook on Legal Writing Programs* 8, 34 (1997) (*1997 Sourcebook*).

Nearly 10 years after the *1997 Sourcebook*, and drawing upon extensive scholarship that developed after its publication, the *2006 Sourcebook* provides a comprehensive description of upper-level writing courses that have evolved under ABA standard 302(a)(3). ABA Sec. Legal Educ. & Admission to the B., *Sourcebook on Legal Writing Programs* 169–98 (2d ed. 2006) (*2006 Sourcebook*). Informed by this research and by the experience and expertise of the drafters of both the first and second editions, the *2006 Sourcebook* provides a highly structured analysis of programmatic priorities and organizing principles that underlie a 302(a)(3) advanced writing course: mastery of legal research sources, communication of a "legal writing doctrine" that involves context, clear articulation of legal rules and editorial principles, with a focus on attaining skill in a clearly defined set of principal goals. *Id*. at 170–72.

The mechanics follow:

Timing: Early and often. The first legal news summary should be presented by the professor in the session's first week. Preceding the demonstration of a model news short (taking between three and five minutes), the teacher should provide an explanation and illustration of both the oral and written formats, as well as research sources for selecting legal news articles. In the process, the teacher can showcase sources for legal news, using the Internet and other computer research resources. The format requires introductory outlines and a calendar of days for students to schedule a legal news summary. The finalized calendar should be distributed in the first or second week. With a capped enrollment of 15 students, each student can schedule two oral summaries in a two-credit-hour course with 30 hours of class time.

Overview: A small, but significant, percentage (about 5 percent) of the course grade is devoted to the legal news project. A written component is the graded component, comprised of a clippings file and student commentary on news articles that touch on legal issues at the local, state, national, or international level. The clippings file is comprised of student-selected news articles, together with a minimum of two five-sentence paragraphs. One paragraph summarizes the central thrust of the article while the second paragraph supplies the student's point of view of the article's contents. The commentary is focused by a general review of the legal significance of the news, and is guided by specific questions designed to enhance analytic reading.[5] The students may use Internet newspapers to develop this file, but they need to produce a hard copy of each of the articles they choose to summarize and discuss. In the commentary paragraph, the students are instructed to discuss the roles lawyers, judges, or law-trained legislators will play or have played in the news item; identify the point of view of the legal claim, or of the article writer; and contrast it with their own.

The daily "what's in the news?" presentation keeps the project on the students' list of priorities, and creates an informative, entertaining, and collaborative opening to class.

Teachable Moments for the Teacher in the Evolution of This Project

I have made several adjustments to this project since I first started it in the spring of 2001 and experimented with it over the course of a dozen or so subsequent advanced writing courses. Following are six rules of thumb reflecting those adjustments, and the reasoning behind them:

1. Regularly Schedule an Oral Component for the Exercise

Early on, I assigned this project as a completely independent project, with a chapbook of 15 articles and comments due at the end of the semester. I found students were scrambling to complete all 15 entries, when they were also in the process of studying for finals. I added the class time oral component, with a view to helping students complete the project in self-monitored increments throughout the semester. Still, for the frenetically busy students, deadlines had the important meaning, and some students continued to "finish up" at the end of the semester, just in time to meet the hard deadline.

"The daily 'what's in the news?' presentation keeps the project on the students' list of priorities, and creates an informative, entertaining, and collaborative opening to class."

The legal news exercise is perhaps most closely aligned with the "writing-to-learn" approach recognized in the *2006 Sourcebook* under the general category of "Writing Across the Curriculum," where "writing is used as a tool to develop ideas and to promote understanding of the subject matter." *Id.* at 191. It is a loose alignment, at some variance with the *2006 Sourcebook* illustrations. *See id.* As an adjunct to an intensive writing course where the dominant materials and instruction teaches legal writing doctrine, the legal news exercise provides some freedom for individual expression without altering the important structural standards the *2006 Sourcebook* identifies and illustrates. *See id.* at 3 (articulating the purpose of both editions of the *Sourcebook*: "'to help improve the overall quality of legal writing programs across the country while increasing the consistency with which those programs are administered'"). *Id.* (quoting *1997 Sourcebook*, *supra*, at 2).

[5] *See, e.g.*, Santa Clara University Library, *Writing an Annotation,* <www.scu.edu/library/research/general/writingannotation.html> (accessed February 7, 2007); National Association of County and City Health Officials, *Developing an Opinion Editorial,* <www.naccho.org/advocacy/MarketingPublicHealth_guide_op_ed.cfm> (accessed February 7, 2007); Kevin Dennis, *Assessing Written and Oral Communication of Senior Projects,* <www.maa.org/saum/new_cases/new_case_07_04/StMarys.html> (accessed February 7, 2007).

"Appeal to the students' shared sense of professionalism and decorum in a law school classroom."

2. Assign No More Than Six Discrete Articles and Their Related Annotations

The number six strikes a good balance for both economy and critical mass for engagement and evaluation purposes. Fifteen was way too many, and even a more moderate 10 was fairly daunting, for the students to compile, and for me to review.

3. Set Some Incremental Deadlines for the Written Summaries

A portfolio deadline of the last day of the semester can lead to the accumulation of summaries that have not yet been written, after oral presentations. The last time I used this project, some students turned in clippings dated the last week of the semester, indicating they were playing catch-up when they could have been finalizing their course outlines and studying for exams. This semester, I am experimenting with incremental deadlines. The deadlines change my weekly workload but provide me with increased opportunities to encourage student insights and suggest ways to polish subsequent submissions.

4. Assign the Project with a "Just Right" Limit on Article Content

Current legal news, broadly defined, is surprisingly just right. While it would be possible to limit article content to legal news about trial practice or law practice, and to require a tie-in to a rule of procedure or a judicial ruling, such limitations would jettison some of the more interesting articles that exist under the broader category. In earlier versions of this exercise, I asked students to track the activities of their state legislator. This focus worked fairly well in the spring semester during the off-year our General Assembly was in session. An alternative, to track the activities of a particular member of the United States Congress, proved to be too daunting.

5. Keep the Presentations to Classmates a) Oral, b) in the Physical Presence of the Teacher, and c) During the Formal Class Time

A TWEN® (The West Education Network®) discussion board outlet, where students could write analytical summaries of their selected news articles and engage in a dialogue with each other, was an experiment I tried one year,[6] with a warm reception from those students who were actively involved in the news of the day and who were comfortable with the discussion board format. A couple of students ultimately found the discussion board environment intimidating or burdensome, after trying it with some optimism at the semester's outset. Even those students who readily warmed to the interactive possibilities perhaps spent too much time developing their points of view on the discussion board. The nature of an online discussion requires that the professor monitor and, if necessary, censor student commentary that displayed deep-seated prejudice or misapprehension of another student's point of view.[7] Both semesters I experimented with a discussion board, the intensity of the group bonding was a positive by-product. Even after the semester ended, one of these groups held several book club meetings to continue exchanging news and views. It was a good experience and a worthwhile experiment, but as discussed here and in the notes, opening a limited public forum in a required course had its own set of logistical difficulties.

6. Identify Some Off-Limits Topics

Appeal to the students' shared sense of professionalism and decorum in a law school classroom. In a sense, this stricture reflects the personal taste and comfort level of the instructor. Before developing a standard

[6] This experiment was the subject of a session I gave contemporaneously with one of the two semesters during which a TWEN discussion board formed part of the project. *See* Kathryn A. Sampson, A Virtual Twist on Journal Writing, presentation at the 2004 Rocky Mountain Legal Writing Conference, University of Nevada at Las Vegas, March 6, 2004 (discussing potential writing fluency uses for the TWEN discussion board function and highlighting some pedagogical concerns that are raised through its use, as more fully discussed *infra* notes 7–8).

[7] This tension highlighted the pedagogical concerns expressed in Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 270, 271 (1988) (stating "[e]ducators are entitled to exercise greater control over … student expression to assure that participants learn whatever lessons the activity is designed to teach, … and that the views of the individual speaker are not erroneously attributed to the school"). In the post-secondary setting, the Hazelwood application is even more ambiguous than it is the secondary schools. *See* Hosty v. Carter, 412 F.3d 731 (7th Cir. 2005); Kincaid v. Gibson, 191 F.3d 719, 723 (6th Cir. 1999), vacated, 197 F.3d 828 (6th Cir. 1999), rev'd en banc, 236 F.3d 342 (6th Cir. 2001); Edward L. Carter, Kevin R. Kemper & Barbara L. Morgenstern, *Applying Hazelwood to College Speech: Forum Doctrine and Government Speech in the U.S. Courts of*

decorum, when I offered the open-ended call for "what's in the legal news," early presentations included a couple of stories about violent crimes. I imposed this limit after the beginning of the semester and students adjusted the content quickly. In subsequent semesters, the prior restraint on graphic detail and "shock" news has virtually eliminated voyeuristic details,[8] while preserving an array of legal news reports that reflect interesting and important contemporary issues. More importantly, this prior restraint gives the upper-division students an opportunity to clarify a developing sense of professionalism, as students make news selections that meet the course requirements.

In each permutation of this exercise, I have learned about current legal issues I would not have noticed but for student presentations.[9] The breadth of possible insights is reflected in this list, gleaned from fall 2006 student selections:

1. Election law in the context of U.S. Representative Tom DeLay's inability to remove himself from the ballot in the 22nd District of Texas;
2. Immigration law and a Pennsylvania town's restrictions aimed at fining landlords who rent to undocumented aliens and denying permits to companies who employ them;
3. Free speech of an Alaskan student suspended for unfurling a banner that read "Bong Hits 4 Jesus";
4. The legal effect on Kenneth Lay's estate when his Enron conviction was overturned posthumously;
5. The United States Supreme Court's decision to grant certiorari in an "obvious" patent infringement case, involving a gas pedal;
6. An Audubon Society petition in Washington state for injunctive relief against logging near spotted owl habitats; and
7. A federal court's ruling that the Treasury Department practice of issuing bills all the same size discriminates against the blind.

The list grows, and in it is one of the reasons teachers embrace lives as teachers: because they love lives as students. I carry a notebook with me, and often jot down notes from lectures or conversations, or something I have seen in the newspaper or heard from a media outlet. And one of my favorite things to do, as a teacher, is to take note when I learn something new from one of my students.[10]

In the short term, in the day-to-day success of any particular hour, the legal news portfolio provides a unique way to engage upper-level students, even as it refines their oral, analytical, and legal writing skills. The daily routine helps make connections among a heterogeneous group of students, their teacher, and the law-trained minds who are making

"In each permutation of this exercise, I have learned about current legal issues I would not have noticed but for student presentations."

Appeals, 48 S. Tex. L. Rev. 157 (2006); Richard J. Peltz, *Censorship Tsunami Spares College Media: To Protect Free Expression on Public Campuses, Lessons from the "College Hazelwood" Case*, 68 Tenn. L. Rev. 481 (2001). For analysis of secondary school discipline under a school rules-based civility analysis, regarding Internet comments about nonparticipants, see Layshock ex rel. Layshock v. Hermitage Sch. Dist., 412 F. Supp.2d 502 (W.D. Pa. 2006) (parody of school principal); Flaherty v. Keystone Oaks Sch. Dist., 247 F. Supp.2d 698 (W.D. Pa. 2003) (general Internet discussion of school personnel).

[8] *But see* Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986) (illustrating the inventiveness of the human mind in pressing the edges of polite discourse). A gentle prior restraint, grounded in a spirit of professionalism, avoids the complexity of the fringe contributions, while opening a modest outlet for the expression of various viewpoints, through the lens of the media stories.

[9] The currency of the legal news topics that surface also produces ideas for potential scholarly articles. Moreover, the student selection of legal news that interests them suggests topics for legal research and writing assignments.

[10] Such rewards are shared by many teachers, including the teacher who inspired me in several details of this discussion. Helen A. Sampson (*nee* Sundahl) (1909–2006) spent much of her life preparing for, and teaching, both junior high students and adult learners. In our very last conversation, she asked what was most rewarding for me in my life as a teacher. After some pause, I realized I most appreciate my exchanges with those students who put forth an effort, who teach me new insights, who give me something back. I returned the question, and she said—words I wish I had transcribed—but I remember the nod and the knowing smile that meant, "Yes, it's all of a piece." Or in the words of the poet, "bird and flower were one and the same." Robert Frost, *In a Vale*, in *Complete Poems of Robert Frost* 21 (1964).

the news. The written component solidifies these connections and develops the critical thinking and analysis that lie behind all good writing.

In the end, the days of the advanced writing semester unfold, and each student's voice and contribution have been added to the mix of information that forms an important part of the classroom culture. The safe harbor and dignity of both professor and students has been preserved and developed, in the context of a structured, but dynamic, classroom forum for the exchange of ideas.

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"The written component solidifies these connections and develops the critical thinking and analysis that lie behind all good writing."

Another **Perspective**

"It has been argued that for the Founders, 'original intent' referred only to what could be gleaned from the Constitution's language and the use of structural means of interpretation but not from the personal intentions of the Founders. The present study opens this argument to reevaluation. In the Founding Era, the debates over the Constitution's scope permitted a broader array of evidence, including the purposes, expectations and intentions of the individuals and gatherings that created the document. At the same time, this study shows that the compromises and decisions of the First Congress resulted from both interest politics and a variety of arguments, including originalist arguments, which were sometimes raised on opposite sides of the same issue. This process has always been typical of legislatures.

For example, in a speech opposing the establishment of a national bank, Madison allowed the use of 'contemporary expositions given to the constitution.' Under this canon of construction, he introduced evidence on the sentiments expressed in various state ratifying conventions that the necessary and proper clause should be narrowly construed. Thus, he relied on legislative history—not contemporary expositions of meaning—to argue that Congress lacked the authority to establish the bank. In doing so, Madison deviated from the purely textual British tradition that did not employ legislative history to construe statutory text. Despite this deviation, Madison apparently expected his argument to be persuasive to his colleagues. His choice of argument suggests that when it came to rules of construction, the Founders were not purely textualists, but were often pragmatic politicians."

