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## Incorporating Electronic Communication in the LRW Classroom

By Ellie Margolis

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It is no secret or surprise that use of electronic communication is supplanting hard-copy writing in the world of law practice. The formal memo is on the decline,<sup>1</sup> and lawyers and clients alike are asking for answers to their questions via e-mail, reading them on a computer screen, BlackBerry, Droid, or iPhone. I had been feeling increasingly like I needed to address electronic communication in my legal research and writing (LRW) course, and I was hearing similar things from colleagues at various schools, so I decided to find a way to bring an electronic writing assignment into my first-year LRW class. After some thought, I developed a real-world writing assignment that reflects current law practice. The exercise was very well received by my students and, I discovered, had pedagogical benefits beyond the immediate practical assignment. I came away from the experience with a renewed sense of the importance of this type of assignment, and I urge all LRW professors to think about incorporating e-communication into the LRW classroom.

As with trying anything new, I had several challenges to address. First was figuring out exactly what I wanted the students to produce. I left practice before the tech revolution really took hold, so I had no firsthand knowledge to draw from. A quick review of the existing literature revealed that most of the articles and book chapters are about issues of security, etiquette, and

professional tone,<sup>2</sup> and very few are about the form and content of electronic communication. After a few conversations with friends and former students currently in practice, I decided that a realistic scenario would be for the students to sum up the results of their research and analysis of a client problem in an e-mail to me, in the role of a partner preparing for a meeting

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<sup>1</sup> Kristen Konrad Robbins-Tiscione, *From Snail Mail to E-Mail: The Traditional Legal Memorandum in the Twenty-First Century*, 58 J. Legal Educ. 32 (2008).

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<sup>2</sup> E.g., Janice Mac Avoy, Ivan Espinoza-Madrigal & Sherita Walton, *Think Twice Before You Hit the Send Button! Practical Considerations in the Use of Email*, 54 Prac. Law. 45 (December 2008).

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with the client. While e-communication takes many forms, this seemed to be a task frequently required of junior associates, and one I thought students would be capable of handling.

Next came the challenge of working the assignment into the curriculum of my fall semester LRW class, which already packs in more work than the two credits allotted to the course. The students write multiple drafts of two open-research office memoranda and attendant smaller assignments. I did not want to add to the students' workload or my own by adding in this assignment without removing anything else. After some reflection, it seemed that the e-mail summary was closest to the brief answer in a traditional predictive memorandum of law. Since my fall semester includes two brief answers, and since I have never felt that time spent on brief answers was particularly useful, I decided to replace them with the e-mail assignments. This way, the students could write the e-mails based on an issue they were already familiar with, and it was roughly equivalent to the amount of writing they would have been doing in the course anyway.

I timed the e-mail assignments so that they were due the day before the full, formal memos were to be turned in. Before the first due date, I assigned some reading about e-mail communication<sup>3</sup> and held a class meeting, in which we focused not only on etiquette issues, but also on the needs of the reader in this particular context.<sup>4</sup> The discussion emphasized the need for a clear, up-front answer and succinct analysis as well as the importance of organization, bearing in mind that the message may be viewed on a variety of different electronic devices. I did not give any particular advice about content or level of depth in the analysis. At the

end of the class, I told the students that they would soon be receiving an e-mail from me with further instructions regarding this assignment, but I did not tell them exactly what the assignment would be. This first assignment was not graded,<sup>5</sup> and I told the students to give it their best effort, curious to see what they would turn in.

A few days later, I sent an e-mail explaining that I (as their supervising partner) was going to meet with the client and needed an overview of what they had found so far, even though I knew they hadn't yet completed the full memo. Although in the real-life scenario, an associate would likely have a day, or a few hours, to complete a task of this sort, I gave the students several days. The students responded to the e-mail by the designated time, and I reviewed the messages. As with any new assignment, there was a wide variety in the content of the students' work, but overall, the e-mails provided a good summary of the students' analysis.

Because this was the students' first attempt and I had given little guidance, I decided not to give individual feedback, and instead, selected a representative sampling of the student work to go over, workshop style, in class. This is a technique I often use with drafts of smaller parts of the assignment, such as questions presented. The students' observations about the e-mails were perceptive, and we had a very productive discussion. They seemed to find it easier to put themselves in the shoes of the reader for this assignment, and commented on both the substantive aspects of the messages, as well as some of the visual and style aspects. The most interesting part of the discussion focused on their observations about how important organization was, as they thought about how the message would appear on a BlackBerry or iPhone, where the reader would have to scroll through a longer document.

“I timed the e-mail assignments so that they were due the day before the full, formal memos were to be turned in.”

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<sup>3</sup> These included a *New York Times* article on the pitfalls of electronic communication: John Schwartz, *A Legal Battle: Online Attitude vs. Rules of the Bar*, Sept. 12, 2009, <<http://tinyurl.com/4oc35x4>>, and *Writing to the Email Recipient in Wayne Schiess*, *Writing for the Legal Audience* (2003).

<sup>4</sup> This class took place when the students were in the final stages of revising their memorandum assignments in anticipation of a final deadline. As such, they were already quite conversant in the legal issues the assignment addressed.

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<sup>5</sup> In my LRW course, only the final memorandum assignment is graded, and students are never graded on a task the first time they are asked to do it. For more on this approach, see Ellie Margolis & Susan Dejarnatt, *Moving Beyond Product to Process: Building a Better LRW Program*, 46 *Santa Clara L. Rev.* 93 (2005).

“My students were much quicker to grasp the purpose of the e-mail assignment, and to understand how an e-mail like this would be used. ...”

The e-mails the students submitted, and the ensuing discussion, made me change some of my preconceived notions about the role of e-communication in law practice. I began to think that this kind of e-communication called for a different kind of writing than is traditionally covered in a legal research and writing course. It wasn't just a brief answer plunked into an e-mail. It was longer, and organized differently than a brief answer would be, yet was still a concise summary of the analysis of the client's problem. The assignment involved the analysis of a five-part test for determining a hostile work environment under Title VII. Where the typical brief answer would have presented the test and one or two sentences about how the client facts satisfied the test, the e-mails that worked best presented each factor, one at a time, with a brief description and application to the facts.

The second e-mail assignment was tied to the final, graded assignment of the semester. This time I did not have a class meeting, but did send out an e-mail request about a week before the final memo was due asking the students to attach to their memos an e-mail summary of their analysis.<sup>6</sup> I did not give any detailed instructions, other than telling the students to use what they had learned from the last e-mail assignment in drafting another one. Grading the e-mails did not add significant time to my grading process, and I was pleased to see that many students had incorporated concepts about clarity and organization based on the first assignment cycle. When all was said and done, I felt that the students had a valuable experience and I had learned a great deal in the process.

One of the most interesting things that struck me about the experience was the fact that many students in the class did their best writing of the semester on the final e-mail assignment. Even students who were weaker analytically, or who

had difficulty with writing clear, direct prose, did a very good job summarizing their analyses clearly in the electronic context. I think this was due to several factors. First, digital natives (the generation of students who has grown up using computers from a very young age) are simply more comfortable and familiar with electronic communication. While the downside of this is the oft-noted problem with overly casual tone in professional communications, this experience reminded me that there is an upside as well. As legal writing professionals, we should continue to think about how to harness this comfort factor.

The second, and related, reason is that students were so much more easily able to put themselves in the shoes of their reader with this assignment. I do a lot of work in my course trying to help the students understand why different documents are written, what purposes they serve, and what the reader generally needs to get from the document. The traditional office memorandum is difficult for students to relate to, especially when they have no context to understand its purpose. My students were much quicker to grasp the purpose of the e-mail assignment, and to understand how an e-mail like this would be used, than they ever were with the traditional formal memorandum.

One student suggested to me that part of the reason it was easier to relate to the reader in this assignment was the lack of pre-existing structure. The class discussion about the first assignment had showed the students that, as a new type of communication, there weren't a lot of "rules" about what the document should include, or what form it should take. As a result, this student felt freer to really focus on what information she thought the reader would need and the best way to convey it. This discussion reinforced my decision to incorporate electronic communication into my course, and served as a reminder that I need to

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<sup>6</sup> Because I grade the final assignment anonymously, I could not have the students send me an e-mail reply for this assignment. Instead, they were to draft an e-mail, print out a hard copy with identifying information removed, and attach it to the hard copy of their memos.

continue working at helping students understand how the traditional forms of legal writing are designed to help the reader, and aren't just a bunch of arbitrary rules for the students to get right.

The other major takeaway for me as the teacher was how much we, the community of legal writing professors, have to learn about e-communication. It is not as simple as taking traditional written forms and sending them electronically. Like electronic legal research, the change in the medium necessitates changes in the form of the communication. What literature there is on the subject of electronic communication does not address this substantive component of how analysis conveyed via electronic device differs from traditional forms of legal writing. With my small assignment, for example, I came to believe that something longer than a brief answer, but much shorter than a full-fledged memorandum, would be the most helpful to inform a partner going in to meet with a client. This experience showed me that there is much to learn about how best to communicate legal analysis when it is being conveyed via electronic devices.

As legal writing professors, it is incumbent on us to learn more about the ways in which practicing lawyers are using e-communication. I believe we can also play a role in shaping the forms of that communication. Much more thought needs to go into issues such as whether different organizational principles are called for, what level of citation is appropriate, and how in-depth the analysis should be. We are still at the beginning of this adventure. I urge all teachers of legal writing to begin to incorporate electronic communication into the classroom, and to begin to think about what it should look like.

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“The other major takeaway for me as the teacher was how much we, the community of legal writing professors, have to learn about e-communication.”

## Another Perspective

“When was the last time you spoke with your client? When was the last time you wished him or her happy birthday or happy anniversary? Does your client communication extend beyond a perfunctory holiday card? If not, you may find yourself losing clients or, even worse, being the subject of a disciplinary complaint.

It is well known that the most common—and most avoidable—type of complaint against attorneys results from their failure to communicate with their clients. It is particularly ironic that, despite the availability of more and more ways to communicate—including letters, faxes, e-mail, instant messages, text messages, and cell phones—some attorneys still ignore this critical obligation to their clients.

In reality, good client communication only begins with promptly returning phone calls and answering e-mails. At its core, communicating with clients—and potential clients—requires giving them information. It also may be the most important way to expand your practice.

Regular communication not only avoids ethics complaints but also gives you a marketing opportunity. Remember the expression ‘out of sight, out of mind’? After all, if clients aren’t thinking of you, they may not give your name to a friend or relative who needs a lawyer. The last thing you want is to discover that you lost a case because your client ‘forgot’ you were his or her lawyer.”

—Daniel J. Siegel, *Keep on Top of Client Communication*, 46 *Trial* 54 (April 2010).

Cite as: Eric T. Gilson, *Injecting Mobile Legal Research Skills into the Curriculum*, 19 *Perspectives: Teaching Legal Res. & Writing* 126 (2011).

# Injecting Mobile Legal Research Skills into the Curriculum

By Eric T. Gilson

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## I. Introduction

Legal research is no longer tethered to a stationary location. To the contrary, through a variety of technological advances, ubiquitous access to legal information is now possible. The evolution of the smartphone,<sup>1</sup> particularly with its current capacity to access legal materials quickly and in a more user-friendly, readable fashion, is playing an important part in this dynamic.<sup>2</sup> In addition, smartphones and their accompanying apps continue to develop at a strikingly rapid pace.<sup>3</sup> Through smartphones, attorneys and other legal researchers now have the option to plug relatively sophisticated searches into the palm of their hand in circumstances that would have been unheard of in the past.

<sup>1</sup> Smartphones are recognized for their condensed size and computer functions. Cambridge Dictionaries Online, <<http://dictionary.cambridge.org/dictionary/british/smartphone>> (last visited Dec. 17, 2010). They possess a multitude of functions including Internet accessibility, which is particularly relevant for this article.

<sup>2</sup> New Media Consortium and EDUCAUSE Learning Initiative Release 2009, *Horizon Report on Key Emerging Technologies*, Jan. 20, 2009, <<http://www.educause.edu/ELI/PressReleases/NewMediaConsortiumandEDUCAUSEL/142338>> (recognizing the rapid development and versatility of these devices, the significant learning opportunities they provide, and the expectation on higher education to utilize and deliver mobile content).

<sup>3</sup> *Id.* (noting the rapid pace of mobile device and app development). See also, Lee Rainee & Janna Anderson, Pew Internet and American Life Project, *The Future of the Internet III*, Dec. 14, 2008, <[http://pewinternet.org/PPF/r/270/report\\_display.asp](http://pewinternet.org/PPF/r/270/report_display.asp)> (predicting mobile devices will be the primary Internet access device by 2020).

Recognizing the value of these devices, publishers have been introducing apps for legal research.<sup>4</sup> For instance, Thomson Reuters offers both Westlaw Wireless along with a mobile app for its new WestlawNext product.<sup>5</sup> LexisNexis also offers mobile legal research resources along with HeinOnline.<sup>6</sup> Fastcase recently announced the first legal research application allowing users to freely search both American statutes and cases.<sup>7</sup>

<sup>4</sup> See, e.g., Thomson Reuters, *WestlawNext Mobile*, Oct. 28, 2010, <[http://thomsonreuters.com/content/news\\_ideas/articles/legal/298575](http://thomsonreuters.com/content/news_ideas/articles/legal/298575)> (Vice President of Westlaw Product Development Mike Dahn noting the increasing mobile needs of legal professionals); Fastcase, *Fastcase Releases First Legal Research App for iPhone*, Jan. 29, 2010, <<http://www.fastcase.com/fastcase-releases-first-legal-research-app-for-iphone/>> (Ed Walters, chief executive officer of Fastcase, also contends mobile devices are the future for legal research particularly noting the value of ubiquitous access to legal information); LexisNexis, *LexisNexis Goes Mobile with New Web Application*, Feb. 22, 2010, <<http://www.lexisnexis.com.au/media/press-releases-au/2010/1.aspx>> (TJ Viljoen, chief executive officer of LexisNexis Pacific, recognizing the increasing demand for on-the-go legal research and LexisNexis response in Australia). The ABA 2010 Legal Technology Survey Report provides further support for the increased use of these devices by attorneys, reflecting 76 percent of those responding use smartphones, compared to 64 percent in 2009, and 56 percent use the devices for legal research, compared to 50 percent in 2009. Posting of ABA Legal Technology Resource Center to ABA Book Briefs, Aug. 12, 2010, <<http://new.abanet.org/publishing/bookbriefsblog/Lists/Posts/Post.aspx?ID=179>>.

<sup>5</sup> For additional Westlaw Wireless and WestlawNext Mobile coverage, respectively, see Thomson Reuters, *Westlaw Advantage: Westlaw Wireless*, <<http://west.thomson.com/westlaw/Advantage/access-options/westlaw-wireless/default.aspx>> (last visited Dec. 17, 2010) and Thomson Reuters, *WestlawNext Mobile*, <<http://west.thomson.com/westlawnext/useit/mobile/access.aspx>> (last visited Dec. 17, 2010).

<sup>6</sup> For additional LexisNexis and HeinOnline coverage, respectively, see LexisNexis, *Mobile Platforms*, <<http://www.lexisnexis.com/NewLexis/Mobile/Default.aspx>> (last visited Dec. 17, 2010) and post of Marcie Baranich to HeinOnline Blog, Mar. 5, 2008, <<http://heinonline.blogspot.com/2008/03/heinonline-mobile-interface-now.html>>.

<sup>7</sup> For additional Fastcase coverage, see Fastcase, *Legal Research on Your iPhone*, <<http://www.fastcase.com/iphone/>> (last visited Dec. 17, 2010).

“Legal research is no longer tethered to a stationary location. To the contrary, through a variety of technological advances, ubiquitous access to legal information is now possible.”

These technological developments add another wrinkle to the research process; that is, not only determining the best resources for a particular issue, but when, and on what device, to most effectively access the information. Based on the foregoing, those who teach legal research should consider how to effectively integrate and harness the power of these mobile tools into their learning outcomes. The purpose of this piece is to aid in this process by exploring smartphone attributes, sampling legal research apps, and providing practical suggestions for developing and integrating mobile legal research exercises into course work.