—Louis J. Sirico, Jr., *Original Intent in the First Congress*, 71 Mo. L. Rev. 687, 718–719 (2006).

From Simon Cowell to Tim Gunn:

What Reality Television Can Teach Us About How to Critique Our Students' Work Effectively

By Michael J. Higdon

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Anyone who has paid even the slightest attention to pop culture over the last few years cannot help but be aware of the recent proliferation of reality television. However, within that broad category, it is those reality shows that fall into the "talent competition" category, like *American Idol* and *Project Runway,* that currently reign supreme. In reality shows belonging to this class, a variety of individuals in a particular field compete against one another for a career-advancing prize. For example, on *America's Next Top Model* and *The Apprentice*, participants compete for a large modeling contract and the opportunity to work for Donald Trump, respectively. However, despite the different premises of these talent-based reality shows, each is comprised of a series of episodes, all of which share the same three elements: (1) contestants are given a particular task; (2) at the completion of the task, the participants are critiqued; and (3) one of the contestants is then eliminated from the competition.

For the legal writing professional looking at these three elements, the last element no doubt sounds like something exclusively within the realm of reality television. Indeed, although there might be days when even the most dedicated teacher might find it an entertaining idea, no legal writing program in the country allows its professors to vote students out of the classroom. In contrast, of course, the first two elements constitute not only a very familiar, but also a very large part of legal writing instruction. Throughout the year, we give students a variety of tasks and then critique their performance. Given, then, the overlap between these essential elements of both reality television and legal writing instruction, we can learn much about the effectiveness of different critiquing styles by comparing what the judges do on reality television with what we do in legal writing.

Furthermore, the critiques that take place on reality television provide us with an additional perspective on critique that we rarely get to experience. Specifically, part of what makes critique so difficult in the classroom is that we often return the critiqued work for the student to review (and respond to) outside of class. Thus, we do not see the initial impact that our critiques have on the students. Such information is crucial because of the potential for hurt feelings, given that we are, in essence, critiquing the student's mental processes as well as his creative choices. However, when a contestant on a reality show is critiqued by the judges, the reaction of the contestant is not just visible; it is often the focus of the segment featuring the critique. Thus, watching how reality television contestants respond to different approaches to critique can help us better understand how to critique in a way that is more likely to be inspiring and less likely to be hurtful.

In this article, I focus on two particular programs: *Project Runway* and *American Idol*. On *Project Runway*, aspiring fashion designers compete for a mentorship with Banana Republic. Each week, the designers are asked to design and construct a garment based on that week's theme. At the end of the challenge, the contestants show their creations in a runway show, and the "loser" is then "sent home." Similarly, on *American Idol*, young singers from across the United States compete for a recording contract. After a series of preliminary rounds, the field of contenders is narrowed to 12 finalists. Each week, the finalists perform a song based on that week's theme, and one finalist, based on the viewer's phone-in votes, is then eliminated.

"In reality shows belonging to this class, a variety of individuals in a particular field compete against one another for a career-advancing prize."

"One of the main goals of a critique is to inform the student how we, as the reader, respond to the draft."

Using these two programs as a backdrop, I give various examples of specific critiques from each show organized under four basic principles of effective student critique. Given the difficulty we sometimes face in finding helpful models of student critique in action, these examples not only provide samples but also help us better understand the varying success of the different approaches.

Principle 1: In Critiquing a Work, a Good Critique Does Not Focus on What Is Right or Wrong with the Work, but Instead Focuses on the Reader's Reaction

We routinely tell our students that the documents they draft are ultimately for the benefit of the reader; thus, the writing process itself must take into account the reader's expectations. One of the main goals of a critique is to inform the student how we, as the reader, respond to the draft. Ultimately, as we review the document, we must ask ourselves whether the document helps to inform the reader of the law and, at the same time, persuade the reader that the student's analysis can be trusted. Furthermore, where our reaction indicates a possible weakness in the work, we provide the student not only with our response, but also with the specific aspects of the work that gave rise to our response so as to aid the student as she revises.

To see a good example of principle 1 in action, we need only look to Tim Gunn of *Project Runway*. Gunn is the outgoing chair of New York's Fashion Design at Parsons The New School for Design, which is the setting for *Project Runway*. Although not one of the official judges, Gunn is specifically charged with critiquing the contestants each week as they design and execute the garment for that week's challenge.

In critiquing the contestants on *Project Runway*, Gunn understands that one of the most helpful things he can share with the students is simply his reaction. For example, in one episode, Gunn is critiquing an evening gown design by contestant Santino Rice. Gunn states: "Can I tell you how I respond to this now without any additional embellishment? … It looks like a costume. It looks like renaissance fest to me … I see Guinevere."

Contrast Gunn's approach with the approach frequently taken by Simon Cowell, one of the *American Idol* judges. Cowell, who is a record producer for Sony BMG, is well known for being rather abrupt and sometimes abrasive with the contestants on *American Idol*. For example, on a recent episode, contestant Chris Sligh had just completed his performance for the evening. Simon then gave the following critique: "I think you murdered the arrangement. … I think you turned a beautiful song into a complete and utter drone."

In their two approaches, both Cowell's and Gunn's critiques force the contestant to view the submission through the eyes of the reader. However, Gunn's critique is phrased in such a way that the contestant is less likely to feel that he, as the artist, did anything objectively wrong. Instead, the contestant is merely presented with Gunn's reaction to the work, not to the designer. In Cowell's critique, however, the negative response is presented not as one person's reaction, but more like an indisputable truth. Furthermore, Cowell's comment is phrased in such a way that the contestant is more likely to take the critique personally. Indeed, Cowell's critique is phrased in terms of what the contestant personally did "wrong." On the other hand, Gunn's critique appears more thoughtful as he couches his response in specific terms that better allow the contestant to understand the source of Gunn's response; in contrast, Cowell's comment is more general and, thus, less likely to help the contestant understand what it was exactly that he did that was "bad." Accordingly, of the two critiques, Gunn's is more likely to be helpful to the contestant because it not only provides the contestant with the reader's reaction but does so in terms that are (1) not personal and (2) specific enough to better equip the contestant to make revisions.

Principle 2: A Good Critique Forces the Student to Consider Other Audience Members Who May Approach the Work from a Different Perspective

We constantly remind our students that legal documents are intended for a variety of audience members and that not all audience members will approach the document from the same perspective.

Accordingly, we typically, through our critique, try to force our students to consider the perspectives of those various audience members. For example, we may note on a student draft: "Yes, I know the facts of this precedent case; however, the judge may not. As a result, you need to include more facts" or "Watch your tone, the client may read this!"

Like the legal writing professional, Simon Cowell and Tim Gunn also employ this principle of critique, albeit with varying degrees of effectiveness. For example, Cowell once told a contestant that the contestant's performance "came over as a bit of a joke. Having said that, I have a feeling the audience at home will like you." However, once again, Cowell fails to offer sufficient details to make the critique useful to the contestant. The contestant is left to his own devices to figure out (1) why Cowell perceived the performance as a joke, and (2) why the audience at home would be inclined to like it.

Gunn offers a better example. On season two of *Project Runway*, when finalist Daniel Vosovic was preparing for the final runway challenge, Gunn pulls Vosovic down on the floor to force the contestant to look at the design from the perspective of those watching the runway show. In the process, the contestant discovers that his hem is uneven and his lining is showing. Thus, Gunn provides a very literal example of forcing students to look at their work from the perspective of various audience members.

Principle 3: A Good Critique Calls on the Student to Explain the Choices She Made in Creating the Work

One of the primary goals we all have in critiquing papers is to force our students to expand their critical thinking skills. When students are drafting out of habit and not through conscious decision making, the students are not being effective legal writers. Accordingly, effective critique does not so much point out the failings of a work along with suggested revisions, but actually empowers the student to figure out for herself which of her choices potentially needs to be revised and how. As a result, many of us will frequently use a form of Socratic critique on our students' papers: "I'm curious why you phrased the court's holding in these terms?" or "Can you think of any other facts from our case that might be helpful to your analysis?"

Unfortunately, the judges on *American Idol* rarely ask a contestant to explain his decisions. Instead, the judges simply give their critique and neither solicit nor even permit much response from the contestant. Of course, this failing could be due to the fact that *American Idol* is a live show with rather tight time constraints.

However, on *Project Runway*, Tim Gunn not only makes frequent use of principle 3, but does so in a variety of different situations to which many of us can relate. First, Gunn seems to recognize that he can more easily critique if he first asks the contestant to explain the choices that she has made. Of course, we can understand Gunn's approach given that many of us have frequently had the experience where we note a criticism on a student's paper only to later, after the student has explained the cogent rationale behind his choices, wish we could retract the comment. Thus, by phrasing his critiques in the form of a question, Gunn avoids this potentially uncomfortable situation. For example, in one episode, the contestants had to design an outfit that could be worn both at the office and also for a night on the town. As Gunn approaches one team of contestants, he preliminarily notes, with some concern, that the jacket they have designed appears a bit too "precious." He then allows the two to explain, and they reply "That's what we *want*. The jacket should look like 'No, I'm not going home with you.' And, then, she takes it off and now she says, 'But maybe I'll let you buy me a drink. … '" Armed with the contestants' explanation, Gunn is now in a position to give his critique: "Alright, well you know something, then you achieved it … and it works!"

Second, Gunn seems to understand how unpleasant it can be to communicate a negative critique to the unsuspecting student. Accordingly, Gunn is quite effective at softening the blow by first asking a contestant questions about the decisions she has

"When students are drafting out of habit and not through conscious decision making, the students are not being effective legal writers."

made in order to allow the contestant, on her own, to discover the negative aspects of her work. In one example, Gunn approaches designer Guadalupe Vidal while she is sewing. Immediately, the home viewer can tell from Gunn's face that he is not reacting well to what he sees on the design table. However, instead of offering his thoughts, Gunn asks Vidal some questions that ultimately lead her to concede that she thinks the design looks lousy. Gunn's terse response? "I'm not going to debate that." Not only is Gunn's method a kinder approach to delivering bad news, but his approach is likely more effective given that people are more persuaded by conclusions they reach on their own.

Finally, Gunn's method of asking the contestants to explain their choices makes it clear to the contestants that it is they who ultimately retain creative control over their designs. As such, the contestants are empowered and, thus, more likely to take pride in the final product. Thus, Gunn's contestants, like our students, are free to make any choice they like.

"Finally, Gunn's method of asking the contestants to explain their choices makes it clear to the contestants that it is they who ultimately retain creative control over their designs."

However, our job does require that we help the students understand that certain choices will carry consequences. In terms of legal writing education, those consequences include a lower grade, a less helpful document, or even an angry supervising attorney. However, even on *Project Runway*, Tim Gunn is quick to let the contestants know that their choices will have consequences. For example, in one episode Gunn tells contestant Chloe Dao that the dress she has designed looks as though it is "hugging a rear end." When Dao explains that she intended that effect, he then tells her exactly what she needs to say to runway judge Nina Garcia when Garcia undoubtedly questions Dao's choice: "Nina, I *wanted* her to look like she has a big, fat ass!"

Principle 4: A Good Critique Offers Praise, but Only Where Such Praise Is Deserved

When critiquing, I often have to remind myself of this last principle. Of course, I start the year off on a fairly good foot as I know that I need to give my new students sufficient praise to build their confidence and to encourage them to continue their hard work. However, as the students' confidence builds, I tend to forget the need to praise good choices that the students make. Nonetheless, praise is one of the key components of effective critique as it not only provides positive reinforcement for the good choices that the students make, but also, when supplied judiciously, can provide them with an additional incentive to work hard.

Thus, in looking at this last principle, there are two components: (1) the need to praise and (2) only offering this praise when it is deserved. Indeed, offering praise too freely will minimize the positive reinforcement that such encouragement is intended to convey.

For example, *American Idol* judge Paula Abdul frequently violates this second component as she almost always finds some excuse to praise a contestant's performance. As a result, when receiving praise from Abdul, the contestants show relatively mild appreciation, which is a direct contrast to the unbridled glee they exhibit when praised by Simon Cowell, who doles out praise *much* more rarely.

Furthermore, Abdul demonstrates another potential problem that arises from an extreme eagerness to praise. Specifically, if the praise does not relate to the skill that the student is being tested on, it may come across instead as somewhat insulting. For example, on season three of *American Idol*, contestant Katherine McPhee flubbed the lyrics of a song during her weekly performance. When it came time for Abdul's critique, she chose to focus on McPhee's attire: "You should wear dresses more often. You look absolutely beautiful." Given that *American Idol* is a singing competition, the fact that Abdul chose to comment on the contestant's clothing was more likely to be perceived by the contestant as criticism. Thus, a legal writing professor who writes "good job at numbering pages" or "excellent placement of staple" on a student's paper would likely be doing more harm than good.

Finally, Abdul's approach to critique also demonstrates that a critique must be specific and meaningful if it is likely to serve its intended purpose. For example, *American Idol* contestant Lisa Tucker probably had little idea what she had done well when Abdul gave her the following

critique: "The energy of what you brought tonight was who you are." In contrast, once again, Tim Gunn provides a better demonstration. Prior to contestant Chloe Dao's final runway competition, Gunn, taking one final look at Dao's design, tells her: "the way in which you are innovating with the construction is really brilliant … good work!" Dao responds with a beaming smile.

Thus, despite the bickering that sometimes goes on between American Idol judges Simon Cowell and Paula Abdul, the two actually have something in common: both provide excellent examples of what not to do when critiquing student work. Project *Runway*'s Tim Gunn, on the other hand, sets a more positive example. In fact, Gunn, who frequently tells his contestants that when it comes to their creations, they need to "make it work," understands that it is actually his critique that will better enable the contestants to reach that goal.

Consequently, unlike Cowell and Abdul, Gunn does not use his critiques as an opportunity to belittle or patronize a young artist. Gunn uses his critiques as an opportunity to help improve the student's ability to make more effective choices in the future. For these reasons, the legal writing professional would likely be much better off to emulate the example set by Gunn. After all, unlike contestant William Hung, whose poor performance on *American Idol* was so bad that it earned him both a record deal and a cult following, legal writers will find that the legal field is much less inclined to embrace a poor performance.