## II. Maximizing On-the-Go Time

Two key smartphone features are their compact size and relatively light weight. Complementing these features is the ability to accomplish a multitude of functions including Web access for legal research. At this point, their primary challenge may be limited screen size, although their screen quality seems to be steadily improving.

With limited real estate, lengthy research and document review may be better left to desktops, laptops, and tablets.<sup>8</sup> However, based on their current features, smartphones appear particularly well suited for snippet research for short periods of time, such as quick keyword searches and citation searching to sample relevant authority.<sup>9</sup> Adding further value, these searches can occur in a wealth of locations, beyond the contours of the traditional work space. In addition, their usage can be integrated into the broader picture of using multiple devices to maximize legal research efficiency.

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<sup>8</sup> See Thomson Reuters, Thomson Reuters Introduces Its iPad App for WestlawNext, Aug. 27, 2010, <[http://thomsonreuters.com/content/press\\_room/legal/614240](http://thomsonreuters.com/content/press_room/legal/614240)> (Andy Martens, senior vice president of New Product Development for Thomson Reuters, Legal, noting the distinction between short period smartphone research and more lengthy iPad research).

<sup>9</sup> See West, WestlawNext Now Optimized for Mobile Access, May 24, 2010, <<http://west.thomson.com/about/news/2010/05/24/westlawnext-optimized-mobile.aspx>> (James Jarvis, senior director of User Experience for Westlaw Product Development, discussing the value of its mobile product, WestlawNext Mobile, for helping attorneys resume their research anywhere).

## III. Mobile Legal Research Tools

Below is a sampling of mobile legal research tools that provide multiple search features and access to primary, or both primary and secondary, authority.

### A. Westlaw

Westlaw offers both primary and secondary authority access through its Westlaw Wireless and WestlawNext Mobile products.<sup>10</sup> Westlaw Wireless offers almost complete access to Westlaw content on almost all wireless devices.<sup>11</sup> There is no additional mobile subscription cost for the product, and its features include KeyCite; the ability to e-mail results to a maximum of five people simultaneously; printer result delivery; and for searching, Terms and Connectors, Natural Language, database drop-down lists, and database identifier searching.<sup>12</sup>

WestlawNext Mobile is also available on multiple devices, with no additional mobile subscription, and comprehensive WestlawNext content search capabilities.<sup>13</sup> An enhanced search engine has been added, and the product has been designed for an intuitive research experience.<sup>14</sup> Available features include browsing,<sup>15</sup> KeyCite, saving recent searches, and using project folders to save documents, together with taking and updating notes.<sup>16</sup>

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<sup>10</sup> See Thomson Reuters, *supra* note 5, for Westlaw Wireless and Westlaw Next Mobile coverage. Thomson Reuters also offers its TWEN course management product in mobile format, providing access to course discussion forums, course content, and additional resources. TWEN Release Information, October 20, 2010 Release, <<https://lawschool.westlaw.com/shared/marketInfoDisplay.asp?code=MI&id=345&mainpage=mainpage>>.

<sup>11</sup> See Thomson Reuters, *supra* note 5, for Westlaw Wireless coverage.

<sup>12</sup> Thomson Reuters, Westlaw Wireless, Westlaw Quick Reference Guide, July 2009, <<http://west.thomson.com/documentation/westlaw/wlawdoc/web/wlbbqr4a.pdf>>.

<sup>13</sup> See Thomson Reuters, *supra* note 5, for WestlawNext Mobile feature coverage. Thomson Reuters notes some content may only be available in the standard versions of Westlaw and WestlawNext.

<sup>14</sup> See West, *supra* note 9, for discussion of WestlawNext Mobile design.

<sup>15</sup> *Id.* For additional coverage, see Mike C., WestlawNext Mobile—Research on the Move—Part I, Sept. 1, 2010, <<http://westreferenceattorneys.com/2010/09/westlawnext-mobile-research-on-the-move-part-i>>.

<sup>16</sup> See Thomson Reuters, *supra* note 9, for feature coverage.

“However, based on their current features, smartphones appear particularly well suited for snippet research for short periods of time. . . .”

“Consider sprinkling 10- to 15-minute mobile research exercises throughout the term, moving from basic, to more complex, concept searching.”

#### B. LexisNexis

LexisNexis also offers an iPhone app for access to LexisNexis content.<sup>17</sup> The LexisNexis version 1.2 mobile product provides access to cases and Shepard's, together with complete state and federal statutory collection coverage.<sup>18</sup> Searching by citation with e-mail and bookmarking features is also provided.<sup>19</sup> LexisNexis has also announced the future arrival of a new product, Lexis Advance for Solos, which incorporates new algorithm searching and interface design.<sup>20</sup> With Lexis Advance for Solos, specific source selection will not be required for searching, and multiple filter options will be available for answers.<sup>21</sup>

#### C. Fastcase

Fastcase provides free access to both cases and statutes for the iPhone.<sup>22</sup> The Fastcase product includes citation, keyword, and natural language searching; a statutory browse feature; multiple ways to customize search results; a display reflecting the number of times a case is cited; and the ability to jump to the relevant paragraph in the search result and also save results.<sup>23</sup>

### IV. Classroom Integration

The first step in the integration process is to alert students that these tools are available.<sup>24</sup> Ideally, this should be done at the beginning of the term to allow exercises to be successfully integrated throughout the term. Thereafter, exercises can be injected into lesson plans throughout the semester using a building block approach.

<sup>17</sup> iTunes Preview, LexisNexis Get Cases and Shepardize®, <<http://itunes.apple.com/us/app/id336328468?mt=8A>> (last visited Dec. 17, 2010).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See LexisNexis, *supra* note 6, for coverage of the Lexis Advance for Solos product including subscription requirements.

<sup>21</sup> *Id.*

<sup>22</sup> See Fastcase, *supra* note 7, for feature coverage.

<sup>23</sup> *Id.*

<sup>24</sup> Student device availability can also be addressed at this point.

#### A. Introductory Lecture

During the introductory lecture, consider including initial background coverage on the continued growth of these devices in law practice, along with coverage of situations and locations where mobile searching works particularly well. In addition, the relationship between smartphones and other devices such as desktops, laptops, and tablets might also be explored. Additional foundational coverage such as device requirements, cost factors, sign-in locations, synchronization between devices, and communicating results might also be addressed, along with an assignment requiring students to explore various tools in preparation for future exercises.

#### B. Exercises

Consider sprinkling 10- to 15-minute mobile research exercises throughout the term, moving from basic, to more complex, concept searching. Possible factors for adjusting difficulty levels include requested response times, researcher location, available devices, cost constraints, and available citation and factual information. A key consideration in designing these problems is how to effectively simulate realistic use of these tools in law practice.

##### i. Citation Research

Following the building block approach, request that students retrieve both cases and statutes based on identifiable information, and update the retrieved authority with their mobile devices. Thereafter, additional factors such as available databases might be injected into the mix. Once a comfort level is achieved for primary sources, request that students retrieve a sampling of secondary source citations on their devices, for example, a law review, an encyclopedia, and a treatise reference on a particular topic.

##### ii. Keywords and Conceptual Research

After working through citation exercises, consider shifting to keyword searches where a fact pattern is given and students are required to pull the relevant keyword and formulate an effective search for primary and secondary authority, and perhaps a combination of both. Initial fact patterns might have readily recognizable terms with difficulty levels increasing with subsequent searches. In

particular, fact patterns might be assigned that require students to formulate synonyms in order to retrieve applicable authority, in a matter of minutes. Once a comfort level with keyword searching develops, consider introducing broader fact patterns where keywords are even less recognizable, requiring students to formulate the initial terms and synonyms. Cost, database availability, response requirements, and other factors can also be added to these problems.

### iii. Multiple Devices/Multiple Resources/Multiple Restraints

After sprinkling varying levels of citation and keyword searching into the classroom during the semester, consider a final assignment, to be completed outside of class, requiring students to determine the best resources and the best devices for addressing a particular fact pattern. Variations on time requirements, location, citation information, available keywords, and factual information, together with database availability, could be included for certain issues in a problem, creating a situation where mobile research

should be considered. Other portions of the assignment could contain issues that require more document review or extensive searching where a traditional desktop or tablet is a stronger option.

### Conclusion

A key consideration in creating mobile legal research exercises for law students is to practically and realistically integrate the devices into an overall research strategy. Ultimately, the learning outcome should be to train students to instinctively determine not only the best resources for a particular issue, but what devices work best when completing a research assignment. In the future, advances in both device technology and resource availability should be periodically reviewed to determine further uses of these devices in legal research education.

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“A key consideration in creating mobile legal research exercises for law students is to practically and realistically integrate the devices into an overall research strategy.”

## Another Perspective

“Studies show that today’s students work best when given clearly-defined standards and that they are accustomed to frequent assistance and supervision. Unfortunately, sometimes professors can mistake these generational traits for stupidity or immaturity. These misunderstandings have the potential to cause instructors to develop contempt for students whom they believe need ‘hand-holding’ in order to accomplish anything. In turn, students looking to their writing instructors for guidance can become angry and frustrated when denied the help they seek. Accordingly, to promote mastery of research and writing methods, professors must show law students how to ‘self structure’ their work. While they are developing that skill, students’ need for external support can be met through collaborative learning, providing a welcome respite from the competitive atmosphere of legal education. Analyzing and explaining real issues rather than evaluating hypothetical scenarios makes for active learning, so that students synthesize information more quickly and retain lessons for future use. ...

The most important factor that makes Paper Chase work as a legal research and writing exercise is a defined set of standards for good performance. Objective criteria for posts are found in JURIST’s staff manual, perhaps best explained as ‘*The Bluebook meets The Associated Press Stylebook*.’ The manual covers everything: the editorial process, writing tips, style, and ethics, supplemented by brief backgrounders on major national and international legal institutions and procedures that anchors are likely to deal with on their shifts. Staffers receive ‘continuing JURIST education,’ and the instruction they receive from recruitment onward closely follows the traditional fundamentals of legal research and writing.”

—Abigail Salisbury, *Skills Without Stigma: Using the Jurist Method to Teach Legal Research and Writing*, 59 J. Legal Educ. 173, 183 (2009).

# Using Congressional Committee Prints for Research

By Peter J. Egler

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## Introduction

Congressional committee prints are potentially useful research resources. This article explains the origin and purpose of committee prints, discusses their research uses, and reviews how to access them.

## What Are Congressional Committee Prints?

Congressional committee prints are the internal working papers of congressional committees. They are usually prepared by the committee staff. Committee prints are created in the course of the committee's efforts to understand and regulate its specific area of law. Committee prints are published in a variety of formats, including but not limited to the following:

- A study of a topic that is within the committee's jurisdiction
- The findings of a subcommittee, reported to the committee at large
- A compilation of laws under a committee's jurisdiction
- Internal committee rules
- Committee rosters

As these lists indicate, committee prints encompass a wide variety of documents.

## Congressional Committee Prints as Research Resources

Many committee prints deal with substantive topics and can be useful research resources. For example, these prints were recently issued by congressional committees:

- Ad Hoc Subcommittee on Disaster Recovery of the Committee on Homeland Security and Governmental Affairs, U.S. Senate, *Far from Home: Deficiencies in Federal Disaster Housing Assistance After Hurricanes Katrina and Rita and Recommendations for Improvement* (Comm. Print 2009)
- Congressional-Executive Commission on China, *A Year After the March 2008 Protests: Is China Promoting Stability in Tibet?* (Comm. Print 2009)
- House Committee on Agriculture, House of Representatives, *Compilation of Responses to Climate Change Questionnaire* (Comm. Print 2009)
- Special Committee on Aging, U.S. Senate, *Target Date Retirement Funds: Lack of Clarity Among Structures and Fees Raises Concerns* (Comm. Print 2009)

These documents include data, analysis, and conclusions concerning their individual topics. They are potentially useful research resources, to be used in the same way as a relevant book or article.

Other committee prints cover procedural and internal matters, and are likely only useful to the authoring committee. Examples:

- House Committee on Veterans' Affairs, *Committee Rules of Procedure for the 111th Congress of the House Committee on Veterans' Affairs* (Comm. Print 2009)

- Senate Committee on Commerce, Science, and Transportation, *Guide for Preparation of Committee Reports* (Comm. Print 2009)
- Staff of the Secretary of the Senate, *Committee and Subcommittee Assignments for the 111th Congress* (Comm. Print 2009)

### Are Congressional Committee Prints Useful as a Legislative History Resource?

Typical legislative history research involves collecting all legislative documents created during a bill's legislative journey, and then reviewing those documents to determine if their language indicates the legislature's intent when passing the law. Useful legislative history documents can include the original version of the bill, amended versions of the bill, transcripts of hearings related to the bill, reports from committees recommending the bill, *Congressional Record* entries concerning the bill, and conference committee reports explaining the final version of the bill.

Unlike the standard legislative history documents mentioned in the previous paragraph, most congressional committee prints aren't created as part of an individual bill's legislative journey. Congressional committee prints that deal with substantive issues are usually created by the committee's staff as part of the committee's information-gathering activities. The information included in the prints may lead to subsequent legislative action by the committee but the prints themselves are not usually connected to a particular bill. Congressional committee prints that aren't connected to a specific piece of legislation are not useful legislative history resources.

Occasionally committees will issue prints that contain analysis of specific pieces of legislation. These prints usually include the text of the legislation, along with some explanation of the legislation. For example, see the House Committee on Appropriations, *Omnibus Appropriations Act, 2009* (H.R. 1105, Public Law 111-8) (Comm. Print 2009).

Congressional committee prints of this type would be a useful legislative history resource.

The Office of Law Revision Counsel ("the Office") is part of the House of Representatives. One of the responsibilities of the Office is to maintain the official *United States Code*. Occasionally the Office will reorganize or create new titles in the *United States Code* in order to incorporate new laws or remove repealed laws. The Office will frequently issue a print that explains the purpose of its reorganizations. Examples include the following:

- House Office of Law Revision Counsel, *Description of H.R. 4320, to Enact Title 41, United States Code, "Public Contracts"* (Comm. Print 2004)
- House Office of Law Revision Counsel, *Explanation of H.R. 3039, to Enact Title 51, United States Code, "National and Commercial Space Programs," as Positive Law* (Comm. Print 2005)

These prints would be useful to researchers interested in reorganizations of the *United States Code*.

### Accessing Congressional Committee Prints

Congressional committee prints aren't published on a regular schedule, and they don't have a consistent numbering system.<sup>1</sup> Despite these challenges, there are resources available that make congressional committee prints relatively easy to access.

The GPO website includes congressional committee prints for the 105th Congress (1997–98) forward. The current URL is <http://www.gpoaccess.gov/cprints/index.html>. These materials are migrating in 2011 to GPO's new Federal Digital System (FDSys), <http://www.gpo.gov/fdsys/search/home.action>. The documents are available in ASCII text and, in some cases, in Adobe PDF. The GPO website allows researchers to browse or search the prints from the current Congress and search the prints from past Congresses.

Coverage in the LexisNexis Congressional Committee Print database starts in 1830. It contains PDF versions of many of the prints indexed in the databases. If the database doesn't include the full text of a print, it provides the CIS number for the print. The researcher can use this number to access a copy of the print on microfiche at a library that has the appropriate CIS microfiche set.

Examples of congressional committee print records found in the LexisNexis Congressional Committee Prints database include the following:

- House Committee on Naval Affairs, *Navy-Yards, Naval Stations, and Coaling Stations Belonging to Great Britain, France, Germany, and Russia* (Comm. Print 1902). Note: The full text of this print is available in the LexisNexis Congressional database.
- House Committee on Ways and Means, *Report on Trade Mission to the Far East* (Comm. Print 1985), CIS 86-H782-1. Note: The full text of this print is not available in the LexisNexis Congressional database.

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<sup>1</sup> In 1983, Senate committees started numbering congressional committee reports from Senate committees. The standard citation includes the Congress and the print number. Example: *Iran: Where We Are Today*, S. Prt. 111-19 (May 4, 2009). The House committees don't use a numbering system for their prints.