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"Gunn uses his critiques as an opportunity to help improve the student's ability to make more effective choices in the future."

Another **Perspective**

"I illustrate [dicta] by reference to a hypothetical card game, with rules not yet clearly understood. Let's call it 'Poker.' The plaintiff has three Jacks; the defendant holds a pair of Queens. Each claims to have the winning hand. The court rules for three Jacks. In explanation, the court writes, 'When held in equal numbers, Queens beat Jacks. But three-of-a-kind always beats a pair.' The statement that Queens beat Jacks is superfluous to the court's reasoning, which explained the grant of judgment to the plaintiff by reason of the plaintiff's having three-of-a-kind. Were the statement turned around to state the opposite—that Jacks beat Queens—the court's grant of judgment in favor of the three Jacks, on the ground that three-of-a-kind beats a pair, would nonetheless stand unaltered. The statement of priorities between Jacks and Queens played no role in its award of judgment in favor of the three-Jack hand and was accordingly dictum. …

To professors I would say: You have a responsibility to make sure your students understand and are alert to the distinction between holding and dictum—and its importance. It is not something to be discussed only in a brief, first-year intro-to-law lecture. Students who graduate without a grasp of it are not well trained for the profession."

—Pierre N. Leval, *Judging Under the Constitution: Dicta About Dicta*, 81 N.Y.U. L. Rev. 1249, 1257, 1282 (2006).

What I Learned from My Fourth-Grader About Teaching Legal Reasoning

> "As a result of my son's struggles, I better understand the challenges that my students face in learning legal reasoning."

By Jill Koch Hayford

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As a fourth-grader, my son had the good fortune (misfortune, according to him) of being exposed to two math curricula—"Everyday Math" and "Connecting Math Concepts."[1] The two curricula differ widely in approaches to learning. What surprised me as a legal writing teacher were the parallels between their divergent approaches and the reasoning methods in which I instruct my students every day. As a result of my son's struggles, I better understand the challenges that my students face in learning legal reasoning.

Everyday Math is the curriculum[2] of choice in our school system. My husband and I discovered some time ago, however, that our son struggled with it in the general classroom. We worked with the special education teacher to modify the problems he was asked to do for homework, and we supplemented it with extra practice on some concepts outside of the classroom. These modifications and supplements helped, but my son still seemed never to catch on to the logic of Everyday Math. We wanted to know why.

We began to research the pedagogy underlying the curriculum, and we learned of other curricula with approaches that might make more sense to our son. We focused on Connecting Math Concepts as a possibility, and ultimately we were able to get the school district to use this curriculum to supplement my son's math instruction. It clicked with him. In fact, his success was so dramatic that eventually we were able to persuade the school district to use Connecting Math Concepts as his only math curriculum.

Everyday Math, like many other so-called "new math" curricula, adopts an experiential, discovery-based, constructivist approach to learning; children are introduced to math problems in everyday life, and then are encouraged to "discover" what the rule might be to solve those problems. Only after the children discover the rule are they exposed to the rule. In essence, they construct their own methods of solving problems, based on their experience. Proponents say that this type of learning encourages children to think more deeply about the interrelatedness of math disciplines and to be better problem-solvers. Opponents say that kids don't become proficient at some of the basic math skills, such as computation, that are required of them both in everyday life and in higher-level mathematics.

Connecting Math Concepts, on the other hand, adopts a more traditional, direct, and sequential approach. Children are explicitly taught rules to solve math problems, and they receive repeated practice in applying those rules. Once they have mastered a rule, they move on to the next rule. Proponents say that this type of learning provides children with a solid foundation in the basic skills that are required of them; opponents contend that the repetition leads to boredom and therefore kids who are less intrinsically motivated to learn math, and that children never see the "whole" of mathematics.

[1] Everyday Math and Connecting Math Concepts are published by SRA McGraw-Hill.

[2] I use the term "curriculum" throughout this article, though some educators would call these commercially available materials "instructional resources."

Proponents of each type of curricula, pejoratively dubbed "fuzzy math" versus "drill-and-kill," have engaged in the infamous "math wars"[3] in some states, such as California, where the state mandates a curriculum for all public schools in the state. It has also led to skirmishes on the individual school or child level. Where one comes out on the debate, though, should have less to do with philosophical differences ("new v. old," "fun v. boring") than with what is best for the way in which each student's brain works.

For some time, educators have researched students' learning styles, dividing them into subgroups, including global versus analytical processors. "[G]lobal learners are right-brain preferenced processors, as opposed to analytic learners who are left-brain preferenced processors."[4] In general terms, global learners learn from whole to part, preferring to experience the "big picture" first, while analytical learners learn from part to whole, preferring to learn step-by-step and sequentially.[5] For this reason, at least some research suggests that global learners do better with experiential math curricula, while analytic learners prefer direct, sequential curricula.[6]

Parallels can be drawn to the reasoning skills that we teach in our legal writing classrooms. To be successful lawyers, students must learn not only to synthesize a rule but also to apply that rule to a client's factual situation.

To synthesize a rule, students read several cases that involve real life situations. They then must discover connections among them—the big picture—and build a rule that explains the results in the individual cases. It is an experiential, constructivist approach with parallels to new math curricula such as Everyday Math.

But we expect students to apply those individual rules, as well, to their clients' facts. Students start with the specific rule of law and, using rule-based reasoning, must use that rule to solve a problem. Like more traditional math curricula, rule-based reasoning is more direct and sequential, moving from part to whole.

As noted by many of our colleagues, however, "[a] law school class is likely to consist of both global and analytic learners."[7] Perhaps, then, we are unrealistic in expecting students to master both synthesis and application equally well. While all students can and must develop both skills to be successful lawyers, learning the skill that doesn't come naturally takes time and sustained effort, a struggle that I better understand from my fourth-grader.

From my son's struggles, I also better understand how to help my students to learn these skills. For the natural-born "left-brainers," struggling with synthesis, I break the process into step-by-step, sequential parts, using tools such as a synthesis chart.[8] For the natural-born "right-brainers," struggling with application, I help them to visualize the big picture—to focus on the end result of rule application to their client's facts—and then to build the steps leading to that result.

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"For some time, educators have researched students' learning styles, dividing them into subgroups, including global versus analytical processors."

[3] For one Web site that details these "wars," see <www.mathematicallycorrect.com>.

[4] Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 Alb. L. Rev. 213, 236 (1998).

[5] *Id*. at 236–38.

[6] *E.g., id*. at 236.

[7] *Id.* at 238.

[8] *See, e.g.*, Tracy McGaugh, *The Synthesis Chart: Swiss Army Knife of Legal Writing,* 9 Perspectives: Teaching Legal Res. & Writing 80 (2001).

Suggestions on How to Conduct Empirical Research: A Behind-the-Scenes View

"Just as research memoranda and appellate briefs begin with a single-sentence Question Presented, so should a research study."

By Robin A. Boyle and Joanne Ingham

Robin Boyle is Professor of Legal Writing, Coordinator of Academic Support, and Assistant Director of the Writing Center at St. John's University School of Law in Queens, N.Y. Prof. Boyle has conducted three formal classroom studies involving law students' learning styles and experimental classroom methodologies.[1] *Dr. Joanne Ingham is the Assistant Vice President for Institutional Research at New York Law School in New York. Dr. Ingham has collected and analyzed data from three law schools involving 1,500 law students.*[2] *Her institutional research has focused on the learning styles of undergraduate students, employees in industry, law students, and faculty members.*

The conference theme of empirical research at the 2006 Association of American Law Schools Annual Meeting, held in Washington, D.C., indicated an interest on the part of doctrinal and skills professors to conduct their own studies. The conference title, Empirical Scholarship: What Should We Study and How Should We Study It?, along with the plentiful workshops on the topic, evidenced the acceptance in the academe of empiricism. As a researcher noted, "Empirical legal scholarship … is arguably the next big thing in legal intellectual thought."[3]

Assisting legal writing professors with their growing interest in conducting empirical studies, the authors presented at the 2006 biennial Legal Writing Institute conference held in Atlanta, Ga. The subject matter of our workshop is described below. What follows is a step-by-step approach for planning a research study in a classroom. At the outset, we consider "empirical research" to be research that involves objectivity of the researcher, clearly stated goals from the start of the research project, a procedure for collecting data, a statistical measure of the data collected, and process for analyzing that information.

Step One—Identify the Research Question or Hypothesis

Just as research memoranda and appellate briefs begin with a single-sentence Question Presented, so should a research study. A research question of interest to you, or to your institution, may evolve from observing student performance in class. Perhaps a majority of students are struggling with understanding a critical concept or mastering a skill. Maybe a new instructional approach has produced what you think are strikingly dynamic results. Often these experiences, or reading about colleagues' experiences or research, will prompt a research question of interest to you. It is extremely difficult to collect data first and then try to figure out the research question later.

When your idea is formulated, you should be able to explain it clearly to others in a sentence or two. Will your dean understand your research question? Would the faculty understand the question if you were presenting a workshop on the topic? If you struggle to explain your study, then it may not be sufficiently focused to move forward. A focused question for a classroom study was this: "When compared with the traditional method of teaching legal research, what is the relative effectiveness of [the experimental material]?"[4]

[1] *See* Robin A. Boyle, Karen Russo & Rose Frances Lefkowitz, *Presenting a New Instructional Tool for Teaching Law-Related Courses: A Contract Activity Package for Motivated and Independent Learners*, 38 Gonz. L. Rev. 1 (2002–2003); Robin A. Boyle & Lynne Dolle, *Providing Structure to Law Students—Introducing the Programmed Learning Sequence as an Instructional Tool*, 8 Legal Writing 59 (2002); Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 Alb. L. Rev. 213 (1998).

[2] *See* Joanne Ingham & Robin A. Boyle, *Generation X in Law School: How These Law Students Are Different from Those Who Teach Them,* 56 J. Legal Educ. (forthcoming 2006).

[3] Tracey E. George, *An Empirical Study of Empirical Legal Scholarship: The Top Law Schools*, 81 Ind. L.J. 141, 141 (2006).

[4] Boyle, Russo & Lefkowitz, *supra* note 1, at 15.

Step Two—Explain the Rationale

There needs to be a justifiable reason why your research is being conducted. After all, conducting a study for the heck of it will likely result in an unfocused and, thus, useless collection of data. Ask yourself whether there is a purpose to the study.

Perform a background literature search to understand whether your study or other similar studies have already been conducted. Ascertain whether your intended study is worth doing. If not, reconsider the expense of time and energy. However, unlike the prohibition against writing a scholarly article on a topic twice, there is no such prohibition in empirical research. A subsequent study may further confirm the results of a prior study. A study conducted in a different geographic region, or with a different population, may help shed light on findings from prior studies and contribute to a scholarly body of work.

Who will benefit from the study? The study may benefit the students if it pertains to pedagogy. The study may also benefit the institution. If the study contributes to a body of scholarly work, then it may make it easier to garner support for the project. The answer to this question may help you to identify potential funding sources for your study. It could also help you to select a forum for publishing your findings. Understanding who benefits from your study may also help you to plan, in advance, speaking opportunities. For example, the authors presented their findings of learning-style traits of students and faculty before their faculty at colloquia held at their school as well as before audiences at two biennial conferences of the Legal Writing Institute.

Consider conducting a pilot study. Prof. Boyle conducted a pilot study one year before the actual classroom study.[5] Results from pilot studies are very useful in justifying the research and persuading funding groups to support your efforts. A pilot study helps researchers fine-tune their procedures and modify materials and provides an anticipated outcome for their findings. You will not use the same study population for both the pilot and the actual study, so plan a year in advance to identify different populations for your two studies.

Step Three—Prepare a Formal Proposal

You will need institutional approval for your study; thus, you will need to put your ideas into written form. The approval process varies from institution to institution, but typically includes written support from the department chair, the dean, or the school's Institutional Review Board (IRB).[6] Information regarding your school's IRB may likely appear on your school's Web page. IRBs review studies that involve human subjects and will help you to shape your research protocol. The IRB is charged with making sure that the participants are properly informed and protected from harm—physically, psychologically, or emotionally—and that the personal data you collect will remain confidential.

In writing your formal proposal, you should include your study question (see step one above) describing what you plan to do and why (rationale). Also include how you specifically plan to conduct the study. This may involve research. For example, you may want to research articles on metacognition[7] if you are studying how students read cases. How were the "think-aloud" studies[8] conducted? Would you want a similar structure for your study? You may want to refer to any number of excellent books describing research methodology that can guide your planning activities.[9]

> "Perform a background literature search to understand whether your study or other similar studies have already been conducted."

[5] *See id.* (describing a study for which a pilot had been conducted, yet unreported, one year prior).

[6] *See generally* Gregory Mitchell, *Empirical Legal Scholarship as Scientific Dialogue*, 83 N.C. L. Rev. 167 (2004).

[7] *See* Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 Reading Res. Q. 407, 410 (1987); Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student,* 81 U. Det. Mercy L. Rev. 1, 13–17 (2003).

[8] *See* Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 Seattle U. L. Rev. (forthcoming 2007); Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 30 Reading Res. Q. 154, 155 (1995).

[9] *See* Schuyler W. Huck, William H. Cormier & William G. Bounds Jr., *Reading Statistics and Research* (1974); Thomas D. Cook & Donald T. Campbell, *Quasi-Experimentation: Design and Analysis Issues for Field Settings* (1979).

"Is your study descriptive, quasi-experimental, or experimental? Your research design will determine the appropriate statistical methods to use."

Plan ahead for your data collection. Where will you obtain the data and in what form? For example, if you are asking your subjects to complete a hard-copy test, will the answers be quantifiable? Will someone then input the answers (scored, say, in a Likert scale) into a software package loaded onto your office computer? If so, will you be hiring an upper-level student to do the labor-intensive work of inputting numbers into an electronic spreadsheet? Which software package will you use? Who will analyze the data?