Hard-copy versions of some congressional committee prints have been distributed through the Federal Depository Library Program. The prints are usually cataloged by title. Keyword searches of individual library catalogs or the WorldCat database will yield relevant congressional committee prints. For example, if a researcher is interested in finding information about U.S. trade with foreign countries, he or she could run the keyword search "committee print foreign trade" in WorldCat. The following committee prints would be included in the search result:

- Senate Committee on Foreign Relations, *Uruguay Trade Preferences: A Strategic Opportunity in the Southern Cone* (Comm. Print 2009)
- House Committee on Ways and Means, Subcommittee on Trade, *Report on Trade Mission to New Zealand and Australia* (Comm. Print 1999)
- House Committee on Ways and Means, Subcommittee on Trade, *Written Comments on Extension of Unconditional Most-Favored-Nation Treatment to Mongolia and Laos* (Comm. Print 1997)

### Conclusion

Congressional committee prints document the information gathering activities of congressional committees. The prints that deal with substantive issues are potentially useful resources for researchers interested in those issues.

Today's researchers have access to congressional committee prints dating back to the early 1800s. While congressional committee prints from both recent and past sessions of Congress can be useful resources for current and historical information, most congressional committee prints are not useful resources for legislative history documents.

There are some exceptions to this rule. Researchers interested in any topic involving government regulation should search for relevant committee prints from recent and past Congresses.

### **Additional Resources**

These websites contain additional information about congressional committee prints:

Harvard College Library, U.S. Congressional Publications, <[http://hcl.harvard.edu/research/guides/us\\_congressional/part5.html](http://hcl.harvard.edu/research/guides/us_congressional/part5.html)>

LexisNexis, Congressional Committee Prints, <[http://www.lexisnexis.com/help/CU/TP/Committee\\_Prints.htm](http://www.lexisnexis.com/help/CU/TP/Committee_Prints.htm)>

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### **GPO Partners with Google to Offer Federal E-Books**

The U.S. Government Printing Office (GPO) and Google have entered a partnership to offer the public, for the first time, federal government titles in an e-book format. The titles will appear on Google's recently launched Google ebookstore, which can be searched, purchased and read on any connected device with a capable browser. Currently the public can search for titles such as the appendix for the *Budget of the United States, Fiscal Year 2011*, *Remembering the Space Age*, *Borden's Dream* (a history of Walter Reed Army Medical Center). GPO has about 100 titles in the catalog and will continue to add titles in the next several months, which will include the first volume of the *Public Papers of President Barack Obama* and the *Budget of the United States, Fiscal Year 2012*.

Link to Google's ebookstore to search for federal government titles: <<http://books.google.com/ebooks>>

—GPO Press Release, Dec. 14, 2010, available at <<http://www.gpo.gov/pdfs/news-media/press/10news46.pdf>>.

Cite as: Judith Rosenbaum, *Brutal Choices in Curricular Design ... New Directions in Advanced Legal Writing Courses*, 19 *Perspectives: Teaching Legal Res. & Writing* 134 (2011).

# New Directions in Advanced Legal Writing Courses

*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, e-mail: [h-shapo@law.northwestern.edu](mailto:h-shapo@law.northwestern.edu), or Kathryn Mercer, Case Western Reserve University School of Law, e-mail: [klm7@case.edu](mailto:klm7@case.edu).*

**By Judith Rosenbaum**

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### Introduction

In spring of 2009, when I was asked to redesign and teach Northwestern Law’s advanced legal communication course, I knew I was not writing on a clean slate. First, here at Northwestern, in 1998, Helene Shapo proposed, secured approval of, and created the school’s first advanced course in legal writing. The course name was later changed to advanced legal communication to reflect its emphasis on different modes of oral communication, in addition to written communication. It was offered every year for 10 years until Professor Shapo started teaching family law.

A second reason I was not writing on a clean slate was that advanced legal writing had been a topic on legal research and writing listserv discussions for at least 10 years and in 2003, Jo Anne Durako, then at Rutgers School of Law–Camden, had begun compiling a Syllabus

Bank for Advanced Legal Writing courses on the Legal Writing Institute (LWI) website.<sup>1</sup>

The final reason I was not writing on a clean slate was that at the time I was asked to teach the advanced legal communication course, Northwestern Law had recently completed an evaluation of its curriculum to update our 1998 Strategic Plan and had published Plan 2008, the report growing out of that review.<sup>2</sup> As part of the implementation of Plan 2008 during the 2008–09 school year, I had been part of a Communication Skills Task Force, consisting of a cross section of communication and legal reasoning (CLR) and casebook faculty and administrators, such as the acting associate dean of student affairs and a representative of the Admissions Office. The task force had been charged with the responsibility to:

Study and propose revisions to ... curriculum (including the existing Communication and Legal Reasoning Program) ... in order to ... [e]nsure that our graduates leave the Law School with the following four communicative abilities: Basic Exposition ... ; Legal Analysis ... ; Contract and other drafting ... ; and Business Exposition ... [and to] [i]dentify and develop diagnostic and other tools to measure and demonstrate our students’ competency and improvement in this area including at admission, at enrollment, and at completion.

Within this framework, I saw two different challenges in creating my version of this course. First, I thought I should draw on the collective wisdom of those who

<sup>1</sup> Legal Writing Institute, Advanced Syllabus Bank, Advanced Courses, <[http://www.lwionline.org/syllabus\\_bank\\_advanced.html](http://www.lwionline.org/syllabus_bank_advanced.html)> (compiled January 2003).

<sup>2</sup> Northwestern Law, Strategic Plan and Plan 2008, <<http://www.law.northwestern.edu/difference/strategicplan.html>> (accessed Sept. 28, 2010).

“ [W]hen I was asked to redesign and teach Northwestern Law’s advanced legal communication course, I knew I was not writing on a clean slate. ”

had come before me, both here at Northwestern and those teaching advanced courses at other schools so that I did not “re-create the wheel.” Second, I believed I should try to fit what had come before into the framework established by the aspirations of Plan 2008, and, in particular ideas that had surfaced during the meetings of the Communication Skills Task Force.

### Curricular Focus

As I went about designing the curriculum for my course, I started with what I knew. First, I knew that Plan 2008 aimed to foster deeper and richer training for our students in communication skills; teamwork; experiential learning, such as simulations and role plays; and multiple and varied feedback mechanisms.<sup>3</sup> Second, I knew that the substance and pedagogy of the first-year communication and legal reasoning course had been incorporating these ideas into the curriculum for more than a decade. Third, I knew that the advanced legal communication course as designed by Professor Shapo had been a comprehensive course, popular among students, and that it often ran a waiting list.

I was less familiar, however, with how advanced courses were being taught at other schools, and again, to avoid re-creating the wheel or starting in a void, I looked at every advanced course syllabus posted on the LWI website, and in addition, I posted a request on both the ALWD and LWI listservs asking for advice or samples of syllabi or both. On the website, out of 48 links relating to advanced writing courses, 35 links were still live. And from my request to the listservs, 30 different people responded;<sup>4</sup> 10 of those responses were

specific responses to a narrower question about advice on requiring students to attend a court proceeding and report on what they observed.<sup>5</sup> One of the 10 had responded to both requests so I had a total of 34 separate responses from 33 different people. Since the website had not been updated since 2003, there was relatively little overlap between the syllabi I received from my listserv requests and the syllabi posted on the website. Thus, I had about 50 syllabi to review.

From my review, I concluded that advanced courses, as they were being taught in the first decade of the 21st century, fell into five general categories. One type was a survey course in which students were introduced to a range of documents, such as legislation, wills, jury instructions, predictive and persuasive memos, various litigation documents, and contracts. The specific documents varied from one course to the next, but one constant seemed to be that the documents were not unified around a case or a client. Rather, by and large, the documents grew out of fact patterns developed specifically to produce the desired document. Faculty teaching these courses probably had many different reasons for designing the courses to cover breadth rather than depth, but certainly one key reason for that design is that the two main texts for advanced courses are organized so that each chapter covers a different type of document.<sup>6</sup>

The four other types of courses followed a more integrated approach but gave students a smaller range of writing experiences. Some courses were designed to teach litigation drafting (often limited to a specific practice area, such as bankruptcy or employment law). Others focused exclusively

“From my review, I concluded that advanced courses, as they were being taught in the first decade of the 21st century, fell into five general categories.”

<sup>3</sup> Northwestern Law, Strategic Plan and Plan 2008, <<http://www.law.northwestern.edu/difference/strategicplan.html>>, p. 14 (accessed Dec. 23, 2010).

<sup>4</sup> I would like to thank the following people for their generosity in sharing syllabi and answering my numerous follow-up questions: Coleen Barger, Mary Beth Beazley, Linda Berger, Jim Dimitri, Lisa Eichorn, Elizabeth Fajans, Lori Fulton, Joe Kimble, Robin Boyle Laisure, Jan Levine, Sue Liemer, Allison Kort, Alexandra Makosky, Laurie O’Neal, Martha Pagliari, Jo Ann Ragazzo, Mary Ray, Ruth Anne Robbins, Helene Shapo, Janice Sperow, Andy Starkis, Roberta Thyfault, Robert Volk, and Barbara Wilson.

<sup>5</sup> I would like to thank the following people for sharing methods of requiring and grading a court observation: Coleen Barger, Paige Canfield, Nancy Costello, Barbara Glesner-Fines, Kathy McQuade, Lori Miller, Terrill Pollman, Chris Rollins, Sheila Simon, and Sophie Sparrow.

<sup>6</sup> Elizabeth Fajans, Mary R. Falk & Helene S. Shapo, *Writing for Law Practice* (2d ed. 2010); Mary Barnard Ray & Barbara J. Cox, *Beyond the Basics: A Text for Advanced Legal Writing* (2d ed. 2003). The *Writing for Law Practice* text contains two case files in an appendix. Those files give the professor the ability to have the students represent the same client and work on the same legal issues when preparing the litigation documents the professor assigns.

“As I designed my curriculum ... I tried to balance the work I would assign students across four pairs of corresponding skill sets. ... ”

on transactional drafting. Still others focused on scholarly writing. Finally some courses aimed to teach only grammar, adopting one of the many “writing” texts and assigning a different chapter (punctuation, nominalization, etc.) each week.

Although I don’t know whether the materials sent to me by individual professors or available for downloading from the LWI website were a representative sample of advanced courses, at least from what was available to me, I noticed that none of the advanced courses followed a curriculum in which the students represented a single client and worked exclusively on that client’s case file for the entire semester, completing for that client a range of different tasks, such as letters, e-mails, phone calls, memos, contracts, and both drafted and analytical<sup>7</sup> litigation documents. Some classes devoted specifically to pretrial litigation or appellate advocacy do have the students working for a single client all semester, sometimes with the classes split so half the students represent each side in the case, but the assignments in those courses are all related to the litigation case or cases, and don’t seem to cover transactional matters or informal tasks such as e-mails and phone calls.

After this review of what my colleagues were doing in their advanced classes, I decided that one way to create a fairly original course at Northwestern was to assign students to work as practicing attorneys during the semester and to assign them a range of projects similar to those often given to junior associates, though with a compressed timeline

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<sup>7</sup> In a sense the term “draft” could refer to early versions of written documents that are revised over time. However when referring to legal documents, I think we have to distinguish “analytical” from “drafted.” To me, an analytical document is one that applies law to fact whether it is predictive or persuasive. Analytical can also refer to nonlegal written documents that evaluate a condition, product, or term, such as a document analyzing whether a product should be released. In a sense, all analytical documents are “drafted,” because they are written and probably revised over time. But in the law, a drafted as opposed to an analytical document is one that does not analyze or evaluate. It contains provisions written in the language and the order that authors deem necessary to accomplish their purpose. A drafted document could be for litigation such as a pleading or an affidavit, or it could be for a transaction such as the wide range of contracts. The line is admittedly blurry and some documents, such as a client letter or a demand letter, could contain both analytical and drafted aspects.

so all the work could be completed within the semester.<sup>8</sup> I also decided to try to incorporate as many as possible of the competencies mentioned in Plan 2008, because those competencies had been identified as important by the Communication Skills Task Force and also because our students’ future employers had identified those competencies as important in the focus groups run in conjunction with the research for Plan 2008. An additional reason for trying to include those competencies in my course pedagogy is that many of them tied into the recommendations of the Carnegie report.<sup>9</sup> As I designed my curriculum with those competencies in mind, I tried to balance the work I would assign students across four pairs of corresponding skill sets: oral/written; analytical (that is, memos or briefs)/drafting (that is, not involving the IRAC, TREAC, CREAC paradigm); formal/informal; and litigation-focused/transaction-focused.

After working out a reasonable balance among all these skills,<sup>10</sup> I asked the students to work on a single case for a single client and to undertake the following tasks in conjunction with the case:

1. Interview the client;
2. Brainstorm about the potential causes of action that would fit the client’s case and e-mail me as supervising attorney at least three causes of action, listing their elements and indicating how strong the facts were for each element;
3. Draft an engagement letter in which the client hires the law firm;<sup>11</sup>
4. Draft a demand letter to seek a settlement;

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<sup>8</sup> Since my review of other courses was admittedly limited, there may be faculty at other schools who have also devised creative methods to teach advanced legal writing. If so, perhaps a future iteration of this column can be devoted to other “choices” in designing advanced course curricula.

<sup>9</sup> William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (2007).

<sup>10</sup> See the chart at the end of this article.

<sup>11</sup> The law firm consisted of all the students in the class. Some of the students had given the firm the name of two 3Ls in the class during the interview and that name “stuck” as the name of the firm for the rest of the semester.

5. Phone the client to bring her up-to-date on what had been done thus far;<sup>12</sup>
6. Draft a complaint;
7. Draft interrogatories;
8. Draft an internal persuasive office memo responding to a motion for summary judgment—this assignment was actually divided into two separate assignments, one to draft a persuasive statement of facts and the other to draft a persuasive argument; and
9. Report to me as supervising attorney, assessing the strength of the case and suggesting ideas for dealing with aspects of the case where the facts and law were not particularly strong for the client.

I did give the students one additional assignment that I thought put the “cart before the horse,” because, despite its pedagogical value, it was not specifically part of their work for the client. The “cart” was that I wanted the students to do a formal oral presentation, as they might do to a group of senior attorneys, a client’s board of directors, or a potential client by whom the firm wanted to be hired. I could not think of a way to set up this assignment within the context of their work for the client, so I asked the students to observe a trial court proceeding and an appellate court proceeding, to evaluate the quality of the lawyering, and to offer an opinion on whether justice was done during whatever part of the case they had observed. The main objective was to have the students present their conclusions in a formal oral presentation, but in addition, I asked them to write about what they had chosen to do, why they had made that choice, and what they had concluded. The writing offered an opportunity for

<sup>12</sup> This phone call was timed to take place while the firm was waiting for a reply to the demand letter and before the firm had taken any steps to draft a complaint and file a lawsuit. When I first taught the course in the fall of 2009, I discovered that when I asked the students to call me, I often was left waiting at the telephone for between five and 15 minutes, which turned out to be dead time. Thus, in the fall of 2010, in my second iteration of teaching the course, I switched the task so that I, acting as client, called the student attorneys. The switch put the burden on the students as attorneys to be near their phone, though we did arrange a convenient time in advance.

the students to prepare an informal written report that was neither legal drafting nor legal analysis.

Ultimately, while the balance was not perfect, and some competencies could not be strictly categorized (particularly the formal/informal and the litigation practice/transactional practice), at a minimum the course exposed students to a variety of tasks that lawyers perform in practice.

### Pedagogical Approaches

In addition to designing the course to put the students in the role of junior associates working for a single client, I incorporated three well-regarded pedagogical tools into the course—rewrites, peer reviews, and grading criteria—but revised them to work better for upper-level students. For the rewrites, I wanted to assess the students on more of a mastery scale than on a strict curve or by strict percentages. I thus permitted the students to rewrite just about all of the written assignments and required them to rewrite at least two.<sup>13</sup>

I opted for that balance between permitted and required rewrites for two reasons. First, I know from teaching the first-year course that rewrites force students to process the comments on an original draft and that a great deal of learning takes place as they attempt to understand the comments and either answer the questions or incorporate the suggestions into the next draft.<sup>14</sup> I wanted to ensure that students went through that intellectual process at least twice during the semester. On the other hand, I also believe that adult students need to be given some control over course content and over the allocation of their time. They all have pressure points in the semester when they are busy with other things than assignments in my course, be those due

<sup>13</sup> This idea was not my own. I borrowed it from Mary Barnard Ray who uses it in her advanced legal writing course at the University of Wisconsin Law School.

<sup>14</sup> See Natalie A. Markman, *Bringing Journalism Pedagogy into the Legal Writing Class*, 43 J. Legal Educ. 551 (1993); Patricia Grande Montana, *Better Revision: Encouraging Student Writers to See Through the Eyes of the Reader*, 14 Legal Writing 291, 299–308 (2008); Lucia Ann Silecchia, *Designing and Teaching Advanced Legal Research and Writing Courses*, 33 Duq. L. Rev. 203, 236 (1995).

“Ultimately, while the balance was not perfect ... the course exposed students to a variety of tasks that lawyers perform in practice.”

“To encourage students to do additional rewrites voluntarily, I told them that instead of averaging the grades ... I would give them the higher of the two scores.”

dates in other classes or family obligations.<sup>15</sup> If I required rewrites for each assignment, as we do in first-year CLR, then I might have needed to build in time for quite a few more rewrites and would not have been able to give the number or range of assignments that I wanted to use.

To encourage students to do additional rewrites voluntarily, I told them that instead of averaging the grades between the first draft and the rewrite, I would give them the higher of the two scores. That practice encouraged rewrites through a carrot instead of a stick because it made rewriting essentially “risk-free.” If the paper improved, they would receive a higher score and if it did not improve, they would not lose the original (better) score.<sup>16</sup>

My second pedagogical focus was to help the students become more effective critical readers. As we all know, once students enter practice and become associates, their work will not only be critiqued by more senior attorneys, but they will also be asked to critique the work of others. Thus, I not only built into the syllabus an in-class peer review for each assignment, but I also structured the peer review so that each student would critique two papers written by others and thus would also receive two critiques from others.<sup>17</sup>

In the first-year course, I have used peer reviews largely to help students identify organizational or analytical ambiguities in other students’ papers, with the hope that once students could recognize things that were hard to understand in someone

else’s paper, that understanding would enable them to do a better job of recognizing similar clarity problems in their own work. To achieve that end, each student worked with only one other student, and the peer review was structured through a series of fairly focused “prompts,” such as whether the question presented included both the legal issue and key facts and whether it was readable.

In the advanced course, I had similar goals of using the peer review to help the students “discover” areas for improvement in their own writing, but my goals for the advanced course went beyond my goals for the first-year course. For example, the timing of the peer reviews was a bit different than the timing I use in the first-year course. In first-year CLR, I generally use peer reviews in a class session close to but *before* an assignment’s due date. Thus, there is still time for students to incorporate any suggestions by their peers into their drafts and to modify their own drafts based on what they learned from reading someone else’s paper. In the advanced course, by contrast, I used the peer review in the first class *after* the students had submitted their papers. At that point they had already faced and devised solutions to some of the writing challenges presented by the particular documents and could share that insight with their classmates. By the same token, since the peer review took place quite a bit before the rewrite was due, if they learned anything new from reading someone else’s paper, they could choose to rewrite that assignment and incorporate their insight into the rewrite. Finally, since the peer review took place before I read and commented on the papers, the students’ comments and observations would be based on their own creative thinking and not restricted or limited by the types of comments they received from me.

Although I monitor the peer review groups in the first-year course, with occasional comments to the entire class based on my observations or on questions from a student, generally the peer review work is between two students, and despite the 90 minutes allocated to the course, there is rarely enough time for the students to read the papers, respond to my prompts, and discuss their assessments with each other. However, in advanced legal communication, the students are more comfortable with peer

<sup>15</sup> In a class that consists largely of 3Ls, as mine did, one likely pressure point is the Multistate Professional Responsibility Exam (MPRE), which is generally given the first weekend in November.

<sup>16</sup> Both the mastery approach of allowing the student to take the higher of the two grades and the philosophy of using a carrot rather than a stick to motivate the students to rewrite more papers also came from Mary Barnard Ray.

<sup>17</sup> The students did not have enough class time for both reading and discussing their critiques of the longer assignments due later in the semester, particularly the persuasive facts and persuasive argument. For the peer reviews of those assignments, I asked them to exchange and read the papers outside of class so that class time could be devoted to discussing their evaluations in their small groups and with the whole class.

review and are more comfortable evaluating each others' work and being evaluated by other students. Thus, there was enough time for the students to read the papers of two other classmates with roughly a half hour left for a group debriefing and discussion of what the students had learned. During the last 20 or 30 minutes of class I engaged the whole class in a roundtable discussion in which I asked them to identify at least one thing they had learned from reading someone else's paper that made a document effective and at least one thing that detracted from its effectiveness. These roundtable discussions were incredibly rich, and generated lots of follow-up comments from other students about how a paper they had read led them to a similar conclusion. Consequently, the peer review classes were some of the most productive and enlightening classes of the semester.<sup>18</sup>

My last attempt to try some new approaches in the course grew out of the fact that, apart from the persuasive facts and persuasive argument, I was giving the students assignments that I had never taught before. Coming up with grading standards and applying them in grading the variety of assignments I had chosen to use was a new experience for me. I believe that the students are entitled to know, before they prepare each assignment, the criteria by which they will be evaluated. Since most of the assignments gave the students tasks that they had not been asked to do in any other courses (though some of them had been exposed to some of these tasks in summer jobs), I created grading criteria to guide the students in writing their own drafts and critiquing the drafts of others. The criteria were equally for me, so that I could be consistent in my assessment of the students'

work. To make sure that I was not doctrinaire in creating the grading criteria and that I took advantage of the practical experience that some students might have had, I put the criteria and their general weights on the Blackboard course wiki and invited the students to comment on or edit the criteria. Although no one actually took advantage of that opportunity, giving them that option was consistent with my general idea that to make the course a "win-win" for both me and the students (me in accomplishing my pedagogical goals and them in getting out of the course what they had hoped to get), they needed to have plenty of opportunity to collaborate with me about how and what they were being taught.

### Classroom Assessment

In recent years the concept of classroom assessment has gained a bit of traction among law faculty. The concept of classroom assessment is not about assessment of student work through exams, papers, etc., nor is it about "outcomes" assessment, discussed by the Carnegie report and currently in vogue with the American Bar Association.<sup>19</sup> Classroom assessment is a term that comes from undergraduate teaching and is about teachers "collect[ing] frequent feedback from their students about how the students learn and how they respond to particular teaching techniques ... [which] [t]eachers can use ... to modify their instruction to help students learn more effectively."<sup>20</sup> Generally, the techniques used for classroom assessment include simple, ungraded, in-class activities such as "free writes," "minute papers," "chain notes," or other devices that allow the students to give feedback on the teaching methods that are working for them and those that are not.

“Coming up with grading standards and applying them in grading the variety of assignments I had chosen to use was a new experience for me.”

<sup>18</sup> One of our most lively discussions was about how many facts to put into a complaint, particularly in light of two recent Supreme Court cases. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1940 (2009) (“[T]he tenet that a court must accept a complaint’s allegations as true is inapplicable to threadbare recitals of a cause of action’s elements, supported by mere conclusory statements.”); and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (“While a complaint attacked by a Rule 12(b) (6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. ...”) (citation omitted).

<sup>19</sup> See American Bar Association, Section of Legal Education and Admissions to the Bar, Standards Review Committee, Student Learning Outcomes Subcommittee, Draft for January 8–9, 2011 Meeting, <<http://tinyurl.com/4tvllus>>.

<sup>20</sup> Gerald F. Hess, *Student Involvement in Improving Teaching and Learning*, 67 UMKC L. Rev. 343, 344 (1998).

“Since both the concept and the content of the course were new, I wanted to be particularly attentive to whether the course was meeting the students’ objectives and whether the workload was appropriate. Consequently, I used several different classroom assessment techniques throughout the semester. Although often the techniques used for classroom assessment are written and anonymous, the students tended not to fill out the questionnaires I gave them. Rather, the method that seemed to resonate the most with the students was devoting several blocks of class time during the semester to evaluating the course.

As a result of those conversations, I made one procedural change, revised one assignment, and eliminated a piece of another assignment. The procedural change was an adjustment to the requirement that all assignments be done in teams. The initial class size established for the course was 24 students. Fortunately, perhaps because the course was new, I ended up with nine students. However, initially, anticipating an enrollment of 24 students, I had written the syllabus to require that every assignment except the final persuasive memo be done collaboratively with at least one other student. Given all the literature about the need for intensive writing courses to be limited to about 12 students, I didn’t see how I could cover the range of assignments that I had planned and simultaneously give effective feedback if I had to read and comment on 24 separate papers for the written assignments or give 24 different evaluations for each separate oral assignment. Thus, I thought initially and still believe that the only way I could manage a class of 24 students without severely truncating the range and number of assignments was to require mainly collaborative work.

In our first discussion of the syllabus, however, before any written assignments were due, the students, even as 3Ls, who had already done a fair amount of collaborative work, were roundly against all the teamwork. Fortunately, with only nine students, the class was small enough that it was possible to turn the majority of assignments into individual assignments for the students who wanted to work individually. Still, there

were two assignments—the complaint and the interrogatories—where I thought that brainstorming would be beneficial. Thus, we agreed that the students would do those two assignments with one or more team members. As to all the rest of the assignments except the persuasive memo, which was always designed as an individual assignment, I made collaboration optional.

The revision was made to the “emergency weekend assignment.”<sup>21</sup> This assignment was intended to mirror the unpleasant aspect of practice when a junior attorney is asked at the last minute to handle an emergency over the weekend. My plan was to assign it to the class during one of the weekends I had to be out of town. For the assignment itself, I intended to draft some of the facts and one count of a complaint based on our fact pattern.<sup>22</sup> I would then require the students to finish the facts and add a count for the second issue. I thought this approach would not be too burdensome, because I could draft the jurisdictional facts that they might not know about and they could model the remaining factual allegations and the second count on what I had already drafted (in addition to the guidance provided by the course book and by their own thinking about what was similar and what was different between the sections already drafted and the remaining sections). The students’ response was that they would be bitter and resentful if given a last-minute emergency. While such last-minute emergencies “went with the territory” at work, they were not part of the law school culture and so, unlike a work emergency, they told me the bitterness and resentment would fester. Rather than argue with them, I took their concern at face value and gave

Footnote 21: The idea to ask the students to do an emergency weekend assignment was also not my own. At a conference earlier in the year, several professors from the Duquesne legal writing faculty, Erin Karsman, Julia Glencer, and Tara Wilke, had told me they were incorporating this exercise into a new advanced course that they were planning for spring of 2010. Perhaps I should never have mentioned in the syllabus that there would be a last-minute emergency assignment over one weekend, but I thought the students were entitled to at least some notice that this assignment would form part of their evaluation in the course.

Footnote 22: The students knew the fact pattern from the client interview conducted earlier in the semester and their work on both engagement and demand letters.

them the same assignment over the same weekend but provided them with the complaint earlier than I had initially planned and adjusted the due date to take away the “rush” aspect of the assignment.

Based on the students’ suggestions, I also modified part of the court observation assignment. I had initially wanted them to observe two types of courts or two types of proceedings so that in their oral presentation and written summary they could compare what they had observed. However, the students convinced me that by their third year, if not their second, most of them had actually been in a courtroom through a practicum, an internship, or a summer job. Thus, requiring two observations was superfluous. I went along with their suggestion, in part, because even though I had included this assignment in the syllabus, I had always had some reservations about it. The assignment was never part of the client-centered concept of the course. I had developed it largely because I wanted to have a formal oral presentation as one of the course requirements. The pedagogical goal could be accomplished without two separate observations. As it turned out, the students who

had been in a courtroom before last fall often did incorporate a comparison of their earlier experience with the observation required for the course. Thus, my pedagogical goals were never compromised by eliminating one observation.

### Conclusion

I have often thought that creating and teaching a course is like giving birth to a growing, breathing organism. The course, like the organism, needs nurturing. The course, like the organism, cannot remain static; it must grow and change over time. The course and the organism are likely to experience setbacks over time, but with effort and attention those setbacks can be overcome. The course, or at least the students in it, needs a measure of autonomy to thrive. Finally, although both the course and the organism may reach maturity, they will both fare better if they never cease efforts to improve. This year’s iteration of my advanced legal communication course has gone through changes and has adapted to them. However, I expect that as long as I am teaching the course, I will be looking for ways to change and improve it.

“I have often thought that creating and teaching a course is like giving birth to a growing, breathing organism. The course, like the organism, needs nurturing.”

Assignment	Type of Communication		Use of Written Document		Level of Formality		Type of Written Document	
	Oral	Written	Litigation	Transactional	Formal	Informal	Analytical	Drafting
Client Interview	X				X			
E-mail to Senior Attorney		X	X			X	X	
Retainer Contract		X		X	X			X
Complaint		X	X		X			X
Demand Letter		X		X	X			X
Interrogatories		X	X		X			X
Phone Call to Client	X					X		
Notice of Motion and Motion	Never did assignment; not enough time							
Report to Sr. Atty. Conference	X					X	X	
Persuasive Facts		X	X		X		X	
Persuasive Argument		X	X		X		X	
Court Observation Paper		X				X		
Court Observation Presentation	X				X			
<b>Totals</b>	<b>4</b>	<b>8</b>	<b>5</b>	<b>2</b>	<b>8</b>	<b>4</b>	<b>4</b>	<b>4</b>

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## Teaching Students to Present Law Persuasively Using Techniques from Psychology

By Kathy Stanchi

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In many (if not most) legal research and writing courses, students are taught predictive writing before persuasive writing. Often, the fall semester is devoted to “objective” legal analysis, and the spring semester to persuasion. For many students, the transition may come too early. First-year law students often have a difficult time transitioning to a persuasive tone. They can have particular difficulty with fashioning persuasive rules.

Because of the structure of most legal writing courses, students may just have learned how to read legal texts and extract the legal rules from them when we ask them to switch to advocacy. Identifying a holding, or the relevant text of a statute, is a challenge for many students and does not disappear with the switch to advocacy. At a time when students may still be struggling with identifying what the law *is*, we ask them to move beyond that concrete identification process toward a more flexible view that acknowledges that law can be susceptible to multiple meanings.

More than that, we may ask them to extrapolate from the legal texts, or reframe a holding, instead of simply identifying and paraphrasing a rule. This takes a level of confidence with the legal material, and a level of sophistication, that many first-year law students are struggling to attain.

The structure of introductory writing courses (predictive first, then persuasive) can contribute to the struggle with presenting rules persuasively. Many of us spend a semester, or a substantial part of it, impressing upon the students the need to

be objective, and read the law with an eye toward giving solid advice to a client. They come to law school wanting to advocate, and we spend some time getting them to adjust to the different role of counselor. But then, in most courses, we switch gears to advocacy just as some students have attained some level of comfort with the adviser role.

Finally, rules can present special challenges in persuasion. While students may have a level of confidence working with facts because most people have some experience with telling stories, or “spinning” a story to suit a particular goal, most students will not have had experience working with rules or law. Unlike facts, which are somewhat familiar, rules of law are utterly new to most students.

To guide students in the process of developing the confidence and sophistication to present legal rules persuasively, I have developed two exercises drawn from the scientific studies of persuasion. These exercises give students a step-by-step process for constructing persuasive rule statements while also introducing them to the psychology of persuasion. The first exercise is based on a persuasive technique called foot in the door. The second is based on a persuasive technique called priming.

### I. Foot in the Door Exercise

Foot in the door (FITD) is a technique in which a persuader induces a person to comply with a future request by plying her with prior requests with which she is likely to agree.<sup>1</sup> The idea is that the past compliance with the easy requests

<sup>1</sup> Kathryn M. Stanchi, *The Science of Persuasion: An Initial Exploration*, 2006 *Mich. St. L. Rev.* 411, 418–19.

“The structure of introductory writing courses (predictive first, then persuasive) can contribute to the struggle with presenting rules persuasively.”

paves the way for the future compliance.<sup>2</sup> FITD works because people like the feeling of making consistent decisions, and they dislike the feeling of dissonance that comes with making inconsistent decisions. The effect of FITD is sometimes likened to convincing someone to go up each step of the high dive, one at a time.<sup>3</sup> With each step up, it becomes easier to take the next step, and harder to make the decision to come down.