Include timelines in your written proposal. You should consider deadlines for obtaining consents from the institution (deans, IRB) and from your study participants (usually consents are in writing and voluntarily given). Include in your planning the amount of time needed for creating and administering pretests and posttests, if there are any; writing and duplicating your study materials; engaging professionals, such as statisticians and graphics artists;[10] introducing the study to your participants; and instructing other professors or teaching assistants who will be scoring tests or lecturing during your study.

Lastly, the study proposal should include how the data will be analyzed. Is your study descriptive, quasi-experimental, or experimental? Your research design will determine the appropriate statistical methods to use. The proposal should also include how the study will be reported and to whom. As an added bonus, when you are ready to prepare a final report or draft an article for publication, the formal proposal serves as the outline for your writing activities.

Step Four—Conduct the Study

With step three in place, you are ready to get started. It is important to circulate your timeline to all involved parties. If you are relying upon other professors or upper-level students to help in your study, now is the time to let them know when they will be needed and what is expected of them.

Your study materials, including pretests and posttests, need to be created and duplicated. If you need supplies, such as number two pencils, this is the time to order and store them. Organize all of your materials and communicate with all those involved in the project.

In step four, provide written consent forms to your study participants. This is the time to create a PowerPoint that explains your study and show it to the participants. The effectiveness of your presentation to the students has a direct impact on their willingness to fully participate. Communicate to students that they do not have to participate and that they will not be harmed academically if they do not participate.

There is no room for error at this stage. Your study has begun!

Step Five—Collect the Data

Step three should have helped you plan for the data collection. This is the time to collect answers to test questions. Perhaps your subjects are reading cases aloud with their responses being scored by prepared observers; this is the stage when you collect those responses. Meticulous attention to detail is essential. You may want to, or need to, code participants' names for confidentiality. Label materials for date, time, class, and classroom to prepare for the data entry stage. Be very clear in your labeling as to which data you have and from where it came.

Having collected the data, it may need to be inputted into an electronic spreadsheet (Excel or SPSS, for example). Your computer skill level and the amount of data you have to enter will determine if you need assistance with this step. You should be prepared to back up and to store the collected data in a secure environment for several years, or as suggested otherwise by your IRB. Data can be stored in a password-protected file on a law school computer and backed up by the institution, saved on a CD and stored safely off-campus, etc.

[10] *See, e.g.*, Boyle & Dolle, *supra* note 1, at app. B (employing a graphics artist to develop pictures for the study materials).

Step Six—Analyze and Report Findings

How are you going to determine your outcomes? Consider which analyses you will be conducting. Who will run the statistics and prepare tables and graphs? Statisticians are useful for analyzing data and preparing tables and graphs. If your law school is part of a larger university, there are likely to be statisticians teaching in the psychology department or education department who could help you analyze the data. Often professors from other disciplines would be happy to receive acknowledgment of their contributions by listing them as co-authors on your published findings. The authors have sought help from both university statisticians and statisticians whom we have hired from the outside. Often the for-hire statisticians charge an hourly rate.

You and your statistician may come to the unfortunate conclusion that the study did not work well. If results are indicating that there was a flaw in the study, it may make sense to discontinue the data collection and analysis. Alternatively, if your statistician reports the successful execution of the study, the collection of appropriate data, and the determination of useful findings, such as "statistical significance,"[11] then congratulations. You are ready to move on and plan for step seven—how your findings will be reported.

Step Seven—Share the Results

The ultimate moment in your study is determining what you have learned; after all, this is the point of the study. Determining the relevance of the findings is the next inquiry. The findings may be relevant to only a few persons, such as your students; the deans at your school; the faculty at your school; or perhaps the larger community of scholars in your field.

Often it is appropriate to share the results with the participants. The findings may provide useful information or feedback for their personal benefit. Students have typically been very interested in finding out the results of a study. In a study conducted at three different law schools with faculty and students, all of the students involved received feedback on the study results and how those results could benefit their study strategies. Seminars were presented to the faculty at all three law schools to report back on what was learned at each site and how the findings could be generalized to legal education. Consider speaking engagements at faculty colloquia and regional and national conferences, and to law firms and other interested industries. Sharing the results can also include publication in newsletters in your field as well as in legal periodicals.

Finally, help yourselves and your colleagues by making recommendations for future research. What questions were generated by your research and need further study? What would you have done differently? This discussion may also provide the basis for your own continued research activities. Very often, finding answers to one research question generates a new set of questions ripe for new research.

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"The ultimate moment in your study is determining what you have learned; after all, this is the point of the study."

Another **Perspective**

Please note that beginning with volume 1, all issues of *Perspectives* are available in the Perspectives database (PERSPEC) on Westlaw and in the LEGNEWSL, TP-ALL, and LAWPRAC databases. *Perspectives* is also available in PDF at **west.thomson.com/newsletters/perspectives**.

[11] *See, e.g.*, Boyle, Russo & Lefkowitz, *supra* note 1, at 16–17 (describing the study's findings as having "achieved statistical significance at the p< .001 level" meaning that a "result of this magnitude might occur by chance approximately one in a thousand times").

Teaching U.S. Legal Research Skills to International LL.M. Students: What and How

"Deciding how to treat the teaching of legal research is a challenge for any professor teaching a legal writing and research course geared for international graduate students."

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 Elizabeth L. Inglehart

Elizabeth L. Inglehart is Clinical Assistant Professor of Law at Northwestern University School of Law in Chicago, Ill.

Deciding how to treat the teaching of legal research is a challenge for any professor teaching a legal writing and research course geared for international graduate students. The challenge arises most often in a legal writing course being taught to students in one-year international LL.M. degree programs such as the one at Northwestern University School of Law, where I teach.[1] The vast majority of students in such programs are already attorneys in their respective home countries. Most of them have undergraduate law degrees from their home countries and have worked in legal jobs for at least a year, sometimes many years, before entering an international LL.M. program at a U.S. law school.

Thus, these attorneys-cum-students already have experience with legal research. However, their experience generally is with research of quite a different kind than that taught in U.S. law schools and performed in U.S. legal practice. That is because most of these international LL.M. students come from code-based civil law countries, where the sources of law are less numerous and varied than in the U.S. common law system. One of the main features that differentiates common law legal systems, of course, is that common law systems rely on the concept of stare decisis, or following binding case precedents, whereas most civil law systems do not apply judicial decisions as binding precedent, or do so only to a very limited extent. Many of my international LL.M. students tell me that most of the legal research they are called upon to do in their home countries consists of looking up sections of their country's civil code, or individual statutes, and that often they can find those sources in a single Web site, run by the government, that provides an official source for their country's civil code and statutes.[2] The situation obviously is quite different with regard to

[1] After five years of teaching legal writing to J.D. students at Northwestern Law, I began teaching a similar course, common law reasoning (CLR), to two slightly different populations of international graduate students. In the summers of 2004, 2005, and 2006, I taught CLR to our LL.M./Kellogg students. Our LL.M./Kellogg students are enrolled in a program unique to Northwestern Law, where, in 12 calendar months, they earn an LL.M. from Northwestern Law, as well as a certificate from Northwestern's Kellogg School of Management. In the fall semesters of 2004, 2005, and 2006, I taught CLR to our LL.M. students in our "traditional" international LL.M. program, a nine-month program. Our CLR course is a one-semester required course in the first semester of the LL.M. and LL.M./Kellogg programs.

I would like to thank my colleagues in developing and teaching the LL.M. CLR course at Northwestern Law over the past three years: Lauren Hines during fall 2004, Adrienne Giorgolo during fall 2005 and fall 2006, and Ellen Mulaney during fall 2006. Development of this course was a collaborative venture.

[2] For example, civil codes can be found online at the following sources:

France: French codes can be found online at <www.legifrance.gouv.fr/WAspad/ListeCodes>. *See also Guide to Law Online: France* (Law Library of Congress), <www.loc.gov/law/guide/france.html>.

Japan: The Japanese Consolidated Code Online (in Japanese) can be found at <www.e-gov.go.jp>. *See also Guide to Law Online: Japan* (Law Library of Congress), <www.loc.gov/law/guide/japan.html>; Makoto Ibusuki, Update to *Japanese Law via the Internet,* <www.llrx.com/features/japan2.htm> (a Japanese Law Professor's Guide to Sources of Japanese Law on the Internet).

Mexico: Official government Web site providing Mexican civil codes: <www.diputados.gob.mx/LeyesBiblio/index.htm>. *See also Guide to Law Online: Mexico* (Law Library of Congress, <www.loc.gov/law/guide/mexico.html>; Jorge A. Vargas, *The Federal Civil Code of Mexico,* <www.llrx.com/features/mexcc.htm#1>.

U.S. legal research, since the U.S. legal system encompasses both federal and state jurisdictions, each with its own laws. Thus, depending on the legal question she is researching, the legal researcher must learn how to access and update the laws of any of these jurisdictions.

Should International LL.M. Students Be Taught U.S. Legal Research?

When teaching international LL.M. students who hail from many different nations, most of which are civil law or hybrid jurisdictions, then, the question arises as to what, if anything, we should teach them about U.S. legal research. One possibility is not to teach them any U.S. legal research skills, on the theory that they will be returning to their respective home countries after they graduate from the LL.M. program and will have no need to research U.S. law. This seems an unwise approach. While indeed the majority of LL.M. students will return to practice in their home countries after the LL.M. program, an increasing number of them are succeeding in getting jobs in U.S. law firms or with other legal employers after graduation. Some stay for a year or two as interns; others get permanent jobs as associates alongside American J.D. graduates. And both the students who return home immediately and the ones who get jobs in the United States have two things in common: they came to LL.M. programs in the United States because they wanted to learn more about the U.S. legal system, and in their jobs in their home countries they work closely with U.S. lawyers and need familiarity with U.S. law. Many of them work for foreign offices of U.S. law firms. Others work for foreign offices of U.S. corporations, or work for corporations in their own countries that have numerous U.S. clients or business or legal dealings with U.S. corporations. Under any of these circumstances, they will be called upon to analyze the application of aspects of U.S. law to various transactions. Thus it is important for them to learn how to find the applicable U.S. law that may be relevant to a given relationship or transaction. They need to be taught something about researching U.S. law.[3]

The questions then become how much U.S. legal research LL.M.s should be taught in a legal skills course, and by what method they should be taught. At Northwestern, we spend somewhat less time on research skills in the LL.M. course than we do in the J.D. course. Our LL.M. legal writing course at Northwestern is a modified and shortened version of the two-semester legal skills course for J.D. students. Like the J.D. students, the LL.M. students write a closed memo and then rewrite it. We do not, however, assign the LL.M. students an open research memo. We have concluded that, because of the English as a second language challenges that many of the international LL.M.s bring to their experience in the common law reasoning (CLR) course, it is wiser to spend more of the semester working on their common law analytic skills and legal writing skills, rather than spending as much time as the J.D. students spend on legal research. We want the LL.M. students to emerge from CLR with at least basic solid skills in performing U.S. legal research and using it to answer legal questions. Accordingly, we teach the LL.M.s how to research in three main legal sources: statutes, cases, and secondary sources, and to use those research skills to find materials that will enable them to answer factual hypotheticals posing legal issues. As to methods, we teach the LL.M.s to locate the three types of sources in print, on LexisNexis® and Westlaw®, and on the free Internet.

"We want the LL.M. students to emerge from [common law reasoning] with at least basic solid skills in performing U.S. legal research and using it to answer legal questions."

[3] Most international LL.M. students who return to practice law in their home countries will not have access to a large U.S. law library there. However, they will have other research sources available to them. Their employers may subscribe to Westlaw and/or LexisNexis, but even if not, both Westlaw and LexisNexis offer pay-as-you-go options by credit card, which allow attorneys to access either service for a day, a week, or a month. *See* LexisOne, <www.lexisone.com/legalresearch/index.html>; Westlaw by Credit Card, <creditcard.westlaw.com>.

In addition, the free Internet is becoming an increasingly useful source for researching U.S. law. *See, e.g.*, Legal Information Institute at Cornell Law School, <www.law.cornell.edu/>; the Library of Congress, THOMAS, <thomas.loc.gov/> (federal legislative information); the U.S. Government's Official Web Portal, <www.usa.gov/>; the Government Printing Office Web site, <www.gpoaccess.gov/>; FindLaw®, <findlaw.com/> (providing limited free legal research sources); and LexisOne, <www.lexisone.com/> (providing limited free legal research sources).

"Over the six semesters that I have taught [common law reasoning] to international LL.M. students, I have used different types of active learning assignments."

Teaching Research to Individuals with Different Learning Styles

In an effort to reach students with all types of learning styles,[4] and to put into practice the theory that complex skills are best taught by repetition,[5] I have always taught legal research by combining a variety of methods. First, I assign reading about legal research in legal writing textbooks[6] to reach the verbal learners. The Amy E. Sloan and Christina L. Kunz legal research textbooks are designed well to reach visual learners, in that their chapters on legal research include many sample pages from various primary research sources, both print and electronic. Second, after students have completed the assigned textbook readings, to reach the visual and aural learners I give PowerPoint lectures about how to do secondary source, statutory, and case law research. My PowerPoint presentations include pictures of pages from print research sources and screen captures from electronic sources. In addition, in fall 2006, during those lectures designed to reach the tactile learners, I brought in legal research books and had the students do very short in-class exercises to immediately try out research methods that I had just explained in the PowerPoint lectures. Third, to reach the tactile learners, once the overview lectures are delivered I have had the students spend one or two class periods doing hands-on, small-group guided research exercises in the library with our law librarians.[7] Fourth, after the above three methods of teaching research have taken place, I have always assigned students to complete some kind of active learning research assignment.

Active Research Learning Assignments

Over the six semesters that I have taught CLR to international LL.M. students, I have used different types of active learning assignments. A brief description of each type of assignment I have used, and its advantages and disadvantages, follows.

1. Graded Research Scavenger Hunt (Guided Research Exercise) in Print Sources

The research scavenger hunt I assigned was a guided research exercise of the type that many legal research and writing professors probably completed as law school students. It required students to research legal issues arising from a hypothetical client problem using various, mostly print resources in the library. The scavenger hunt was very directed; it led the students through many specific research resources (digests, case reporters, print statutes, treatises, encyclopedias, online electronic databases, etc.) and in each resource asked them to find either a specific primary or secondary source (such as a case, statute, or law review article) or to list the best sources they found using that method.

Advantages: The scavenger hunt had the advantage of ensuring that students used each of many research

[4] *See generally* Rita Dunn & Kenneth Dunn, *The Complete Guide to the Learning Styles Inservice System* ch. 8 at 15 (1999) (Drs. Rita Dunn and Kenneth Dunn, who have researched learning styles for more than 30 years, describe four "perceptual preferences" used by students to learn new and difficult information: "(1) hearing it (auditorially), (2) seeing it (visually), (3) handling manipulative instructional resources (tactually), and/or (4) actively participating while standing or moving (kinesthetically).") *See also* Robin A. Boyle, Karen Russo & Rose Frances Lefkowitz, *Presenting a New Instructional Tool for Teaching Law-Related Courses: A Contract Activity Package for Motivated and Independent Learners*, 38 Gonz. L. Rev. 1, 2–8 (2002–2003) (discussing learning-styles theory); Elizabeth L. Inglehart, Kathleen Dillon Narko & Clifford S. Zimmerman, *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom,* 9 Legal Writing 185 (2003).

[5] *See, e.g.*, discussion of teaching research to different learning styles in Samantha A. Moppett & Rick Buckingham, *Library Research Labs: A Hands-On Approach to Taking the First Step with Your Students to Reflect Good Practice in Legal Education,* 14 Perspectives: Teaching Legal Res. & Writing 73 (2006).

[6] In the past two years of teaching the LL.M. course, I have assigned readings about legal research in Amy E. Sloan, *Basic Legal Research: Tools and Strategies* (3d ed. 2006) and Christina L. Kunz, Deborah A. Schmedemann, Matthew P. Downs, Ann L. Bateson & Susan L. Catterall, *The Process of Legal Research* (6th ed. 2004).

[7] This required a large time commitment from the librarians to run these small-group exercises because the number of our LL.M. students increased each year. During the first two years that I taught the LL.M.s, when we had 60 LL.M. students, or even 80, the small group method worked. In the fall of 2006, however, our enrollment increased to 100 LL.M. students, and we decided that we simply would not have the resources to continue these small-group library exercises with the librarians. This decision, along with a decision to move to an integrated approach to teaching research (discussed below), led me to decide to assign students to work in small groups to do independent open research on a fact problem, and then to present the results of their research in class. The parameters of the group open research assignment will be further discussed below.

resources, and because the exercise called for particular answers, it was easy for the professor to tell whether the student used a particular resource correctly. For the same reason, the assignment could easily be objectively scored and graded. **Disadvantages:** Some students felt that the assignment took them too many hours (about 20 to 25), and they were frustrated by the fact that many students were using the same books, so that books were sometimes missing from the shelves. Also, some students seemed to think that this assignment was "busywork," because they did not use the answers to write any legal analysis, and because the topic (the meaning of "housing accommodation" under a discrimination statute) was not closely related to their interests, which tend toward business law and intellectual property areas. In addition, some students expressed frustration that the scavenger hunt focused quite a bit on print resources, to which students are less likely to have access once they return to their home countries.

2. Graded Internet Legal Research Assignment and Graded LexisNexis and Westlaw Electronic Research Exercises

In response to students' expressed desires to spend more time focused on learning to use electronic research resources, in other semesters I did not assign a library research scavenger hunt, but instead assigned two graded electronic research assignments. One assignment required students to use LexisNexis and Westlaw to obtain the answers, and the other required them to use cost-free sources on the Internet. **Advantages:** The electronic research exercises focused on research methods students are more likely to use in practice (electronic pay and cost-free methods). For that reason, the students themselves perceived these exercises as more useful to their future law practice. Moreover, because the exercises had objective answers, they could be graded easily. **Disadvantages:** The main disadvantage of using these electronic research exercises was that students did not get hands-on practice in doing book research (except during the in-class small group exercises with the librarians). I perceive this as a disadvantage because I feel that those new to U.S. legal research will benefit from understanding the structure of the traditional print research resources in order to use both print and electronic resources more effectively.[8] As a result, I began searching for a new kind of assignment that might expose students to both print and electronic resources, and also keep them interested in the research process. This was one consideration that led me to adopt an integrated approach to teaching research.

The Move to an Integrated Approach to Teaching Legal Research

In fall semester 2006, I moved to using an integrated method of teaching research for the first time. In the past, I had always taught research on a method-by-method basis: first teaching how to research secondary and primary sources in print, then having our LexisNexis and Westlaw representatives give a class on how to research any source on those services, and then recently adding a lecture about how to research any source on the cost-free Internet. I decided to change my approach, however, based on a session I attended on integrated research teaching at the 2006 Legal Writing Institute Conference.[9] This session,[10] presented by Professors Kari Aamot and Suzanne Ehrenberg of the Chicago-Kent College of Law, Illinois Institute of Technology, convinced me that it makes more sense to teach research on a source-by-source basis. That is, for

"In fall semester 2006, I moved to using an integrated method of teaching research for the first time."

[8] *See generally* Patrick W. Spangler, *THE NEW WORLD versus THE OLD WORLD OF LEGAL RESEARCH: Are Print Resources Completely a Thing of the Past?,* 20 CBA Rec. 48 (April 2006); Lee F. Peoples, *The Death of the Digest and the Pitfalls of Electronic Research: What Is the Modern Legal Researcher to Do?*, 97 Law Libr. J. 661 (2005).

[9] Legal Writing on the Move, The Twelfth Biennial Conference of The Legal Writing Institute, June 7–10, 2006, Atlanta, Ga.

[10] Profs. Aamot and Ehrenberg's session, which took place at the conference on June 8, 2006, was entitled Integrating On-Line and Print Research Training: A Guide for the Wary. Their description of the session in the conference brochure was as follows:

> As on-line research becomes not only the first research tool of choice, but in some cases the only available research tool, we must integrate our teaching of on-line and print research and emphasize the content of legal information, rather than the container in which it is found. This presentation will introduce those who have not yet made the leap to integrated research training to some strategies for doing so, and identify some of the unique challenges that arise in such a research program.

See *also* Suzanne Ehrenberg & Kari Aamot, *Integrating Print and Online Research Training: A Guide for the Wary*, 15 Perspectives: Teaching Legal Res. & Writing 119 (2007).

"I also very much liked the fact that this open research project required students to work collaboratively in small groups."

example, first teach students how to research secondary sources in print, on LexisNexis/Westlaw, and on the Internet. Second, teach how to research statutes in print, on LexisNexis/Westlaw, and on the Internet. Then do the same for teaching case law research. This approach has the advantage of enabling comparisons of the advantages and disadvantages of finding, for example, case law using each of these methods. It also teaches students more clearly about the choices and alternatives available to most effectively and efficiently arrive at the most relevant sources of law for their client situation. Accordingly, in fall 2006 I revised my syllabus and lectures to follow the integrated approach, and also arranged for the LexisNexis and Westlaw representatives to jointly teach three separate times to the LL.M.s: once covering secondary source research, once covering statutory research, and once covering case law research.[11]

Small Group Research Project—Putting Integrated Research Teaching into Practice

In tandem with the move to an integrated approach to teaching legal research, it seemed appropriate to assign a research project that would allow students to choose for themselves which methods and sources they would use to find answers to their research questions, rather than being directed as to which method and which sources to use (as in the research scavenger hunts, which focused on print sources and required students to get answers by looking at specific books), or being directed as to which methods to use (as in the LexisNexis/Westlaw exercise and free Internet exercise assignments). Therefore, in fall 2006 I assigned an ungraded group open research project that required students to research client hypotheticals independently in groups and then to give presentations on the research steps they took and their results. For this assignment, the students were allowed to use any type of research sources (print, LexisNexis or Westlaw, or free Internet). I also very much liked the fact that this open research project required students to work collaboratively in small groups.[12]

The small group research projects that we assigned to the LL.M.s in fall 2006 were structured as follows. Our faculty[13] adapted two research problems from Nadia Nedzel's legal writing textbook[14] for the purposes of our course.[15] We decided to assign each problem to half of our LL.M. students, so we wanted the problems to be roughly comparable in terms of difficulty and required research time. We therefore revised the factual hypotheticals in the two problems so that both problems required the students to research secondary sources, international treaties, U.S. federal statutes, and U.S. federal case law. We also removed the questions in the Nedzel text that were more directive and geared toward specific individual research sources. In their place, we asked the students several broad questions about the legal issues in their client's situation. We divided the students (we each teach two sections of about 16 students) into small research groups of about four students by having them count off by four during class time. This put them into randomly formed groups with other students near whom they did not ordinarily sit, and who they might not know well. We assigned each of the problems to half of the small groups in each section. The students received the research problems during the fifth week of the semester, when they had already attended about half of the research classes for the semester. The students then had about six weeks to work with their small group members on their research problem. The students were told that they could use any of the

[11] In fall 2006, when we first used the integrated method of teaching research, we had nine research classes, as follows: 1) researching secondary sources in print and free Internet; 2) researching secondary sources on LexisNexis and Westlaw; 3) researching statutes in print and free Internet; 4) researching statutes on LexisNexis and Westlaw; 5) researching case law in print and free Internet; 6) researching case law on LexisNexis and Westlaw; 7) tips and caveats on Internet legal research; 8) using secondary sources to get started in transnational law research; and 9) finding U.S. treaties and determining parties to treaties.

[12] *See* Inglehart, *supra*, note 4 (discussing the theory and practice of collaborative group exercises).

[13] Professors Adrienne Giorgolo, Ellen Mulaney, and I each taught about 30 international LL.M.s in fall 2006.

[14] Nadia E. Nedzel, *Legal Reasoning, Research, and Writing for International Graduate Students* (2004).

[15] The research problems that we adapted are found in the teacher's manual accompanying Prof. Nedzel's textbook. One problem dealt with the extraterritorial reach of U.S. bankruptcy laws, and the other dealt with claims under the Alien Tort Statute and the Torture Victim Protection Act.

research methods they had learned about in our course, but that for purposes of getting practice, we wanted them to spend at least some time using print sources, using LexisNexis and Westlaw, and using the free Internet. In early November, each group was required to do a 20-to 25-minute presentation to the rest of their section, summarizing the research path and methods their group used, and the answers they reached about their client's legal issues. We required each student in each group to present for at least five minutes. As part of their presentation, each group was also required to comment on which research resources they found more useful and which they found less useful.

This research assignment was very successful on several levels. First, the other LL.M. CLR professors and I were pleased that the assignment required students to research actively, by developing a research strategy and applying it to a client problem. Second, we were pleased that the assignment required students to practice using a wide variety of research sources, both print and electronic, and to compare their relative efficacy. Third, the group presentations demonstrated that the students had reflected on the process of research and had learned a great deal about research strategy, the use of individual sources, and the subject matter of the law of their problem. Finally, and perhaps, most importantly, the students enjoyed the assignment. They appreciated the opportunity to work independently and creatively to develop an effective research strategy. They benefited from sharing ideas from the members of their small group and teaching each other how to use the research resources. They liked researching subject matter that involved international and transnational legal issues and commercial law business issues. And they enjoyed feeling as if they were researching a real problem for a real-world client.

In conclusion, our faculty feels that the small group open research project was the most successful active research learning method that we have thus far used with the LL.M.s. It was a successful experiment that our faculty plans to repeat in future years.

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"They benefited from sharing ideas from the members of their small group and teaching each other how to use the research resources."

Another **Perspective**

"For me, legal writing as a profession is unique in academic disciplines. It is not hierarchical; its members support each others' careers. It is not parochial; its members strive to improve legal writing instruction nationally. Legal writing is more a community, a family."

—Mary S. Lawrence, *The Legal Writing Institute: The Beginning: Extraordinary Vision, Extraordinary Accomplishment,* 11 Legal Writing 213, 214 (2005).

A Timely Seminar: The Clerkship Crash Course in Legal Research

By L. Monique Gonzalez

L. Monique Gonzalez is an Instructor of Legal Research and Learning Resources Librarian at Thurgood Marshall School of Law, Texas Southern University in Houston.

Law students are introduced to the basics of legal research and writing in their first year of law school. During their second and third years however, most students discover that legal research and writing are complex skills that require time and practice. Many of these upper-level law students come to the library, eager to discover the tools and techniques that will help them transition from novice to skilled researchers. My experiences on the reference desk convinced me that these students would benefit from a "crash course" in legal research. Our school curriculum does not currently include an advanced legal research course. After some informal surveys and interviews with current students and faculty, I approached my library director with a proposal for an intensive Saturday research seminar designed for students moving into summer clerkships or practice settings.

Designing the Saturday Research Seminar

The first-year legal research course does not allow for in-depth coverage of legal research materials and strategies.[1] Most law students enter summer clerkships after their second year having been without research instruction for more than a year; third-year students move into their careers without any formal instruction in legal research since their first year of law school. My informal surveys indicated that students would benefit from a focused presentation that highlighted secondary sources, including practitioner resources such as bar publications, litigation resources, and form books; case-finding tools, including print and online resources; a refresher on statutory materials; and a refresher on citation verification.

Preparing for the Seminar

After establishing the substantive components of the seminar, the major challenge was marketing. We created and displayed fliers and posters throughout the law school, and announced the event to faculty, student organizations, and individual students through e-mail and class announcements, the law library newsletter, the law school bulletin board, and the law school monitor.[2] The faculty supported the seminar by making class announcements and offering incentives for attendance.

In terms of logistics, we worked with the law school to reserve a large classroom and the necessary audio-visual equipment. The circulation staff registered students for the seminar. We were pleased to have almost 30 percent of the eligible upper-level students register and participate.[3] We sought financial and logistical support from local vendors. In exchange for distributing vendor material, we received prizes to award during the seminar. The vendors also underwrote the cost of a continental breakfast and a light lunch.