I do the FITD exercise when students have to advocate for a controversial or difficult rule. Before the exercise, I first take a few moments to explain the basic psychology of FITD to students, and I explain that legal advocates can exploit this strong human preference for consistency by presenting legal premises sequentially, from easier to accept to more controversial. Then, we work on how to present a rule using FITD. This exercise works particularly well in cases where the rule students are advocating for is a novel point of law or otherwise a leap from the persuasive precedent, but it can also work for a settled rule that can be articulated differently by both parties. The idea is to teach the students to break the persuasive rule down into parts that are easy to accept, and introduce the rule to the reader in a step-by-step fashion (in other words, take the reader up each step of the high dive).

In my experience, the exercise works best if you use as an example a case the students are currently working with, so that the students are very familiar with the law of the case, have a sense of what rule they want the court to follow, and can more easily break the controversial rule down into its component parts. I think of this kind of exercise as a “construction” exercise, where students must come up with content on their own, as opposed to a “deconstruction” exercise in which students closely read and analyze the tactics used in a pre-made example. A construction exercise works best if the students know the law.

For example, in the spring semester, my first-year students have a brief assignment in which they must argue that parental concern over a child’s safety falls within a statutory definition of “ordinary course of ... business.”<sup>4</sup> This can be a difficult rule to advocate because the obvious connotation of the “ordinary course of business” language is commercial and not familial. The first step of the exercise is to make sure everyone agrees on the basic rule to be advocated, what I call the “target rule.” To get students to articulate the rule to be advocated, I ask students what would be their dream rule for the court to adopt in the opinion. Getting students to articulate a target rule is usually not a difficult step if students are somewhat familiar with the law, as they know what the end result must be for their client. The difficult part is convincing students that the target rule is a legitimate (and ethical) reading of the law. This exercise can help students see whether a target rule is a legitimate and ethical reading of the law, because it forces them to think about how the law explicitly expressed in the authority can support a target rule that is not explicitly expressed.

Once I have the target rule on the board, I then ask the students to shout out information about the statutory language, its history, or the case law interpreting it. I do not worry about order at this point; I just ask for random information about the statute or the advocated premise. During this phase, I often have to ask leading questions, such as “what are some of the ways we could define business?” or “what do we know about why this exception was written into the statute?” But, eventually, students come up with a nice set of premises to work with, such as:

- The word “business” can mean any concern, activity, or mission; although it can have a commercial meaning, it does not have to.
- A statement in the legislative history suggests that the exception was placed in the statute

<sup>4</sup> The assignment involves a parent who tapes telephone conversations that pertain to his child’s safety and well-being. The statute, the Federal Wiretapping Act, permits some interception of telephone calls if the interception occurs in the “ordinary course of ... business.” 18 U.S.C. § 2510(5)(a)(i) (2006).

<sup>2</sup> See *id.* at 419.

<sup>3</sup> See *id.* at 416.

“To get students to articulate the rule to be advocated, I ask students what would be their dream rule for the court to adopt in the opinion.”

“The second exercise I use to teach how to draft persuasive rules uses the psychological technique of ‘priming.’”

in part to avoid criminalizing a father who monitors his teenage daughter.

I write these premises on the board—though of course this exercise could work just as easily with a computer projection. The next step is to prompt the students to provide authority for the premises that they have shouted out. Again, here, some leading questions might be required, such as “are there any cases that support these premises?” or “what authority could you cite for that definition of business other than a case?” I then write on the board, next to each premise, possible authority supporting it. This may be primary authority. Or, we may have to brainstorm about possible other sources of authority, such as dictionaries or canons of construction. If there is no authority, we know we need to revisit the premise, and possibly the target rule. But usually, the premises that the students have suggested are supportable in some way.<sup>5</sup>

The last step is to have the students put the premises in a logical, step-by-step order. It is worth reminding the students of the “high dive” metaphor here, to remind them that we want to make the journey smooth for the reader, and that means not forcing her to take two or three steps at a time. Often during this phase, students will add additional premises (steps) or will add transition sentences or phrases to make the steps smooth. You might end up with something like this:

The client acted in the “ordinary course of business.” The plain meaning of business is broad; it can mean any concern, activity, or mission. [cite] Although it can, it does not necessarily have a commercial connotation. [cite] There is evidence in the legislative history that Congress intended this broader meaning of business. During the hearings on the bill, Congress heard testimony that the ordinary course of business exception “made some sense” because “we wouldn’t want to criminalize a father listening in on his teenage

daughter.” [cite] Based on both the text and the history of the statute, therefore, parental concern over a child’s safety falls easily within the “ordinary course of business.”

This is not a seamless set of steps, but a good start. Once we get through this in class, I send the students off to polish the rule statement, fill in any gaps in the logic, and add transitions to smooth the rough spots in the paragraph.

The exercise is both fun and valuable. The students love the catchy phrase “foot in the door” (which helps them remember the process) and they enjoy hearing a little bit about the psychology of persuasion. More important, the students learn a process for working through a rule statement methodically, and they learn to think more flexibly, and even creatively, about the rules. This exercise is a relatively easy “guided brainstorming” process that they can replicate—either alone or when working in a group.

Finally, the FITD exercise teaches students the important lesson that they can still be persuasive (and they should not give up) even if there is little or no authority directly on point for the rule they need to advocate. As I tell my students, those are the circumstances in which clients need a great lawyer (like them) as opposed to a pretty good lawyer. Any pretty good lawyer can find the law; great lawyers, those truly skilled in the art of persuasion, know how to create law.

## II. Priming Exercise

The second exercise I use to teach how to draft persuasive rules uses the psychological technique of “priming.” Priming is a psychological effect in which an advocate affects our reaction to ambiguous or neutral information by exposing us to a particular prior stimulus, called a “prime.”<sup>6</sup> For example, Tiger Woods is a name that can call up many different associations. However, if someone first talks to you about golf, you are more likely

<sup>5</sup> Note that if you have the time, this is an excellent time to talk about, or revisit, the difference between primary and secondary authority, and the weight given to different kinds of authority.

<sup>6</sup> Kathryn Stanchi, *The Power of Priming in Legal Advocacy: Using the Science of First Impressions to Persuade the Reader*, 89 Ore. L. Rev. 305 (2010).

to think golfer (rather than philanderer) when you hear the name Tiger Woods. By contrast, if someone is talking to you about marriage, or infidelity, you are likely to have a different reaction when you hear the name Tiger Woods. Priming works because of the way our brains, and our memories, operate.<sup>7</sup> When people are confronted by new information, their brains check recent memories to find a shorthand way to interpret the new information.<sup>8</sup> The prime moves information related to the prime to the recent memory, and that means the brain is more likely to use that primed memory to interpret new information.

I use an exercise on priming to teach my students to introduce statutory text in a brief. The priming exercise works well when the assignment students are working on requires them to argue about the meaning of ambiguous text. (It can also work with constitutional text.) This exercise can be done using the assignment that students are working on and familiar with, or it can be done using a stand-alone example. To see the results of priming, students do not have to know the substantive law in the example. In fact, in some ways it helps when the students are unfamiliar with the law, because they are more open to seeing the law from different perspectives.

In my class, I use a Title VII example, because even if the students are not knowledgeable about the law, it is a context with which students have some familiarity. But there are many other potential examples.<sup>9</sup> Prior to this exercise,

instead of lecturing about how priming is useful in law, I will sometimes replicate one of the priming studies in class—in other words, I give the students a priming “test” in class.

There are a number of quick priming studies that you can use to make your point. My favorite is one that involves a short vignette about a man named Donald (this is a very common vignette used in the psychology studies).<sup>10</sup> The vignette is designed to be ambiguous—Donald behaves in certain ways that could be nice or could be awful, depending on how you view them.<sup>11</sup>

In the Donald study, the participants are primed for the traits of “kindness” or “aggressiveness” prior to reading the passage about Donald.<sup>12</sup> In one study, the participants were primed by doing a game in which they confronted a series of words and they had to underline the words that formed a complete sentence.<sup>13</sup> For example, the kindness prime has people change sentences like “love boy the care” to “love the boy.” In the aggression prime, people rearrange sentences like “leg break arm his” to “break his arm.”<sup>14</sup>

After the prime, the participants read the ambiguous vignette about Donald, and then answer some questions about what they think of Donald. The participants’ impression of Donald is almost always affected, pretty significantly, by the prime. Those primed for kindness see him charitably and those primed for aggressiveness see him very negatively.<sup>15</sup> Giving students a test like this doesn’t

“The priming exercise works well when the assignment students are working on requires them to argue about the meaning of ambiguous text.”

<sup>7</sup> See, e.g., Thomas K. Srull & Robert S. Wyer Jr., *The Role of Category Accessibility in the Interpretation of Information About Persons: Some Determinants and Implications*, 37 J. Personality & Soc. Psychol. 1660, 1661 (1979) (once a trait or schema is made more accessible by previous cognitive activity, the likelihood that the schema will be used to encode new information is increased). See also Christine Jolls, Cass R. Sunstein & Richard H. Thaler, *A Behavioral Approach to Law and Economics*, in *Behavioral Law and Economics* 13, 37–38 (Cass R. Sunstein ed., 2000) (discussing availability heuristic).

<sup>8</sup> See Srull & Wyer, *supra* note 7, at 1662.

<sup>9</sup> There are some excellent examples of rules stated from different perspectives in most legal writing texts. These could form the basis of an exercise like the one described here. For some good examples, see Laurel Currie Oates & Anne Enquist, *The Legal Writing Handbook: Analysis, Research, and Writing* 412–416 (4th ed. 2006).

<sup>10</sup> The Donald test is reproduced in the article by Srull & Wyer, *supra* note 7, at 1663–64.

<sup>11</sup> See *id.* For example, Donald is described as talking to his friend at his home, being interrupted by a door-to-door salesman, and telling the salesman to go away. Donald’s response to the salesman can be viewed as mean or dismissive, or it can be viewed as fairly normal, or even respectful of time with a friend.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1669–70.

“ [W]e talk about how the writers deliberately chose introductory material to prime the reader’s impression of the neutral or ambiguous statutory text. ... ”

take that much time, and it can be a fun and memorable way to teach how well priming works.<sup>16</sup>

After students have been primed about priming, we move on to the use of priming to introduce legal rules. I run this exercise as a deconstruction exercise, meaning that we take an example and examine closely why and how it works to persuade. In this exercise, I usually give the following two examples to the students and ask them to read them.

#### Example 1

Title VII is a broad, remedial statute that outlaws employment discrimination based on sex. The statute was intended to strike at the “entire spectrum of disparate treatment of men and women in employment.” Meritor. In keeping with this intention, Title VII plainly states that “[i]t shall be an unlawful employment practice for an employer ... [to] discriminate ... because of ... sex.” 42 U.S.C. 2000e-2 (1)(a) (2000). This language creates “a comprehensive statute proscribing all forms of sex discrimination, whether overt or subtle.” Sprogis.

#### Example 2

Title VII seeks to balance the rights of employees and the rights of business owners to have freedom to run their businesses. McDonnell-Douglas. Title VII prohibits only “unlawful employment practice[s]” in which an employer “discriminate[s] ... because of ... sex.” 42 U.S.C. 2000e-2 (1)(a) (2000). It does not prohibit all or even most adverse employment decisions. Robinson. Indeed, the Supreme Court has noted that Title VII was never meant to “diminish traditional management prerogatives.” Burdine. The decision to retain an employee has always been a core management prerogative.

I then ask the students to think carefully about the two excerpts. The first question I ask is an easy one: which example do you think the lawyer representing the employer wrote? How about the lawyer for the employee? Once the author’s identity is established, I then ask the students to take note of how each example quotes the relevant statutory text (as they must in their briefs), and look carefully at how the two examples are very different in tone and meaning. I ask the students to describe how the writers created those differences.

In describing those differences, we talk about how the writers deliberately chose introductory material to prime the reader’s impression of the neutral or ambiguous statutory text—much like the prime influenced their impression of Donald in the test they took. The students learn that even if they must quote statutory or constitutional text, they need not, and should not, present the information in a neutral way. We discuss how the writers of the excerpts might have wanted the reader to view the ambiguous text, why they chose the introductory material they did, and how they might have found that material (which can lead to a discussion of statutory construction and legislative history). We also discuss how the choice of introductory material might be related to the writers’ theories of the case, and how the writers might have chosen particular words or phrases to highlight certain aspects of their theory.

In addition to priming, this exercise also can be a good starting point to discuss other structural methods of persuasion—or to make a general point about how organization is critical to persuasion. In addition to the introductory material, the examples also demonstrate the

<sup>16</sup> There are other ways to prime for these traits. Sometimes, instead of the word game, I give students a short (two paragraph) story, one about people being kind (a kindness/happy prime) and another about people being mean and unfair (an aggressive/anger prime). This also affects the impression people have of Donald. Note that it helps to have a teaching assistant or someone else there to tally up the results for you. Or, you can give them the test via e-mail prior to class and tally the results yourself.

effectiveness of *following* ambiguous statutory text with persuasive information, to “sandwich” that text with persuasive material, which demonstrates the psychological benefits of recency. Often, people remember the material that they read more recently, which makes it advantageous to put important and persuasive material at the end of paragraphs or sections of a brief.<sup>17</sup>

Overall, the priming exercise shows students that ambiguous or seemingly neutral rules can and should be conveyed persuasively. The exercise also demonstrates that structure and organization can make a substantial difference in the persuasive context, a lesson all lawyers should learn.

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<sup>17</sup> For a terrific discussion of using structure to persuade, see Mary Beth Beazley, *A Practical Guide to Appellate Advocacy* 148, 183–84 (2d ed. 2006).

## Conclusion

For a variety of reasons, students often lack both the confidence and the concrete skills to make the transition from objective to persuasive writing. The transition from objective to persuasive may come too early for some students, and there may be some inherent difficulty with the newness of rules. Students may think of the law and its rules as fixed and constant, not indeterminate and malleable. Exercises that break down the methods lawyers use to draft persuasive rules make this transition a little easier, and give students a replicable process for the future.

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“The exercise also demonstrates that structure and organization can make a substantial difference in the persuasive context, a lesson all lawyers should learn.”

## Another Perspective

“Learning the skill of persuasive legal advocacy is an important component in legal education and legal practice. As a constant component of the everyday work of the practicing attorney, the ability to use persuasive rhetorical techniques is an essential part of each lawyer’s tool kit. Since legal advocacy is a subset of the broader practice of rhetoric, an examination of looking at other types of rhetorical works can be of value to the legal student or practitioner looking to improve his or her skills at advocacy. Martin Luther King’s *Letter from a Birmingham City Jail* provides an excellent example of one such rhetorical work that can be looked upon with profit to introduce basic principles of effective persuasive argumentation. ...

In addition to classical rhetorical theory, King’s letter provides an excellent introduction to four basic strategies used in legal advocacy: the construction of a theme; the use of priming in developing an argument; the use of authority in supporting an argument; and the use of plain, but not dull, language to communicate evocatively and directly to a target audience. Finally, the use of the letter as an introduction to persuasive legal advocacy can provide benefits in legal education by providing a vehicle that can be used to inform students about human-centered approaches to advocacy as well as mission-oriented concerns regarding social justice.”

—Mark DeForrest, *Introducing Persuasive Legal Argument via the Letter from a Birmingham City Jail*, 15 *Legal Writing* 109, 164 (2009).

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## Using a Survey of Returning Students to Improve Your Legal Writing Program

By Erin Donelon

*Erin Donelon is Director of Legal Research and Writing and Professor of the Practice at Tulane University Law School in New Orleans, La.*

Early in the summer, our vice dean for academic affairs forwarded to me a lengthy e-mail message from a rising second-year student. The student was approximately one week into her first summer clerkship, and she wrote to share her “post-LRW thoughts.” She described, in detail, the perceived inadequacies of our legal writing program and peppered her comments with phrases such as “because I feel so ill-equipped” and “I thought I was literally going to vomit from being so unsure about my work.” She then described her “dream LRW class” as one that met three times per week (our class meets only once a week) and involved a series of short, in-class writing assignments (instead of the two longer memos and briefs we now assign each semester). The e-mail concluded with a plea for “more help.”