Before the day of the seminar, librarians reviewed library pathfinders to ensure that they were up-to-date, so that students would have an additional, reliable resource to turn to during their summer clerkships. The librarians who were presenting met several times to critique and practice presentations prior to the day of the seminar.

[1] At the Thurgood Marshall School of Law, students take one semester of legal research during their first year of law school. Legal research is taught as a component of lawyering process I. The law school curriculum does not include an advanced legal research course.

[2] The law school has a monitor located in the lobby, which announces upcoming events.

[3] Thurgood Marshall has approximately 300 second-and third-year law students. More than 100 students benefited from the seminar.

The Main Event

The Clerkship Crash Course in Legal Research occurred on the Saturday following midterm exams and spring break. It was scheduled to minimize conflicts with other law school activities. The seminar opened with an overview of the legal research process. We introduced a hypothetical Texas legal research problem[4] that we would be working through during the seminar. This problem would help us illustrate both specific resources and the importance of having a research strategy. We began by asking students to identify key issues and facts and asked what resources they would turn to first. Our goal was to engage students in active learning throughout the half-day seminar. The structure of each presentation included a basic PowerPoint lecture on key resources, with illustrations of when to use the resource and how to access the resource in print or online. We set aside time for questions after each session and also welcomed questions during the presentations. The separate presentations were designed to complement each other, helping students see a natural progression during the research process. The agenda, hypothetical, and printouts of the PowerPoint presentations were provided to each participant in a bound booklet to be used during the session and for future reference.

A continental breakfast was provided before the start of the seminar and lunch was provided at the end. This encouraged students to come early and stay until the end of the program. After each presentation and at the beginning and the end of the seminar, a student's name was drawn for receipt of a prize that had been secured from vendors. Students anxiously anticipated the award of each prize, adding a festive touch to the seminar experience.

Evaluate, Evaluate, Evaluate

Students were asked to submit an evaluation at the end of the program. All of the feedback[5] received from students was positive. Comments included: "This is great, please continue to do these types of seminars"; "Organization of topics from beginning to end was most helpful"; "I liked the way we started with a fact scenario and took it step by step."[6] These comments were gratifying. This was the payoff for the time we spent coordinating the presentations, working through the hypothetical, and linking the resources and process to the hypothetical. In addition to the student evaluations, librarians and other library staff in attendance also gave us feedback. The librarians and library staff identified specific areas for improvement and discussed them in a debriefing session following the seminar.

Lessons Learned

This initial half-day seminar was successful for several reasons. First, we were able to schedule it during a relatively conflict-free time for second- and third-year law students. Second, we designed the instruction to meet the students' needs and interests and engage them in active learning. Third, we invested significant planning and preparation, doing our best to anticipate potential problems. Fourth, we made sure that participants got value for giving up their Saturday: breakfast, lunch, prizes, substantial handouts, and quality instruction. It takes many people to make a half-day seminar successful. We have some kinks to work out but we're looking forward to making this event the can't-miss seminar of the year.

[4] A Texas hypothetical was presented because the first-year legal research course focuses on federal materials in order to expose students to the widest range of legal resources. See the sample hypothetical at the end of the article.

[5] Of the 82 participants, we received 62 evaluations. Twenty-nine additional students signed up to receive a copy of the *Clerkship Crash Course in Legal Research* booklet.

[6] Student Evaluations, Thurgood Marshall School of Law Library, Clerkship Crash Course in Legal Research (April 1, 2006) (on file with author).

Clerkship Crash Course in Legal Research Hypothetical

After returning from a Halloween party, Shawn Motley, Dominique Drexler, and Terri Nguyen were killed in a collision. The collision occurred about 11:30 p.m. on October 31, 2005. The pickup driven by Shawn Motley and occupied by Dominique Drexler and Terri Nguyen stopped at the stop sign at the intersection of state Highway 288 and FM 529 in Harris County. As Motley proceeded slowly onto the highway, the pickup was struck by a tractor-trailer truck driven by Mike Dade. Dade was traveling 62 miles per hour, just above the 60-mile-per-hour speed limit. Motley's view of oncoming traffic on Highway 288 was partially obscured by trees that had grown up in the state highway right-of-way after the stop sign had been installed two years prior.

The parents of the three teens want to sue the Texas Department of Transportation alleging that the department did not keep the trees at the intersection trimmed back enough to provide sufficient visibility so Motley, as he approached Highway 288 on FM 529, could see and avoid oncoming traffic.

Is the Texas Department of Transportation liable to the parents of the teens?

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Another **Perspective**

"At the end of the movie 'Raiders of the Lost Ark,' the Ark in question—a religiously-significant artifact with a disturbing tendency to vaporize those who open it—is boxed and stored in what we assume to be a U.S. government archive. As the camera pans back, we see that the Ark is to be stored with thousands of identical boxes, all unmarked. We are left with the impression that it will be impossible to find the Ark again and that it is, in essence, being hidden in plain sight.

First-year law students can be forgiven for believing that the same fate awaits a court decision that is bound in one of the thousands of court reporters they see lining the walls of the library. But unlike the movies' Ark of the Covenant, legal decisions are indexed before they are published and those indexes form the basis of pre-computer legal research."

—Ian Gallacher, *Forty-Two: The Hitchhiker's Guide to Teaching Legal Research to the Google Generation*, 39 Akron L. Rev. 151, 179 (2006).

The Rhetoric of Persuasive Writing

By Stephen V. Armstrong and Timothy P. Terrell

Tim Terrell is Professor of Law at Emory University School of Law in Atlanta, Ga. Steve Armstrong is Director of Career Development for the law firm of Wilmer Cutler Pickering Hale and Dorr LLP. They are the authors of Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing *(2003), and have taught legal writing programs for lawyers and judges for the past 20 years.*

In a way, all legal writing is, of course, "persuasive": You are always, at the very least, trying to convince your reader that you have a competent command of your subject. But persuasive writing of the litigation variety is a special, and often misunderstood, challenge that deserves special attention.

A persuasive brief requires mastery of three different skills, only the last of which this article will consider. First, and most obvious, a writer must be able to "think like a lawyer"—to understand how to construct a strong, well-supported legal argument. Second, a litigator must be able to "think like a writer" about how to communicate information so that readers can understand it easily and quickly.

Finally, persuasive writing requires another step that takes place in between thinking like a lawyer and like a writer: "thinking like a rhetorician" about the difficulty of "moving" a reader's mind from one location to another. Rhetoric, however, is seldom studied even in college. As a result, legal writing instructors may have to provide a crash course as a foundation for teaching their students how to think about persuasion. This column does not attempt to offer that course. But it will show how rhetoric yields two insights that can help your students learn to persuade and, at the same, to understand why lawyers can disagree so strongly about whether a document is persuasive.

The Persuasive "Attitude"

From childhood onward, we associate persuasion with exhortation, if not coercion—with table-thumping and insults and raised voices. Novice litigators tend to translate these habits onto the page. They seem to take for granted that an argument consists of two people pounding each other. The one who pounds the hardest and longest wins. That this strategy seldom, if ever, succeeds does not deter wave after wave of new lawyers from leaping to the attack.

Is there a better alternative to this familiar, and seemingly natural, approach? There is. We first encountered it in an observation attributed to one of the master persuaders of all time: Ted Williams. (If your students don't know who this is, shame on them. Stop the class and talk 20th-century culture for a while.) He was once asked how he was able to hit so many home runs. His response was that, when he went to the plate, he did not actually try to hit a home run. Instead, he attempted to crawl inside the pitcher's head, to "know" the pitcher better than the pitcher himself did. Like a jujitsu fighter, he wanted to mold his batting to the pitcher's strengths, not only his weaknesses.

What Williams understood was that his best results came from *reducing* the amount of effort he needed to exert when he swung the bat. Rather than attempt to clobber every pitch—rather than trying to destroy the pitcher as his "enemy"—he simply wanted to send the *ball* in the right direction. That required more knowledge of dynamics than of annihilation.

The best translation of that approach into the world of litigation comes from someone whom many might describe as the Ted Williams of the law: Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit. In a chapter of one of his books,[1]

> "From childhood onward, we associate persuasion with exhortation, if not coercion—with table-thumping and insults and raised voices."

[1] The formula in the text is adapted from Richard A. Posner, *Overcoming Law* 498–530 (1995).

"The best briefs, he noted, were those that *reduced* the amount of persuasive force that the writer felt obliged to exert."

he addressed the question of persuasion in terms Ted Williams would have applauded. The best briefs, he noted, were those that *reduced* the amount of persuasive force that the writer felt obliged to exert. The most convenient way to summarize his point is with the following mock-physics formula:

Persuasive force = distance x resistance

The amount of persuasive force you will need to "move" a judge's mind from one location to another is a function of the "distance" you want that judge's mind to go, legally speaking, and the "resistance" or "friction" that hinders that movement. Your goal is to reduce the force with which you need to argue by reducing both the distance and the resistance. You point out that your argument requires the judge to go only a very short distance ("You've already taken much the same approach in a very similar case, your honor."), and your opponent's argument requires a long journey ("Your honor, they are asking you to stretch the law inappropriately."). And, through clear and concise writing, you reduce the reader's resistance by making it as easy as possible to assimilate your argument.

The Elements of Persuasion

The study of rhetoric by the ancient Greeks produced much more than just a general strategic temperament, however.[2] They dissected the nature of persuasion into certain basic elements—an approach that continues to be the tradition today. But to be relevant to a modern legal argument, these elements must be updated.

The Greeks were interested in the nature of a persuasive *speaker* rather than a writer, and they were also interested in a common and dangerous situation: a leader's attempt to sway the opinions and actions of the *hoi polloi*, the unwashed, uneducated masses. The Greeks then divided the persuasive situation into three aspects: the qualities of the speaker, the argument he would propound, and the audience that would hear it. These elements have become familiar to us as *ethos, logos* (and *axios*), and *pathos*.

Ethos: According to Greek rhetoric, an effective speaker was one whose "character" could dominate an audience—one who could move a rabble from one place to another by force of personality. In essence, the speaker would attempt to have the audience look "up" to him. This required an attractive persona to whom the audience would defer, a persona based on popularity and prestige, and a message that appeared to be steeped in righteousness.

Those qualities are quite foreign to a modern effort to persuade in a legal context. Judges do not want to have lawyers attempt to dominate them. (Nor, however, do they want the opposite: lawyers who grovel before the bench so that the judge comes to look "down" on them.) Instead, they respond positively to a writer whom they can look "at" as a professional equal, someone on whom they can rely to argue truthfully, rationally, and calmly. This requires a credible persona, one that has the qualities of veracity and integrity and professionalism—and that does not try to have the judge look down on opposing counsel: Sneering at the other side, although remarkably common, is off-putting to any sensible judge.

Logos and axios: Although this concept is the background for the familiar topic of "logic," which most of us suffered through in college, the Greeks understood this idea in the persuasive context as something much less rigorous: merely "plausible" reasoning—reasoning that was good enough to get a rabble to agree. Thus, the speaker was attempting to think "for" the audience, which was largely incapable of thinking for itself. Greek rhetoric also developed the useful idea of *axios*: the outcome of the speaker's argument should be "worthy" or admirable from the audience's perhaps selfish perspective: protection from enemies, punishment of the unpopular, and the like.

[2] Sources discussing rhetoric theory are, of course, legion. To name just one, *see, e.g.*, Eugene Garver, *Aristotle's Rhetoric: An Art of Character* (1995).

In modern advocacy before a judge, the argument must be more than merely plausible: Although it need not meet all the tests of formal logic, the argument must reflect, and be based carefully within, the systemic reasoning of the law. It must accept the constraints of internal consistency and logical coherence that judges impose on themselves (we hope), even if that means abandoning an attractive line of pseudo-reasoning or an easy hyperbole. In effect, judges look for lawyers who can think "with" them as a professional equal, not an over-the-top advocate for a position. And a worthy argument will be one that produces "principled" results—results that "do justice," and can therefore be the basis of judicial pride.

Pathos: This is the most misunderstood of the rhetorical elements. It is associated with the emotions, and the attempt to use an audience's agitation or excitement to persuade them to accept a conclusion. But because the Greeks were focused on an audience that was not of the same class as the speaker, they understood *pathos* as the speaker's effort to *invoke* emotion in an easily swayed audience, by exhibiting the emotion himself and more or less explicitly encouraging the audience to feel it.

Although this technique is often employed in modern litigation, it is most often a mistake. A frequent example is the tendency of litigators to characterize testimony in the hopes of arousing sympathy or outrage: "That witness was a liar!" This, more often than not, inspires skepticism. The better approach is instead to *evoke* emotion: to lay out calmly a story or an argument that eventually arouses an emotional response in the readers—but a response that seems their own spontaneous reaction rather than one forced on them. The facts are presented in such a way that the reader begins to think, "Wait a minute. I bet that witness was lying."

Persuasion works best, then, when it is largely invisible. It results from creating a path down which judges can travel smoothly and comfortably toward a conclusion they believe they would have reached on their own, not because they were pushed toward it. As hard as this lesson may be, your students should learn to resist their penchant for regarding written advocacy as warfare. Their goal should be not to become their opponent's most virulent enemy, but to become the judge's alter ego. That requires a persona with whom judges can deal as an equal, an argument that judges would be proud to make their own, and the self-confidence to let judges reach their own conclusion about which side deserves sympathy or opprobrium.

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"As hard as this lesson may be, your students should learn to resist their penchant for regarding written advocacy as warfare."

An Australian Perspective on Legal Research and Writing:

A Review of *Researching and Writing in Law*

By Terry Hutchinson
Lawbook Co. 2006

Reviewed by Timothy Kearley

Timothy Kearley is the Director of the Law Library and Centennial Distinguished Professor of Law at the University of Wyoming in Laramie.