This e-mail surprised me for several reasons. First, her response seemed to contradict years of teaching evaluations. Our end-of-the-year teaching evaluations are typically strong; the written comments range from effusive praise to snide complaints, but rarely do they offer such a wholesale indictment of our program. Second, like most in our field, my colleagues and I often receive a steady stream of student e-mails over the summer. Many students write to offer their sincere thanks and pass along compliments that they have received from their supervisors.<sup>1</sup> Third, and

most importantly, I believe that our curriculum is grounded in best practices and designed to prepare students for their varied summer work experiences. This belief is based on both the rigor of our curriculum and the positive feedback I’ve received over the years from students, employers, and alumni.

It was tempting to dismiss this student complaint. After all, our teaching evaluations were overwhelmingly positive, and we had just completed a successful American Bar Association site visit. It was easy to rationalize these statements as those of a weaker student who simply lacked confidence and perhaps did not take advantage of all that our program offers. Upon further reflection, however, I realized that there was a kernel of truth to some of her criticisms. Our curriculum was centered on longer writing projects (to allow time for drafts, rewrites, and conferences). But, as essential as the drafting process is, we do sacrifice “real-world experience” in favor of a process-oriented approach. I also realized that, even though we do see increasing confidence in our students over the course of the semester, we might miss underlying turmoil.

This rebuke prompted us to question whether we were fully preparing our students for the real-world practice of law. We wondered whether other students were equally insecure about their abilities and work product. In response to her complaints, we decided to revive our practice of surveying all returning second- and third-year students to better understand our students’ summer work experiences.

### Survey Design

We designed a simple, 14-question survey and posted it on the law school intranet.<sup>2</sup> The goal of

<sup>1</sup> Typical is this excerpt from a note from a former student: “Thanks for all the pre-grade and post-grade advise [sic] ya’ll gave me on that assignment. As painful as the legal writing experience seems, I guess it is actually paying off.”

<sup>2</sup> A copy of the 2010 survey is attached as an appendix.

“ [W]e decided to revive our practice of surveying all returning second- and third-year students to better understand our students’ summer work experiences. ”

the survey was to determine what type of work our students were doing during the summer and whether they felt prepared for that work. We began by asking general questions about whether students were employed over the summer and what type of work they were assigned (litigation, transactional, or other). We then asked open-ended questions about what skills they felt were “not covered” during legal writing and what skills they felt needed “more coverage.” We also seized the opportunity to ask questions about current research methods. To that end, we asked whether students had unlimited access to electronic research services and whether they used both print and electronic sources. Finally, we asked students whether they felt confident in their legal research skills and solicited their advice for future summer associates and for the legal writing program in general.

### Student Response

Although the response rate was relatively low,<sup>3</sup> the students’ responses were thoughtful and informative. As we expected, we found that our students work in a wide variety of settings during the summer. Students also reported that they are asked to prepare a wide variety of documents during their summer clerkships. Interoffice memos and motions were the most common assignments, but many students reported that they often prepared brief e-mails instead of formal memos.<sup>4</sup> All students reported that they had access to electronic databases, but many noted that they did periodically turn to print sources as well.

<sup>3</sup> At the time this article was written, 79 students had responded. This figure represents a 16 percent response rate.

<sup>4</sup> Scholars have also highlighted this trend. See Kristen Konrad Robbins-Tiscione, *From Snail Mail to E-Mail: The Traditional Legal Memorandum in the Twenty-First Century*, 58 J. Legal Educ. 32, 48 (2008) (“Although legal advice was once sent via snail mail and communicated through traditional memoranda, informal memoranda and substantive e-mails appear to have supplanted them.”); Lawrence D. Rosenthal, *Are We Teaching Our Students What They Need to Survive in the Real World? Results of a Survey*, 9 Perspectives: Teaching Legal Res. & Writing 103, 106 (2001) (explaining results of a student survey and noting that “most of the assignments the [Stetson] clerks were asked to perform were shorter than [their] shortest Research and Writing I assignment”).

Interestingly, many of the returning students’ comments tracked those in the original “post-LRW thoughts” e-mail. At least nine students suggested that we incorporate several shorter, time-sensitive projects into the first-year curriculum. One student asked for “more timed assignments to create the high pressure associated with producing a quick memo during a single workday on an unfamiliar topic.” Another student explained that “LRW did a great job of preparing me for the summer job. When I needed to write a formal memo, I knew how to do it. But there were times when I didn’t need (or have time) to go through all of that. If possible, quick, weekly, ungraded, and informal assignments may help prepare students for those instances.”

### Faculty Response: Legal Writing Labs

After reviewing the responses to our survey, we decided to adopt several of the suggestions raised in the original “post-LRW thoughts” e-mail. We wanted to address that student’s real-world experience problem and her confidence problem, and we fortuitously found ourselves with four or five extra class meetings to accomplish this daunting task.<sup>5</sup> Given our relatively high teaching loads (60 students per professor), we also felt that we would not have time to grade another assignment during the semester. For all of these reasons, we have decided to add an ungraded “lab” component to our legal writing curriculum.

Our legal writing labs are designed to simulate the real-world pressures of law practice. Students will be assigned a relatively short research task at the beginning of a one-hour meeting. During the lab meeting, students will independently research an assignment and will draft an e-mail to their “assigning partner” (professor) reporting the results. The e-mail will be briefer and less formal than our graded memoranda, but it will be written in IREACC form. During the lab meetings, the professors will circulate and will be available to

<sup>5</sup> Coincidentally, the 2010 ABA site inspection team recommended that we increase our classroom teaching hours to account for a recent increase in credit hours awarded for legal writing.

“Interoffice memos and motions were the most common assignments, but many students reported that they often prepared brief e-mails instead of formal memos.”

“Students have consistently asked for less formal, short-fuse assignments that replicate the stresses of the practice of law and test their basic research skills.”

answer general research questions and clarify the assignment, but they will not review drafts or answer specific questions about the assignment. Students will be expected to work independently. Completed assignments will be e-mailed to the professor within one hour of the lab meeting. Papers will be reviewed, but not graded, and a model answer with sample research pathways will be provided to students at the next lab meeting.

Our hope is that the lab meetings will address many of the concerns identified in the “post-LRW thoughts” e-mail and in our student surveys. Students have consistently asked for less formal, short-fuse assignments that replicate the stresses of the practice of law and test their basic research skills. Moreover, recent studies have shown that “the traditional legal memorandum is all but dead in law practice.”<sup>6</sup> It is our hope that the eight “urgent” assignments that students will complete during their labs will better prepare them for the fast-paced nature of law practice.

In addition, the lab classes will provide us with the flexibility to respond to other student comments. For example, in the 2010 survey, several returning students suggested that we incorporate a wider variety of sources into their assignments. These extra lab classes will enable us to incorporate statutes, regulations, legislative history, forms, and other sources into the curriculum without complicating the graded assignments. And, finally, although anxiety is an inevitable part of the first summer clerkship experience, we hope that the intense, independent work students will have done on the lab assignments will instill confidence and minimize the stress (and even nausea) that accompanies their first foray into the “real world.”

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<sup>6</sup> See Robbins-Tiscione, *supra* note 4, at 32.

## Appendix

### Legal Research and Writing Survey Summer 2010

#### Returning Second- and Third-Year Law Students:

Did you feel prepared for your summer job? Do you have advice for first-time summer clerks? Please take the attached survey to let us know.

The Legal Research and Writing faculty members want to be sure we are preparing our first-year students for their summer jobs and internships. Please answer the following questions. If you would like to discuss the questions in greater detail, please contact Professor Donelon. Thank you for your input as we continue to improve the Legal Writing program.

- (1) Were you employed (in either a paid or unpaid position) over the summer?
  - Private Firm
  - Nonprofit Organization
  - Judicial Externship
  - Government
  - Non-Legal
  - Other
- (2) If yes, how would you classify your employer?
  - Private Firm
  - Nonprofit Organization
  - Judicial Externship
  - Government
  - Non-Legal
  - Other
- (3) What types of documents were you expected to draft?
  - Interoffice memoranda
  - Client correspondence
  - Motions
  - Appellate briefs
  - Contracts
  - Other (please describe)
- (4) Was your work primarily litigation or transaction-oriented, or a combination of both? Please specify the general areas of practice in which you worked.

(5) If you drafted interoffice memoranda, were you expected to use the IREACC structure used in your Legal Research and Writing course or did you use—successfully—a structure based generally on IREACC? If not, please explain the different approach you believe was expected.

(6) Did you receive feedback from supervisors about your written work? Please explain.

(7) Is there any skill that you felt you needed that was *not* covered in your first-year LRW class? If yes, please explain.

(8) Is there any skill that you felt you needed that you wish had received *more coverage* in your first-year LRW class? If yes, please explain.

(9) What types of legal research materials were available to you over the summer?

Unlimited access to electronic databases (Lexis and/or Westlaw)

Limited access to electronic databases (Lexis and/or Westlaw)

Full law library access

Limited law library access

(10) Did you use both print and electronic research materials?

(11) If you used *print* materials, which of the following sources did you use?

Case Digests

Shepard's

Secondary Sources

Annotated Statutes

Other (please describe)

(12) Did you feel confident in your legal research skills? If not, what legal research topics would have been helpful during your first-year LRW class?

(13) What suggestions do you have for first-time summer associates?

(14) What other comments or suggestions do you have about the first-year LRW curriculum, particularly in terms of how it could better prepare students for the tasks they will likely encounter in their summer jobs?

Thank you for your input.

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## Oral Argument as a Dance Best Set to Music

By Teri A. McMurtry-Chubb

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Oral argument is a carefully calibrated verbal dance between an attorney and a judge or judicial panel. Rather than approaching the dance as a friendly two-step, where each party has equal responsibility for his or her movements to create a lively dance, many law students engage in a verbal tango with the court. In these situations, the law student-follow is quickly dominated and subdued by the court-lead in a dramatic and embarrassing fashion.<sup>1</sup> Law professors have viewed these verbal *cambio de frente*<sup>2</sup> with dismay, often blaming themselves for law students' lack of preparation or fear of public speaking. However, by providing a (literal) soundtrack for students as they learn the oral argument dance, legal educators can guide them toward more careful choreography.

Studies on the connection between music and learning have been given the most weight among K-12 educators. Although the benefits of using music as a teaching tool have been proven, such “experimental” teaching is not frequent past the secondary school level, and is almost nonexistent

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<sup>1</sup> Lead and follow represent the position of the partners in the tango. The lead is the dominant partner who leads the follow, the submissive partner, in the dance. The lead is almost always the man. The follow is almost always the woman.

<sup>2</sup> *Cambio de frente* literally means “change of face.” These are essential dance moves of the tango where both the lead (man) and follow (woman) appear to take turns dominating the movement of the dance. The man advances and turns the woman, and then the woman advances and turns the man. However, even when the woman advances and turns the man, she is still being led by the man. The same is true of the court's role in oral argument. The court is the leader in the argument. A lawyer may advance an argument, but the court is still leading through its careful questioning.

in legal education. Music therapists and cognitive scientists have argued that music aids students in building and improving communication skills, encourages pattern recognition, stimulates creativity, and awakens the “right brain.”<sup>3</sup>

Oral argument requires that students have a more sophisticated view of communication as they move from written to oral advocate. It also requires that students recognize the patterns or themes in their arguments and that students exercise creativity in their approach to constructing an oral argument. To the extent that kinesthetic, visual, and auditory learners—right-brain learners—are present in our classrooms, legal educators should be open to the varied ways that we can teach them communication skills. Furthermore, left-brain learners must develop greater right-brain skills, such as listening and visualizing, to become better oral advocates. Using music to teach oral argument can accomplish these goals.

### The Approach: Class Overview

Bringing my iPod and boom box to class on the day of the oral argument lecture always causes shock and disbelief among my students. The appearance of my boom box hastens looks of indignation. At first, the students mistakenly believe that music has no place in the law school classroom and they wonder what purpose it could possibly serve. Their first inclination is to “write off” the class as one where they will not have to pay attention. The oral argument lecture occurs when students are at their

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<sup>3</sup> See Kate Gfeller, *Musical Mnemonics as an Aid to Retention with Normal and Learning Disabled Students*, 20 *J. Music Therapy* 179 (1983); Wanda T. Wallace, *Memory for Music: Effect of Melody on Recall of Text*, 20 *J. Experimental Psychol.: Learning, Memory, and Cognition* 1471 (1994); D.W. Claussen & Michael H. Thaut, *Music as a Mnemonic Device for Children with Learning Disabilities*, 5 *Can. J. Music Therapy* 55 (1997).

“Oral argument is a carefully calibrated verbal dance between an attorney and a judge or judicial panel.”

intellectual breaking point: at the end of spring semester. Although it may seem that introducing a new teaching method at a time when the students are grumpy and tired is poor judgment, the contrary is true. Students' left brains are exhausted, but their right brains have barely been touched during their largely traditional 1L experience.

I begin the lecture by introducing the concept of the remix. A remix is when a musician or composer refashions an existing song while keeping its essential elements. The remix is a proper simile for oral argument, because students are refashioning their written brief into another form of communication while retaining its essential elements. I play two songs to demonstrate this point: the original version of a popular song followed by its remixed version. These songs begin the lecture and allow the class to enter into a discussion about their similarities and differences. This facilitates the students' understanding of how oral argument differs from the text of the written arguments in their briefs.

The next group of songs demonstrates the concepts of the mantra, and deductive and inductive reasoning in argument. The mantra is the theme or theory of the case, the unifying structure that facilitates the court's understanding of the argument. All of the arguments must lead back to the mantra. After introducing the concept of the mantra and illustrating it through several songs, I play a succession of songs that suggests how to order assertions and reasons. First in the group is a song or songs in which an assertion is located far from a reason. These songs are examples of what students should not do in oral argument. If the court cannot logically and quickly connect a reason to an assertion, the impact of the argument and the court's understanding of it is weakened. Next in the group are songs in which the lyrics demonstrate assertions and reasons ordered deductively and inductively. The last song is one in which the songwriter builds an argument through the telling of a story.

### **The Execution: Song Selection**

The selection of the songs for this lecture is a careful enterprise. When the semester begins, I distribute an index card on which students write their favorite movies, television shows, bands, and vocalists. This allows me to bring examples from popular culture into my lectures to which students can relate. Armed with this information, I sort through a variety of songs and song lyrics to find the best examples of mantra, assertions located far from reasons, deductive and inductive reasoning, and storytelling. Song lyrics can be powerful teaching tools for argument, because the songwriter is attempting to "argue" a point. The point can be about love, loss, life, or items less serious. Ultimately, we like the song because it has a beat that is pleasing to the ear or it evokes some feeling or memory that is familiar to us. Such is the purpose of oral argument. The mantra must be pleasing to the judge's legal ear and her understanding of what the case means, and the arguments must urge a familiarity with the law in a manner that does not do violence to the doctrine of stare decisis. The best arguments are those in which the advocate is able to have a conversation with the court about why the proposed course of action is not only necessary, but also the proper course of action to take. Similarly, the most loved song lyrics are those that convince us to throw caution to the wind (as a necessary or required act) or affirm a course of action in which we are currently engaged or which we have already taken.

### **The Mantra**

In choosing a song for the mantra, I look for one that is repetitive and ubiquitous. Like the mantra in the oral argument, the song has to be given a lot of airtime and must have a message that the hearer cannot remove from his or her brain. Examples of good mantra songs are "Remind Me" by Royksopp<sup>4</sup> (more commonly known as "The Caveman Song" from the Geico commercials)

<sup>4</sup> <[http://www.lyricsmania.com/remind\\_me\\_lyrics\\_royksopp.html](http://www.lyricsmania.com/remind_me_lyrics_royksopp.html)>.

“When the semester begins, I distribute an index card on which students write their favorite movies, television shows, bands, and vocalists.”

“After students hear the first verse of this song, I pause the song to ask them what it is about. No one can tell me.”

and “It Takes Two” by Rob Base.<sup>5</sup> The repetitive phrase in “Remind Me” is “And everywhere I go, there’s always something to remind me of another place and time where love that travelled far had found me.”<sup>6</sup> The repetitive phrase in “It Takes Two” is “It takes two to make a thing go right. It takes two to make it outta sight.”<sup>7</sup> These songs and their phrases are instantly recognizable to students. Rather quickly, they assimilate the concept of theme or theory of the case and make the connection in transforming their written work.

#### Assertion Located Far from a Reason

Songs in which the lyrics make no readily ascertainable argument or are abstract are best to use in this section of the lecture. Note the following lyrics from Death Cab for Cutie’s song “Title and Registration”:<sup>8</sup>

The glove compartment isn’t accurately named  
And everybody knows it.  
So I’m proposing a swift orderly change.

Cause behind its door there’s nothing to keep  
my fingers warm  
And all I find are souvenirs from better times  
Before the gleam of your taillights fading east  
To find yourself a better life.

I was searching for some legal document  
As the rain beat down on the hood  
When I stumbled upon pictures I tried to forget  
And that’s how this idea was drilled into my head

Cause it’s too important  
To stay the way it’s been

<sup>5</sup> <[http://www.lyricsmania.com/it\\_takes\\_two\\_lyrics\\_rob\\_base\\_dj\\_e-z\\_rock.html](http://www.lyricsmania.com/it_takes_two_lyrics_rob_base_dj_e-z_rock.html)>.

<sup>6</sup> <[http://www.lyricsmania.com/remind\\_me\\_lyrics\\_royksopp.html](http://www.lyricsmania.com/remind_me_lyrics_royksopp.html)>.

<sup>7</sup> <[http://www.lyricsmania.com/it\\_takes\\_two\\_lyrics\\_rob\\_base\\_dj\\_e-z\\_rock.html](http://www.lyricsmania.com/it_takes_two_lyrics_rob_base_dj_e-z_rock.html)>.

<sup>8</sup> <[http://www.lyricsmania.com/title\\_and\\_registration\\_lyrics\\_death\\_cab\\_for\\_cutie.html](http://www.lyricsmania.com/title_and_registration_lyrics_death_cab_for_cutie.html)>.

There’s no blame for how our love did slowly  
fade

And now that it’s gone it’s like it wasn’t there  
at all

And here I rest where disappointment and  
regret collide

Lying awake at night

There’s no blame for how our love did slowly  
fade

And now that it’s gone it’s like it wasn’t there  
at all

And here I rest where disappointment and  
regret collide

Lying awake at night (up all night)

When I’m lying awake at night.

After students hear the first verse of this song, I pause the song to ask them what it is about. No one can tell me. When the song finishes, I ask them to articulate the assertion that the lyricist is attempting to make. They latch onto the last two highlighted verses. This then leads to a discussion of why locating an assertion far from a reason is ineffective as an argument style. In this case, by the time the listener realizes the point of the song he or she has lost interest.

#### Inductive Reasoning in Argument: Argument conclusions preceded by explanations<sup>9</sup>

The purpose of using songs to demonstrate inductive reasoning is to acquaint students with the method of constructing arguments using this reasoning style. When students view the song lyrics with the parts of the arguments delineated, they can more easily understand how to construct their own arguments using inductive reasoning. The following lyrics to “Used to Love U”<sup>10</sup> by John Legend are instructive:

Maybe, it’s me, maybe I bore you [first  
explanation]

No, no, it’s my fault cos I can’t afford you  
[second explanation]

<sup>9</sup> See Laurel Currie Oates & Anne Enquist, *The Legal Writing Handbook* 288 (5th ed. 2010).

<sup>10</sup> <[http://www.lyricsmania.com/used\\_to\\_love\\_u\\_lyrics\\_john\\_legend.html](http://www.lyricsmania.com/used_to_love_u_lyrics_john_legend.html)>.

Maybe baby, Puffy, Jay Z [third explanation]  
Would be better for you cos all I can do is love  
you [fourth explanation]

[Conclusion and mantra]

Baby when I used to love u  
There's nothing that I wouldn't do  
I went through the fire for you  
Do anything you asked me to  
But I'm tired of livin' this lie  
It's getting harder to justify  
Realized that I just don't love you  
Not like I used to

Maybe, I should rob somebody [first  
explanation]  
So we could live like Whitney and Bobby  
[second explanation]  
It's probably my fault, my bad, my loss [third  
explanation]  
But you are, above cost cos all I could do was  
love you. [fourth explanation]

[Conclusion and mantra]

### Deductive Reasoning in Argument: Assertions followed by reasons<sup>11</sup>

The rationale for using a song that demonstrates deductive reasoning is the same for the song used in the previous section. Consider the lyrics to the song “Belief”<sup>12</sup> by John Mayer:

[Introduction]

Is there anyone who  
ever remembers  
changing their mind from  
the paint on a sign?  
Is there anyone who  
really recalls  
ever breaking rank at all  
for something someone yelled real loud  
one time?

[Assertion 1]

Oh everyone believes  
In how they think it ought to be  
Oh everyone believes  
And they're not going easy

[Explanation 1]

Belief is a beautiful armor  
But makes for the heaviest sword  
Like punching under water  
You never can hit who you're trying for

[Explanation 2]

Some need the exhibition  
And some have to know they're trying  
It's the chemical weapon for the war  
That's raging on inside

[Assertion 2]

Oh everyone believes  
From emptiness to everything  
Oh everyone believes  
No one's going quietly

[Mantra]

We're never gonna win the world  
We're never gonna stop the war  
We're never gonna beat this  
If belief is what we're fighting for

### Persuasive Storytelling: Telling your client's legal story

In her article *Legal Storytelling: The Theory and the Practice—Reflective Writing Across the Curriculum*, Nancy Levit states that “Good advocacy—both oral and written, in trial and appellate work—demands the ability to capture the audience's attention through the recitation of facts.”<sup>13</sup> Songs that tell a cohesive story demonstrate the essential skill of choosing what to use to engage the audience.

“Songs that tell a cohesive story demonstrate the essential skill of choosing what to use to engage the audience.”

<sup>11</sup> See Oates & Enquist, *supra* note 9.

<sup>12</sup> <[http://www.lyricsmania.com/belief\\_lyrics\\_john\\_mayer.html](http://www.lyricsmania.com/belief_lyrics_john_mayer.html)>.

<sup>13</sup> Nancy Levit, *Legal Storytelling: The Theory and the Practice—Reflective Writing Across the Curriculum*, 15 *Legal Writing* 253, 256 (2009).

“In listening to this piece, students begin to understand how powerful legal storytelling can be in advocacy.”

For example, Sting writes in the remake of the Johnny Cash classic “I Hung My Head”:<sup>14</sup>

Early one morning with time to kill  
I borrowed Jeb’s rifle and sat on the hill  
I saw a lone rider crossing the plain  
I drew a bead on him to practice my aim  
My brother’s rifle went off in my hand  
A shot rang out across the land  
The horse he kept running, the rider was dead  
I hung my head, I hung my head [mantra]

I set off running to wake from the dream  
And my brother’s rifle went into the stream  
I kept on running into the salt lands  
And that’s where they found me, my head in my hands  
The sheriff he asked me why had I run  
Then it came to me just what I had done  
And all for no reason, just one piece of lead  
I hung my head, I hung my head [mantra]

The song continues through several more verses and concludes with the hanging of the author for the crime of shooting the lone rider. The conclusion of the song is the last time that the author “hangs” his head. In listening to this piece, students begin to understand how powerful legal storytelling can be in advocacy. Arranging a client’s story into a narrative punctuated by a mantra in key parts allows an advocate to connect with his or her audience on an emotional level, while simultaneously underscoring the client’s most important arguments.

### Music Is Essential

In closing, music is essential for students to learn the dance of oral argument. By giving our students lessons in choreographing their arguments, we can save them the embarrassment of an ill-executed tango by providing the soundtrack for their two-step with the court.

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<sup>14</sup> <[http://www.lyricsmania.com/i\\_hung\\_my\\_head\\_lyrics\\_sting.html](http://www.lyricsmania.com/i_hung_my_head_lyrics_sting.html)>.

## Another Perspective

“Encourage students to listen to stories about legal mavericks, innovative thinkers, and lawyers who have developed a reputation for professionalism and the quality of service they deliver—entrepreneurs who spun off into boutique specialties or female headed smaller practices; lawyers who created new specialty areas of practice (such as cyber law, law and entrepreneurship, animal rights, or transnational law); and attorneys who developed stellar reputations for trustworthiness, fair play, and an exemplary work ethic. Stories raise themes about the structural features of law firms, like the gendered organization of legal practice or questionable billing practices. Stories inform about a firm’s culture, history, and expansion, and they indicate what a firm values.

The stories told about life in practice tell about ethical codes, human relationships, the craft of law—about what is important. If we train students while they are in law school to write their stories with care, with attention to detail, and with passion—and to pay attention to their own roles in the life of the law—we will be training a generation that cares about people and fair treatment of them.”

—Nancy Levit, *Legal Storytelling: The Theory and the Practice—Reflective Writing Across the Curriculum*, 15 *Legal Writing* 253, 276–77 (2009).

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# Ambitious Introductions

By **Stephen V. Armstrong and Timothy P. Terrell**

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This article is not meant to insult your students' intelligence. We know that they already know that they have to "introduce" their reader to their document. What we have in mind is a challenge well beyond the ordinary: How can they craft an introduction that brings even the most reluctant reader willingly into even the most dense and complex document?

Much of the battle to capture and impress a reader is won or lost in the first two or three paragraphs, and sometimes in the first. That's a familiar truth, but novice legal writers seldom take it seriously enough and, as a result, they usually need to be pushed to write introductions that do more communicative work. To be effective, an introduction should not only shed a clarifying light on everything that follows (even though that alone is a challenge). It should also demonstrate the writer's mastery over the document's content and structure, and it should begin to establish the writer's credibility in the reader's eyes. In other words, it should demonstrate the writer's *competence* and *confidence* as well as create some initial clarity.

To accomplish those goals, excellent introductions to almost all documents—briefs, memos, or letters—take three steps that focus not on the

document's substance, but on the reader's psychology.<sup>1</sup> The best introductions:

- make readers "smart" enough to absorb the document's content easily,
- persuade them it will be worth paying attention, and
- make them comfortable enough with the document's approach and language so that they are willing to spend some time in the writer's company.

Each of these topics deserves separate attention, even though the introduction will always be a blend.

## I. The Psychological Elements of an Ambitious Introduction

### A. Making Readers Smart

We do not mean to imply that an introduction can raise your readers' IQ. But it can kick their brains into gear so they can apply their intelligence more energetically as they read. As a writer, you seek readers who are not passive sponges absorbing information mindlessly, but who think about, assess, and use the information as they read. To create that level of engagement, your introduction must provide the following:

- (1) A label. It must first "tame" your readers: You do not want them thinking about everything that might come into their heads as they begin to read, but only about your specific topic. Simply

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<sup>1</sup> In a previous volume of this publication, we discussed a closely related topic: the concept of "front-loading" information in a document, and doing so at every level of the document. Stephen V. Armstrong & Timothy P. Terrell, *Why Is It So Hard to Front-Load?*, 18 *Perspectives: Teaching Legal Res. & Writing* 30 (2009). Here, however, we focus entirely on just the very beginning of the document, where your relationship with your readers is being established.

“Much of the battle to capture and impress a reader is won or lost in the first two or three paragraphs, and sometimes in the first.”

“To be effective—that is, to give the reader a precise and intensive focus—the label must pass two tests.”

announcing your subject—“This appeal involves an unusual and unresolved hearsay issue” or “This contract dispute arises from the tumultuous aftermath of Hurricane Katrina”—narrows the reader’s mental range. It says, in effect, “Close 99 percent of the doors inside your head. Open the 1 percent behind which lies knowledge relevant to this topic.” It gets the reader, quite simply, to focus.

To be effective—that is, to give the reader a precise and intensive focus—the label must pass two tests.

First, it must not distract the reader with extraneous material. For example, “This appeal from the 14th District Trial Court in Smithville, decided on January 30, involves an issue of hearsay testimony that, as the Trial Court held, does not fall within the ‘business records’ exception to that doctrine.” Several of the sentence’s details—14th District, Smithville, January 30—are nothing but a distraction. On the other hand, the specific hearsay exception provides just the focus the reader needs—but it is obscured by the static that surrounds it.

Second, the label must be precise enough to focus the reader on exactly what matters. In the example below, imagine that the introduction is followed by two pages of facts about commodity trading practices.

**The original:**

At this point in the case, the only remaining issue is whether petitioner, a commodities dealer, is subject to self-employment tax on earnings from trading U.S. Treasury bond futures contracts.

**A revision:**

At this point in the case, the only remaining issue is whether petitioner, a commodities dealer, remains subject to self-employment tax on earnings from trading, when the trading is conducted through a floor broker rather than directly by the dealer himself. The answer turns on whether, when the dealer trades through a floor broker, he has significantly altered his ordinary course of trading.

(2) A map. The need for a map is too well-known for us to belabor it here. A quick summary: Once readers recognize the document’s topic, their next question becomes “Down what roads will you be taking me? Where’s my map?” A “road map” can be as simple as “Plaintiff’s claim for an easement fails because he lacks three key elements for such a right.” Or it can be longer and more complex, if the document requires it and the reader will put up with it. In either case, the preview of the structure allows readers to organize and categorize the information as they read, absorbing it a stage at a time rather than in one great gulp.

(3) The point. As obvious as this idea might be, reconsider it as a psychological imperative: Even after you provide a “label” or topic, your reader still has a question: “OK, now that I have some sense of your topic and approach, what do you want my brain to *do* with this information? What is my intellectual challenge as I read?” To kick your readers into their highest mental gear, you must make them able to assess your information critically, by testing it against your point or “bottom line.” The “point” will ordinarily come in the form of either a question or a conclusion, and usually the latter. But simply announcing “The other side has no case” is insufficient—which brings us to the second step in our list.

**B. Making Readers Attentive**

Here is the problem so often overlooked: No matter how hard you try to make your readers “smart,” you can’t get your information into their heads unless you get their *attention*. Certainly your point will begin to get your readers’ analytic juices flowing, but what you really want is for them to be willing to consume and digest the whole document. You want them more seriously connected and committed to what may well be a demanding mental exercise.

To achieve this goal, it is not enough to state your legal point. As we have addressed previously in

this publication,<sup>2</sup> the “point” will usually come in two forms. One is the “legal” point—“What is the legal issue and conclusion here?” The other is the more important “practical” point for the reader—“How does this legal stuff matter *to me*?” It is the latter that is the key to getting your reader to pay the kind of attention you want.

At this column’s end, we will provide an example of the difference.

### C. Making Readers Comfortable

As if the qualities above weren’t difficult enough to achieve, now everything gets worse. To make your readers intelligent and attentive, you also need to get them to *relax*. All readers are busy and distracted, and therefore generally hostile to the demands of yet another document. As a consequence, they need to be reassured that your document—even though it is an imposition—will not annoy them. An introduction can begin to provide that reassurance by quickly answering the question “What’s your point?” But it must also answer two more irksome questions:

Are you going to waste my time? Not only must you have a practical point; you also have to present it quickly, and avoid asking your readers to waste precious time on marginally relevant information. When they read professional documents rather than literature, all readers want to get to what matters most at the earliest possible moment. They do not want to wait for it or hunt for it. In other words, they are looking for efficiency as well as clarity. Again, we will provide an example at the column’s end.

What language will you speak? When business executives or other nonlawyers receive a communication from their lawyer, they always

wonder whether the lawyer will address them in a language they can understand, and with which they can therefore connect, or instead, as is too often the case, in the foreign jargon that lawyers speak to each other. This issue is about more, however, than just using “plain English.” It is also about thoroughly understanding your reader’s perspective and expectations, and then trying to approach your topic from that perspective, as the example in section III demonstrates.<sup>3</sup>

### II. Editing: Going Through the List Backward

Even when legal writers pay attention to all the elements of an ambitious introduction, they typically think about them in the order in which we listed them, starting with matters of “substance” such as focus and structure. Although this sequence is perfectly appropriate for drafting, it is not for editing. The bad news is this: All readers—including you—go through the list we presented *backward*. They initially, and very quickly, react to the document’s language: Is it actually speaking to them or instead to some unidentified “other”? If the language or approach seems foreign, they are already getting grumpy. Next, and just as quickly, readers can become frustrated and distracted if they have to dig for key practical advice buried within the document. With these missteps, all the hard work the writer might do at the top of our list—providing “point” and “structure”—is likely to be wasted.