This book deals with the legal research and writing process from an Australian perspective. The preface notes that the work stems from a graduate research course that the author has taught at the Queensland University of Technology School of Law, where she is a senior lecturer. There are two main reasons it should be of interest to teachers of legal research and of legal writing in the United States. First of all, part I of the book provides perspectives on research and organizing to write that differ significantly from those ordinarily seen in North American texts on the topic. Secondly, part II, "Checklists for Locating and Validating the Law," consists of some 250 pages of concise research references and annotations that will be extremely useful for anyone researching the law of common law jurisdictions and the European Union.

In Australia, the basic law degree required as a practice credential is an undergraduate one, as it is in England. And, while this text arose out of a graduate research course, it also is aimed at these LL.B. students, who may not yet have written extensive, or highly detailed, research papers. Thus, it is necessary for the author to run the gamut of topics, from effective note-taking methods, to basic electronic research techniques and how to organize and complete a doctoral thesis in law.

In North American treatises in this field, it typically is assumed that students in a J.D. program have gained substantial experience researching and writing as undergraduates, and that, therefore, there is little need to address basic skills. Unfortunately, the latter is not always true; some J.D. students could benefit greatly from the advice for undergraduate law students given in this book on such subjects as how to plan research, document its progress, and organize to write. The author's suggestions for visual learners on using aids such as flowcharts and diagrams should be especially useful for the many students who otherwise might struggle to envision the contours of a major writing assignment.

Those of us who teach legal research also might benefit from these discussions of basics. We take much about our subject for granted, so browsing through the introductory sections on legal research paradigms and methodologies may help us see the process in a new light. And being reminded of the simpler, undergraduate concerns of note-taking, organizing, and rewriting may make us more aware of the problems some of our students still face. At the same time, students preparing law review case notes and comments, or other lengthy writing projects, may find beneficial the author's tips on thesis writing. In addition, the chapter on social science research methodologies for lawyers offers a good introduction to the subject for anyone in our discipline who is interested in using surveys, case studies, citation analysis, and the like in his or her research.

The checklists already noted cover not only Australian federal and state primary materials but those of England, Canada, India, New Zealand, and the European Union (and the United States) as well. It is particularly helpful for non-Australian readers that the author emphasizes free, Internet-based sources, though important fee-based online sources and print materials are included as well. The author's intent here is not to provide exhaustive, or historical, information about Australian or Commonwealth legal materials. These checklists are, rather, aimed at allowing the reader to get essential information at a glance. The format the author has chosen works well for this purpose: table headings like "Research tool," "What information will it give me?," and "Tips on use," as opposed to dense text paragraphs, make the checklists an excellent tool for researchers who quickly need to see if there is, for example, an online source for Australian treaties or Canadian regulations.

In sum, while this work would not be suitable as a textbook for legal research and writing courses in North America, it rewards perusal by teachers in the field and is an effective reference resource.

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Another **Perspective**

"Librarians writing today are actually blessed to be in an environment rich with difficult, complex topics related to libraries and information management that call for just the sort of critical analysis that faculty members expect from those in tenure-track positions. Recall some of the meaty topics librarians have taken on in recent years; these are issues whose importance can be grasped even by faculty members who have little or no knowledge of libraries or librarianship. If your writing demonstrates your understanding of them, you will be marked as a candidate who not only can meet the increasingly stringent tenure requirements for scholarship but can also do what should be just as important to faculty members–run their library. So writing critically about important *library*-related subjects can serve to kill two birds with one stone—demonstrate your ability to do law school tenure-track level scholarship *and* establish your credentials as a thoughtful, capable librarian familiar with cutting-edge issues that affect the entire law school and legal communities, not just librarians."

—Frank G. Houdek in Barbara A. Bintliff et al., *Rebuilding the Profession: Recommendations for Librarians Interested in Becoming Academic Law Library Directors,* 99 Law Libr. J. 101, 114–115 (2007).

My E-Semester:

New Uses for Technology in the Legal Research and Writing Classroom

"I have also used technology in its most basic forms in support of my courses, but have been hesitant to adopt more advanced methodologies. I could not, however, figure out why."

Technology for Teaching ... *is a periodic feature of* Perspectives *designed to introduce and describe the ways in which teachers of legal research and writing are using technology to enhance their teaching. Through Volume 9, this column was edited by Christopher Simoni, Associate Dean for Library and Information Services and Professor of Law, Northwestern University School of Law. Readers are invited to submit their own "technological solutions" to* Mary A. Hotchkiss, Perspectives Editor, University of Washington School of Law, William H. Gates Hall, Box 353020, Seattle, WA 98195-3020, phone: (206) 616-9333; e-mail: **hotchma@u.washington.edu.**

By Kristen E. Murray

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Law schools have been grappling with the topic of technology in the classroom for more than 10 years.[1] When I started law school, the conversation was just beginning, as we experimented with taking class notes and exams using laptop computers. The debate has intensified in recent years, as today's students are highly conversant in technological media and expect to see it integrated with in-class education.[2]

At George Washington University Law School, all of our classrooms have smart podiums and wireless Internet access; a classroom computer with full Microsoft® Windows and Office capabilities and Internet access; a VCR, a DVD player, and a video camera; and a camera that projects the images from the computer and video equipment onto an in-class screen.[3] In addition, all incoming students are required to purchase laptop computers. According to the 2006 survey of legal writing programs conducted by the Legal Writing Institute (LWI) and the Association of Legal Writing Directors (ALWD), 123 legal writing programs (of the 184 survey respondents) make use of similarly wired classrooms.[4]

I am no technophobe in my nonprofessional life: I have and use the technological advancements that are now considered standard (laptop, cell phone, iPod). I have also used technology in its most basic forms in support of my courses, but have been hesitant to adopt more advanced methodologies. I could not, however, figure out why. Upon reflection, I narrowed it down to two related reasons: my view that technology is often unreliable, and the tight scheduling that was embedded in all of my lesson plans. I did not want to compromise my credibility

[1] *See* Anna Williams Shavers, *The Impact of Technology on Legal Education,* 51 J. Legal Educ. 407 (2001); Shelley Ross Saxer, *One Professor's Approach to Increasing Technology Use in Legal Education,* 6 Rich. J.L. & Tech. 21 (2000); Maria Perez Crist, *Technology in the LRW Curriculum–High Tech, Low Tech, or No Tech*, 5 Legal Writing 93 (1999); Lucia Ann Silecchia, *Of Painters, Sculptors, Quill Pens, and Microchips: Teaching Legal Writers in the Electronic Age,* 75 Neb. L. Rev. 802 (1996).

[2] *See* Joan MacLeod Heminway, *Caught in (or on) the Web: A Review of Course Management Systems for Legal Education*, 16 Alb. L.J. Sci. & Tech. 265, 283 (2006) ("Many 21st Century law students expect the use of technology in legal education because they grew up with technology and use it in nearly every aspect of their daily lives."). *But see* Andre Hampton, *Legal Obstacles to Bringing the Twenty-First Century into the Law Classroom: Stop Being Creative, You May Already Be in Trouble*, 28 Okla. City U. L. Rev. 223 (2003) (discussing copyright and right of privacy issues attendant to bringing technology into law school classrooms); David M. Becker, *Some Concerns About the Future of Legal Education*, 51 J. Legal Educ. 469 (2001) (expressing concerns about overuse of technology in legal education); Molly Warner Lien, *Technocentrism and the Soul of the Common Law Lawyer*, 48 Am. U. L. Rev. 85 (1998) (encouraging thoughtful use of technology because of its potentially negative impact on legal education and analysis).

[3] We have access to low-tech options including a TV-VCR stand and an ELMO, but I have limited my description of the classrooms to the capabilities most relevant to the technologies I explore in the article.

[4] *See* Association of Legal Writing Directors/Legal Writing Institute, 2006 Survey Results 27, <alwd.org> (accessed March 6, 2007) [hereinafter 2006 ALWD Survey]. Of these, "all faculty" use smart classroom technology in 39 programs; "most" faculty use smart classroom technology in 29 programs; and "some" faculty use smart classroom technology in 55 programs. *Id.* Twenty-nine programs involve no use of smart classrooms. *Id.* The average effectiveness rating for smart classroom technology was 4.07 (out of 5.0) for 2006. *Id.*

(inside or outside the classroom) by demonstrating a lack of proficiency with the technology that my students found so easy to use. Furthermore, I did not want to waste valuable classroom time trying to make a stubborn piece of equipment function as it should.

I realized, however, that my students were openly and seamlessly embracing technology in their everyday educational activities. For example, when I asked my students to "swap papers" in class, they either e-mailed the documents to each other or switched laptops at their seats; even printing word-processing documents seemed obsolete. I decided I needed to think critically about increasing and intensifying my use of technology in and in support of my courses, a project I called my "e-semester." I focused on six technology-based enhancements: using my course Web site to eliminate paper from my class distributions; designing PowerPoint-based lectures with student note taking in mind; encouraging class discussion through a threaded discussion forum; grading electronically; integrating audio and video technology in class lectures; and implementing advanced in-class writing exercises.[5]

Using the Course Web Site to Eliminate Paper from My Class Distributions

The wide availability of user-friendly software has made the class Web page a natural companion to many legal writing courses.[6] I have used a course Web page for all of my courses for as long as I have been teaching.[7] This use, however, was rather limited: I posted my course syllabus, policies, and local rules on one of the document pages, and used another document page to post my class notes and exercise handouts following each class. I also had students sign up for mandatory conferences through the Web page. Essentially, the Web page's major function was as an electronic depository for files so that students had access to them at all times. This gave my students the ability to access the documents whenever they needed them, and meant that I did not need to keep extra copies of my syllabus on hand. Thus, the Web page was useful, but did not demonstrate any real creativity on my part.

In recent semesters I noticed that few students accessed paper copies of documents during class; when I asked them to refer to the syllabus or previous class handouts, they opened the documents on their laptops. When I distributed a handout, there was almost always a student who did not have a pen. And when signing up for individual conferences, almost all of the students checked their calendars online rather than in paper form.

Because the students seemed comfortable in a paperless medium, I decided to use the course Web page as the sole method of distribution for class materials. The syllabus and course policies, documents related to our class assignments, and cases for our closed research writing assignments were posted on the page. Rather than post my class notes and handouts on the page following class,

"I decided I needed to think critically about increasing and intensifying my use of technology in and in support of my courses, a project I called my 'e-semester.'"

[5] Some, but not all, of these suggestions use modes of technology that are not available in all law schools. Where possible, I have included modifications for less-wired classrooms.

[6] Class Web pages are a user-friendly way to begin to experiment with class-related technology. *See generally* Heminway, *supra* note 2. According to the 2006 ALWD Survey, this is the most popular method of incorporating classroom technology: 93 programs make some use of course Web page software. 2006 ALWD Survey at 27. Use of this technology has increased steadily since 2003. "All faculty" at 36 law schools use such software, as do "most" faculty at 9 law schools and "some" faculty at 48 law schools. *Id.* However 42 law schools report that no faculty use course Web pages. *Id.* Faculty report a 3.97 (out of 5.0) effectiveness rating for this technology. *Id.* The number of programs using a Web course utility product such as TWEN® (The West Education Network®), WebCT, or Blackboard is higher, at 153 programs in 2006. *Id.* "All faculty" at 76 law schools use such software, as do "most" faculty at 22 law schools and "some" faculty at 55 law schools. *Id.* Only 12 law schools report that no faculty use course Web pages. *Id.* Faculty report a 4.26 (out of 5.0) effectiveness rating for this technology. *Id. See generally* Lori Shaw, *Lori Shaw and the Search for the Golden Snitch: Using Class Web Sites to Capture the Teachable Moment*, 11 Perspectives: Teaching Legal Res. & Writing 101 (2003); Joan Blum, *Why You Should Use a Course Web Page*, 10 Perspectives: Teaching Legal Res. & Writing 15 (2001).

[7] Many law schools have infrastructure to support these Web pages; in addition, both Thomson West and LexisNexis® offer electronic classroom options. The Thomson West course software is TWEN, <lawschool.westlaw.com/twen>, and LexisNexis has Web Courses, <www.lexisnexis.com/lawschool/webcourses/>. Blackboard, <blackboard.com>, is also available at many academic institutions, as is WebCT, <webct.com/>. These two entities recently merged. Press Release, *Blackboard.com, Blackboard Inc. Completes Merger with WebCT, Inc.* (Feb. 28, 2006), <investor.blackboard.com/phoenix.zhtml?c=177018&p=irol-newsArticle&ID=822607&highlight=>.

"Nervous about the lack of a paper trail, I decided to ensure the integrity of the documents I posted by converting them to Portable Document Format, or PDF."

I posted them in advance so that the students could access them electronically during class.[8]

Nervous about the lack of a paper trail, I decided to ensure the integrity of the documents I posted by converting them to Portable Document Format, or PDF. This would prevent formatting errors that might occur in the upload/download process. Some documents, such as the cases for our closed packet memo assignment, were already available in PDF. To convert other file formats to PDF, I downloaded a PDF distiller, which installed a printer driver on my computer so that I could do the conversions from my desktop.[9]

With the exception of submitting their final appellate briefs, I allowed my students to go paperless as well.[10] I used the assignment submission feature on my course Web page, which allowed students to upload their papers to the Web page when they were completed. Once submitted, I received an e-mail with a time stamp noting the time the assignment was submitted, and with an electronic copy of the document attached. This meant that I did not have to be in my office to collect papers when they were due, and also facilitated the electronic grading discussed below.

This was the quietest of my technological experiments—I did not announce it to my class, and no one commented on the shift to a paperless classroom. This confirmed to me that most of the students considered the paper distributions superfluous; their main reference for all course-related documents had been the electronic copies anyway. After an initial slow start converting all of my course documents to PDF, I came to appreciate this innovation as well, and found myself looking for electronic instead of hard copies of documents when I needed them.

Encouraging Class Discussion Through a Threaded Discussion Forum

Most course software packages include options for teacher-student communication through e-mail and threaded discussions. I have always enabled the discussion forum feature on my course Web page, but made little use of it: I posted class-wide announcements that did not require immediate attention such as job postings and activities at the law school. Almost everything class-related went out through e-mail.

My new course policy this year was that all assignment-related questions should be posted on the discussion forum so that all the students would have the benefit of my answer. I monitored the forum each day and paid particular attention to it in the days before major assignments were due.

Though active in the days—and particularly the hours—prior to a major due date, the discussion forum did not catch on as well as I hoped it would. For the most part, students posted assignment-related questions, but occasionally I would get an e-mail from a student who thought his question was "too personal" or "too silly" to ask in the forum. (Sometimes they were right that it was too paper-specific to post; however, where the student's self-consciousness alone prompted the e-mail, I would post the question anonymously along with my answer.)

A colleague had a much more successful engagement with his students through the discussion forum: before his first class, he sparked an online discussion by asking students to comment on the baseball playoffs. All the students were required to respond, and I think this casual, nonclass conversation made them more comfortable with the forum and kept the

[8] This was also part of my e-semester experiment and is discussed further below.

[9] The PDF distiller installs a printer driver so that the user can create PDF documents from other formats. For example, from within a Word document, I clicked File, Print and chose the PDF option from the printer menu. Instead of actually printing it, the distiller opened the document in PDF using Acrobat Reader, and allowed me to save the new PDF document as its own file. I then had the documents in both Word format, for future edits, and PDF, for posting. Adobe has its own PDF distiller online, <createpdf.adobe.com>; there are also free versions of this software such as PrimoPDF, <primopdf.com>, and PDF Online, <pdfonline.com>.

[10] Because part of our pedagogy contemplates the physical construction of an appellate brief, with formatting and binding requirements under our "local rules," I required the students to submit and exchange briefs with their "opposing counsel" in hard copy. I also asked them to submit electronic copies so that I could grade the papers electronically (another facet of my e-semester discussed below).

discussion going through the semester even on class topics. I am considering the adoption of this type of strategy next fall.

Grading Electronically

I have always used word-processing programs in grading major legal writing assignments. I typically handwrote margin comments and provided each student with a page-long sheet of feedback specific to his or her work product. I provided handwritten comments on shorter homework assignments. In my e-semester, I decided to do all of my grading, for both major and minor projects, electronically.

Most word-processing programs allow users to embed electronic comments in a document.[11] Users can also track changes, highlight text, and draw text boxes and diagrams within the document. All of these tools can be used to grade papers; I used only some of these features in my grading. I do not typically offer line edits as part of my comments, so I did not enable tracked changes—I wanted to avoid the temptation to alter sentences within the document. I made margin comments, along with a global note at the end of the paper, and used highlighting to draw attention to issues of phrasing and word choice so that the students could look critically at these passages later. I then converted the papers to PDF (as discussed above) and returned the papers as e-mail attachments.

Cosmetically, the graded papers looked much nicer than my usual handwritten comments did: there were no issues of legibility or erased or crossed-out comments. Electronic grading can also be more efficient than handwritten comments, because commonly used phrases can be cut and pasted from one document to another. I also found that I had an external limitation on my comments: without pen in hand, I was less tempted to line-edit grammatical and spelling mistakes; instead, I used the highlighting feature.

This grading methodology was easy to adopt, especially because I can type faster than I can write, but I was not immediately ready to commit to electronic grading. I usually grade away from my desk, far from computer-related distractions, and electronic grading meant that I was bound to my computer. I felt that the comments looked less personal than they did in my own handwriting. I also missed the ability to make random markings on the page (such as circling text or drawing arrows to connect examples) that were far easier to do with pen in hand (though arguably the comments I made were clearer than my graphic markings might have been).

My students, however, universally praised the switch to electronic comments.[12] They loved both the format and the substance. At our post-paper conferences, they brought their laptops and pulled up the attachment I had sent them instead of toting the papers as they had at previous conferences. Because the purpose of my comments is, obviously, to benefit the students, I will continue to grade this way.

Designing PowerPoint-Based Lectures with Student Note Taking in Mind

PowerPoint presentations can be an extremely effective classroom tool, but only if used correctly. Using a presentation as a method for delivering content that would take a long time to dictate or write on the board can save a lot of time.[13] However, I have seen many student evaluations involving complaints about PowerPoint-based class lectures where the professor read from the slides.

I have always taught using PowerPoint presentations where I thought that it could save time in class, or where I thought students would benefit from having my outline of the material.

"I have always used word-processing programs in grading major legal writing assignments. … In my e-semester, I decided to do all of my grading, for both major and minor projects, electronically."

[11] In both Microsoft Word and WordPerfect®, the user can place a margin comment in a document by placing the cursor at a point in the document and choosing Comment from the Insert menu.

[12] When two former students saw that I was experimenting with electronic grading, one burst into actual applause and the other told me that "paper is *so* 2003."

[13] For a useful discussion of how to construct an actual PowerPoint presentation, see Wanda McDavid, *Microsoft PowerPoint: A Powerful Training Tool,* 5 Perspectives: Teaching Legal Res. & Writing 59 (1996).

"In-class writing exercises existed well before technology arrived in the classroom. However, technology can add a layer to these exercises."

My slides did not contain too much content, and I always posted them on my course Web page after class.

This year, a student requested that I post the presentations prior to class, so that she could use the slides as a template for her class notes. I acquiesced without thinking there would be any pedagogical implications to this decision; however, when reviewing my lesson plans, I found myself editing the content of the presentations with student note taking in mind. I imagined the students engaging with the text of the presentation, rather than starting with a blank page for their own notes, and this allowed me to change the way I presented the information. For example, where I would normally include elements in a list, such as the parts of an office memorandum, I included only a list of numbered elements so that the students could fill in the content themselves. Where I wanted a slide to inspire class discussion, I left the slide blank and asked the students to answer an open question (for example, "what is persuasion?") themselves, and then supplement their answer with the information ascertained through class discussion. Thus, the slides framed the discussion, but the students' own words filled in the content. Practically speaking, because I teach in a classroom with a wired projector, I was able to run the presentation on the classroom computer, while students could access the file online and take notes on their laptops.[14]

I do not think my students appreciated the nuanced differences in my presentations; I would not expect them to, having not seen other, earlier versions. However, at least one of my students commented on the convenience of having all her class notes in a single electronic file at the end of the semester. And I think that I advanced the level of class discussion and student engagement with the material by restructuring my class presentations. Finally, I also believe that advanced PowerPoint users (a group that does not include me) can design even more interactive and thoughtful classroom exercises using PowerPoint.[15]

Implementing Advanced In-Class Writing Exercises

In-class writing exercises existed well before technology arrived in the classroom. However, technology can add a layer to these exercises. For example, a peer-editing exercise may involve an electronic exchange of papers (via e-mail or a disk transfer) and students may employ some of the capabilities (discussed above) with respect to electronic grading. Students may also start a writing assignment in class and build upon it later—for example, I introduce one of our memo assignments through a client interview, and the students take notes on their computers during the question and answer session. Their follow-up assignment is a summary of their interview notes, and many of my students convert their in-class notes to the assignment that they ultimately turn in. Finally, I have used a combination of in-class writing and course software to allow class-wide brainstorming; I had my students pair up and develop search terms for one of their assignments and then post their results on our discussion forum so that everyone had the same information. I have used all of these techniques for years, and used them again in my e-semester.

I also used classroom technology to engage in some new group-writing exercises. Students have long requested "smaller stakes" writing assignments, and I now ask them to turn in short memos based on the examples in our textbook. I gave them this assignment, and then told them we would start by writing an introductory paragraph together as a class. Using the in-class computer projected onto the large screen in the front of the class, I opened a new word-processing document and asked for contributions to our opening sentence.

[14] In a non-wired classroom, one could e-mail or post the presentation for students before class, and teach using printed notes to the same effect.

[15] Our teaching assistants have brought research and citation to life by using PowerPoint to create truly interactive and high-tech class exercises. For example, our dean's fellows have constructed review sessions where students play "Bluebook Jeopardy," with hyperlinked slides and a true *Jeopardy* board.

This was an effective class exercise, though I did not care for it personally. The students were able to negotiate their sentence structure and word choices, and dictated them to me as the class typist. I am generally a fair and fast typist, but either because I was both listening and typing at the same time, or because I had all my students' eyes on me while I was typing, I faltered at the keyboard and felt much like I was performing at a recital. In the future, I will probably ask my teaching assistant to be the class scribe so that I can devote my full attention to the class discussion (and avoid the self-consciousness I felt when my many typographical errors were projected onto an 8-foot screen).

Smart classroom software can also facilitate the use of technology in the classroom.[16] For example, some programs allow students to log in to a class session so that the instructor can share their desktop views or project each desktop onto the projected screen. Students can then critique each other's work and have a group discussion about their classmates' writing.[17] Classroom instructors can replicate the benefits of such programs in a somewhat crude way even absent such software. For example, in one class I had my students do an in-class writing exercise and wanted them to critique each other's work product in class. I had them post their paragraphs on the discussion forum on our class Web page, and then I logged on to the page using the classroom computer and pulled them up on the projector screen.

Thus, I have had many successes with incorporating technology into in-class writing exercises, and I will continue to use these techniques in the future.

Integrating Audio and Video Technology in Class Lectures

The Internet has many common uses in a legal research and writing class: exploring legal research online; visiting court Web sites to explore local rules and decisions; and using vendors' citation quiz services such as the LexisNexis Interactive Citation Workshop and Thomson West's CiteStation. For the most part, Internet resources fall within the jurisdiction of my teaching assistant and I did not use the Internet for demonstrative purposes in class. This semester, I built up a library of audio and video clips to illustrate concepts that complement the substance of a class discussion. For example, abstract concepts such as oral argument can be made tangible to students through the use of in-class video presentations. User Web sites such as YouTube[18] and Google Video[19] can provide examples of common concepts such as depositions and oral argument.

Many courts have made audio materials available through their Web sites. For example, the U.S. Court of Appeals for the Seventh Circuit uploads audio clips from its oral arguments along with the documents filed with the court.[20] Audio recordings of Supreme Court oral arguments are now posted on the Oyez Web site, with certain cases receiving expedited treatment.[21] Many state courts now have similar recordings available on their Web sites.[22]

Recording students' own presentations can also be an effective teaching tool. Most wired classrooms also have video cameras that are professor-controlled. I had my students bring in blank videotapes to tape their in-class oral arguments so that they can view them at home for self-critiquing.

"Recording students' own presentations can also be an effective teaching tool. Most wired classrooms also have video cameras that are professor-controlled."

[16] "Smart classroom software" refers to products such as SynchronEyes, <www2.smarttech.com/st/en-US /Products/SynchronEyes+Classroom+Management+Software>, which create an in-class network for teachers and students.

[17] Such software can also serve a policing function, should instructors want to monitor nonacademic, in-class computer use.

[18] <youtube.com/> (last visited Mar. 6, 2007).

[19] <video.google.com/> (last visited Mar. 6, 2007).

[20] <www.ca7.uscourts.gov/fdocs/docs.fwx?dname=arg> (last visited Feb. 8, 2007).

[21] Oyez, <www.oyez.org> (last visited Mar. 6, 2007). The Web site recently paired Supreme Court oral argument transcripts with the audio files and photos of the speaker, for a more interactive experience. *See* Meredith v. Jefferson County Board of Education–Oral Argument, <www.oyez.org/ cases/2000-2009 /2006/2006_05_915/argument> (last visited Mar. 6, 2007).

[22] *See, e.g.*, Delaware, <courts.delaware.gov /Courts/Supreme%20Court/?audioargs.htm>; Wisconsin, <wicourts.gov/supreme/scoa.jsp?docket_number=&begin_date= &end_date=&party_name=marder&sortBy=date>; and Texas, <www.supreme.courts.state.tx.us/oralarguments/audio.asp> (last visited Mar. 6, 2007).

Watching their own stance and tone at the podium helped them internalize what they needed to do to improve.

This is the area in which I have felt the greatest increase in student engagement in the classroom. Students connect well to the multimedia presentations and appreciate the juxtaposition of the introduction to a concept and an audio or video demonstration to accompany it. Because of the wide (and increasing) availability of these materials on the Internet, these are easy to find and bring to the classroom.[23]

Upon first use, my experience with these technological methodologies was mixed: some I embraced right away, while I was less comfortable with others. However, I will continue to use all of these technological tools in future semesters because ultimately they enhanced my students' learning experience and were well-received by the students. Thus, following my e-semester, I have made a long-term commitment to seek ways that I can bring technology to the classroom in an appropriate and user-friendly way.

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Another **Perspective**

"Technology is fast (and getting faster), and the 21st Century law student has come to rely on its speed. Television, once the cutting edge of communication, is no longer fast enough in many situations. Many people, law students included, get their news and information from the Internet. Students today can turn on the computer or one of many 24-hour cable news channels and find any information that they want in a matter of minutes. Although law professors do not compete directly with these sources of information, the methods and tools of legal education invariably are perceived by law students through a lens that factors in the speed and nature of mass media communications. If a law student can gain instantaneous information with minimal effort in one aspect of his or her life, then a long, drawn out, 'hide-the-ball' Socratic dialogue on a narrow legal principle may miss its pedagogic mark. Many law students expect instantaneous results, clear answers, and easy access to information."

—Joan MacLeod Heminway, *Caught in (or on) the Web: A Review of Course Management Systems for Legal Education*, 16 Alb. L.J. Sci. & Tech. 265, 286–288 (2006).

[23] Professors in non-wired classrooms can use clips to augment class discussion by sharing them with the class through the course Web page, a discussion forum, or an e-mail to the class.

Legal Research and Writing Resources: Recent Publications

Compiled by Mary A. Hotchkiss

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. *In the absence of annotations, to assist the reader, article entries depart from* Bluebook *form to include the page ranges.*

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Perspectives

Teaching Legal Research and Writing

This newsletter contains articles on ways to develop and improve legal research and writing skills, and provides critical information on electronic legal research and solutions to legal research problems. Beginning with volume 1, all issues of *Perspectives* are available in the Perspectives database (PERSPEC) on Westlaw® and in the LEGNEWSL, TP-ALL, and LAWPRAC databases. *Perspectives* is also available in PDF at **west.thomson.com/newsletters/perspectives**.

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