The final message is therefore about editing rather than writing: To produce a first-class, ambitious introduction, you must give yourself enough time in the editing process to return to your opening and to assess it backward—*up* the list we have descended. This, however, takes an act of will,

<sup>2</sup> Stephen V. Armstrong & Timothy P. Terrell, *To Get to the “Point,” You Must First Understand It*, 13 Perspectives: Teaching Legal Res. & Writing 158 (2005).

<sup>3</sup> In another article, we discussed the effect of “tone” and “character” on a reader’s reaction to a document. Stephen V. Armstrong & Timothy P. Terrell, *Understanding “Style” in Legal Writing*, 17 Perspectives: Teaching Legal Res. & Writing 43 (2008).

“An introduction can begin to provide that reassurance by quickly answering the question ‘What’s your point?’”

“Examples are, of course, critical to bringing our advice to life, but given the constraints of this short article, we will discuss only one.”

for it is neither natural nor easy for a writer to perceive a document so thoroughly from the reader’s perspective. Yet the best work requires it.

### III. An Example

Examples are, of course, critical to bringing our advice to life, but given the constraints of this short article, we will discuss only one. It is from a letter to a client, here a banker. In the associate’s first draft, the only effort at an “introduction” is a statement of the question that prompted the communication—that is, a nod toward a “label”—and an equally casual nod toward a conclusion. After that, off to the races we go:

Dear Mr. Jones:

You have asked us whether, under West Dakota law, BigBank’s proposed mortgage on MegaMall will take priority over a mechanic’s lien for certain engineering services performed before the recording of the mortgage. We believe it is more likely than not that a court would give it priority.

Under West Dakota law, mechanics’ liens are preferred to all other titles, liens, or encumbrances that may attach to or upon construction, excavation, machinery, or improvements, or to or upon the land upon which they are situated, which shall either be given or recorded subsequent to the commencement of the construction, excavation or improvement. . . .

The statute has been interpreted to mean that any mechanic’s lien, whether filed before or after a mortgage is recorded, has priority over that mortgage if construction began before the mortgage was recorded. There is no . . .

The second paragraph makes two distressing announcements. First, its regulatory jargon says to the reader immediately: “I’m not going to take one step toward you. If you want any information, come into my world.” Second, the launch into dense background authority after the barest of “points” says, in effect: “I am now going to waste lots of your time while you search

for anything helpful.” And the third paragraph then reinforces both these unfortunate messages.

This opening is, quite simply, infuriating.

Below are two revisions. The first still begins with a conventional lawyer’s approach (“you have asked us a legal question”), but it then offers quick and thorough practical advice rather than plunging into dense and jargon-ridden legal detail.

Dear Mr. Jones:

You have asked us whether, under West Dakota law, BigBank’s proposed mortgage on MegaMall would take priority over a mechanic’s lien for certain engineering services performed before the recording of the mortgage.

For BigBank to ensure that the mortgage takes priority, we recommend that it is revised so that it becomes a construction mortgage. Section III of this letter provides more details about the necessary changes. If you decide to take this approach, we would be glad to provide a draft of the revised mortgage.

Without these changes, BigBank risks that the mortgage could be held to have lost priority. Under the relevant West Dakota statute, the mortgage would lose its priority only if the engineering services were held to be the start of construction. West Dakota courts have held that a start must involve visible construction work on the site, a criterion that would not be met by engineering services. However, no West Dakota court has directly addressed this issue for 10 years, and more recent cases in other jurisdictions have employed broader definitions of the start of construction. We believe, therefore, that there is a substantial risk that a West Dakota court today would follow the trend that has developed in other states. Our analysis of this risk follows.

#### I. Priority of Mechanic’s Liens

Under West Dakota law, mechanic’s liens are preferred to other liens or . . .

The next revision is more radical. It begins from the reader’s perspective (the deal the banker is

contemplating) rather than a legal perspective, gets to the practical advice even more quickly and thoroughly, and adopts a less formal style. The choice between these two versions is a judgment call that will depend on the situation (for example, is the letter going to the banker through in-house counsel, or directly?). Our moral is only that law students should understand the options, rather than settling automatically on the most lawyerly approach.

Dear Mr. Jones:

After analyzing your proposed mortgage on MegaMall, we recommend that it be revised into a construction mortgage. This revision will avoid the risk that, if MegaMall becomes insolvent, your claims would take second place to claims by HighRise Engineering for services it will have performed before your mortgage is recorded.

As is explained in Section II, a construction mortgage differs from your proposed mortgage in two ways: . . . Neither change involves any disadvantage or additional risk, compared to the terms of your proposed mortgage.

The risk attached to your proposed mortgage arises because there is some chance, although not a strong one, that a court would find HighRise's engineering services to be the

start of construction on the site. In that case, under West Dakota law, HighRise's claim—a mechanic's lien—would take priority over the proposed mortgage. While West Dakota courts to date have held that the start of construction must involve visible construction work on the site, no West Dakota court has addressed this issue for 10 years, and more recent cases in other jurisdictions have employed broader definitions of the start of construction. As Section I below discusses, this trend might be followed by a West Dakota court facing the issue today.

#### I. Priority of Mechanic's Liens

Under West Dakota law, mechanic's liens are preferred to other liens or . . .

A reader whose psychological "needs" have been met at the beginning of a document—even a letter like this that may be complex and substantively challenging—will be far more willing to stay with you as you demonstrate the value of what you have to offer (and, by the way, the magnificence of your intellect).

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“Our moral is only that law students should understand the options, rather than settling automatically on the most lawyerly approach.”

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## Legal Research and Writing Resources: Recent Publications

Cite as: Barbara Bintliff, *Legal Research and Writing Resources: Recent Publications*, 19 *Perspectives: Teaching Legal Res. & Writing* 162 (2011).

### Compiled by Barbara Bintliff

*Barbara Bintliff is the Joseph C. Hutcheson Professor in Law and Director of the Tarlton Law Library at the University of Texas School of Law in Austin. She is a member of the Perspectives Editorial Board. This bibliography includes references to books, articles, bibliographies, symposia, and research guides that could prove useful to instructors of legal research and writing and their students. Also included are citations to related resources that may be of interest to those who teach legal research and legal writing. It includes sources noted since the previous issue of Perspectives, but does not include articles in Perspectives itself.*

Charles D. Bernholz, *Citation Abuse and Legal Writing: A Note on the Treaty of Fort Laramie with Sioux, etc., 1851 and 11 Stat. 749*, 29 *Legal Ref. Serv. Q.* 133–148 (2010).

The author describes numerous citation errors to an important treaty in a range of cases, law review articles, and administrative materials, and then uses examples of the errors in a discussion of the importance of correct citation form.

Richard Buckingham, *Thinking Like a Librarian: Tips for Better Legal Research*, 12 *T.M. Cooley J. Prac. & Clin. L.* 1 (2009).

“The [four] research techniques described are not new and have been written about by others. But too often they appear in publications read primarily by librarians or introductory legal research textbooks that are several hundred pages long, where their importance is lost on first-year law students. The goal of this article is to share these research tips with a larger audience in a way that demonstrates their usefulness.” *Id.* at 1–2 (footnotes omitted).

Paul D. Callister, *Time to Blossom: An Inquiry into Bloom’s Taxonomy as a Hierarchy and Means for Teaching Ordered Legal Research Skills*, 102 *Law Libr. J.* 191–219 (2010).

The author states that law librarianship has a well-developed literature on legal research teaching methods, but lacks the foundation of a pedagogical theory. The article suggests that Bloom’s Taxonomy be used to identify legal research skills, prioritize objectives, and organize course curricula. The author surveys the literature in law librarianship and legal education on pedagogy and research instruction, then details how the taxonomy might be applied to legal research course design, organization, and assessment.

Joseph A. Custer, *The Universe of Thinkable Thoughts Versus the Facts of Empirical Research*, 102 *Law Libr. J.* 251–268 (2010).

Building on surveys of practicing attorneys and law faculty, the author seeks to understand whether assertions are correct that the West Key Number System actually affects the development of the law, and vice versa. He concludes that “the digest is a minor player in a legal culture where lawyers will go everywhere to find the law.” *Id.* at 265. He offers the suggestion that, by extending the digest classification system to law reviews, lawyers might be helped in their research by exposing them to more ideas that would lead to deeper analysis and better understanding of complex issues.

Peggy Garvin, *The Government Domain: New and Free Regulations Trackers*, LLRX.com, April 21, 2010 (available online at <<http://www.llrx.com/columns/govdomain45.htm>>).

This article includes reviews of RegInfo.gov, Regulations.gov, OpenRegs.com, FedThread.org, Justia Regulations Tracker, and RegulationRoom.org.

Sarah Gotschall, *Teaching Cost-Effective Research Skills: Have We Overemphasized Its Importance?*, 29 *Legal Ref. Serv. Q.* 149–163 (2010).

The author surveyed law students about their summer research experiences to understand how much importance their summer employers placed on controlling online research costs. After analyzing results, she concludes that there is a difference in how much cost control is emphasized, depending on the size of the employer. She notes that there may be less need to emphasize cost-effective research for students who will work at smaller law firms and government organizations.

Kris Helge & Terri Lynn Helge, *Teaching Specialized Legal Research: Business Associations*, 29 *Legal Ref. Serv. Q.* 51–83 (2010).

The authors, a law professor and law reference librarian, offer a summary of the basic substantive law necessary to teach a specialized legal research course on business associations, together with a model syllabus and assignments and an annotated bibliography of 25 important business law sources.

Greg Johnson, *May It Please the Classroom: Using Pending United States Supreme Court Cases to Teach Appellate Advocacy and Persuasive Writing*, 12 *Scribes J. Legal Writing* 99–109 (2008–2009).

This article provides a description of the Appellate Advocacy program at the Vermont Law School, which uses pending U.S. Supreme Court cases as the subject of brief writing and moot court arguments. Details are presented on the steps taken by the legal writing faculty in learning about the cases selected and assembling class materials, and then in actually teaching appellate advocacy using the pending cases.

Soma R. Kedia, *Redirecting the Scope of First-Year Writing Courses: Toward a New Paradigm of Teaching Legal Writing*, 87 *U. Det. Mercy L. Rev.* 147–177 (2010).

In response to claims that law graduates don't know how to write well, the author suggests that the real problem is that their writing "often lack[s] a proper grasp

of the issues at hand and the ability to analyze them in a meaningful, useful, and intellectually sound manner." *Id.* at 149. To address the issue, the author explores the IRAC method and proposes an alternative model based on a legal realism-based, inductive process. The goal of the article is to provide a new model of thinking about and teaching legal writing to produce law graduates who are more prepared for the realities of the practice of law.

John A. Lynch Jr., *Teaching Legal Writing After a Thirty-Year Respite: No Country for Old Men?*, 38 *Cap. U. L. Rev.* 1–18 (2009).

This article provides reflections and discoveries of a long-time doctrinal law professor who voluntarily returned to teaching legal writing after approximately 30 years. He recommends that more doctrinal faculty should teach legal writing because

"[l]egal education's doctrinal faculty unquestionably possess an enormous reservoir of legal writing talent. Diverting at least some of this talent from law review articles and treatises would be great benefit to law students, who, after all, have purchased the services of these professors. But perhaps most importantly, doctrinal professors joining in the enterprise of teaching legal writing would find common cause with the new legal writing professionals. That would make it a great deal more difficult to treat these professionals as the second class citizens of legal education. That would be a significant benefit to all faculty and, most importantly, all law students." *Id.* at 17–18.

Susan Nevelow Mart, *The Relevance of Results Generated by Human Indexing and Computer Algorithms: A Study of West's Headnotes and Key Numbers and LexisNexis's Headnotes and Topics*, 102 *Law Libr. J.* 221–249 (2010).

"This article begins the investigation into the different ways results are generated in West's 'Custom Digest' and in LexisNexis's 'Search by Topic or Headnote' and by KeyCite and Shepard's. The author took ten pairs of matching headnotes from important federal and California cases

and reviewed the results sets generated by each classification and citator system for relevance. The differences in the results sets for classification systems and for citator systems raise interesting issues about the efficiency and comprehensiveness of any one system, and the need to adjust research strategies accordingly.” Abstract.

Lisa T. McElroy & Christine N. Coughlin, *The Other Side of the Story: Using Graphic Organizers to Counter the Counter-Analysis Quandary*, 39 U. Balt. L. Rev. 227–253 (2010).

The authors assert that most instruction in legal analysis does not include counter-analysis, that is, looking at the “other side of the story.” The article explains why teaching counter-analysis is so difficult, using social science and educational psychology theory, and examines learning theory by focusing on the use of the graphic organizer, “a visual display that presents the key ideas in a structure that reflect the relationships among the concepts.” *Id.* at 237. Examples of possible uses of graphic organizers in the law classroom are offered, and the article concludes with an argument that teaching counter-analysis, while difficult, is critical to law students’ analytic abilities.

C. Andrew Plumb-Larrick, *Bankruptcy: A Legal Research Course*, 29 Legal Ref. Serv. Q. 193–227 (2010).

“The first half of [the] article presents an introduction to the field as a basic substantive grounding necessary to [anyone] pondering a legal research course grounded in bankruptcy law. The article also familiarizes the prospective research instructor with the major sources of law in the field and assesses numerous secondary sources and research tools covering the field with an eye to which print and online sources will be of the best anticipated value to today’s legal research students. Model syllabi are proposed for either a larger, three-credit course or for a one-credit minicourse in specialized research that might either stand alone or serve as a supplement to a substantive source or seminar in the field.” Synopsis.

Victoria S. Salzmann, *Honey, You’re No June Cleaver: The Power of “Dropping Pop” to Persuade*, 62 Me. L. Rev. 241–264 (2010).

The article examines the use of references to popular culture in legal communications. “Understanding [this use] gives insight into the use of popular culture as a valuable persuasive device. It also, however, raises the issue of whether using popular-culture references is simply good lawyering or manipulation that masks the truth. Learning how to tap into the former while avoiding ethical issues raised by the latter” is the article’s overall purpose. *Id.* at 242.

Wayne Schiess, *Legal Writing Is Not What It Should Be*, 37 S.U. L. Rev. 1–24 (2009).

As an experienced legal writing professor who has read a large amount of legal writing, the author has come to believe that most legal writing is mediocre. He uses this article to explain why legal writing is not as good as it should be. He argues that there are nine complex and connected factors causing poor writing and concludes that, because of this, significant improvement will be difficult. Nevertheless, he offers four recommendations that should make a difference in attorney writing skills.

Jennifer Sheppard, *Once Upon a Time, Happily Ever After, and in a Galaxy Far, Far Away: Using Narrative to Fill the Cognitive Gap Left by Overreliance on Pure Logic in Appellate Briefs and Motion Memoranda*, 46 Willamette L. Rev. 255–296 (2009).

“This article proposes that lawyers can draft more persuasive appellate briefs and motion memoranda—documents that convince the court of the authenticity and correctness of the outcome they suggest—by paying more attention to what stories they tell, and to the elements of narrative. To that end, this article first reviews the current state of cognitive research with regard to narrative and establishes the importance of narrative as a tool for persuasion. Next, this article discusses the elements of a story and establishes how they might be used to mold an appellate brief or motion memoranda into a persuasive narrative.” *Id.* at 258 (footnotes omitted).

Peter Siviglia, *Designs for Courses on Drafting Contracts*, 12 *Scribes J. Legal Writing* 89–98 (2008–2009).

The author, a practitioner, “suggests and discusses content that could form the body of one or more courses on drafting contracts.” *Id.* at 90.

Jason R. Sowards, *Teaching Specialized Legal Research: Administrative Law*, 29 *Legal Ref. Serv. Q.* 101–132 (2010).

“In an effort to provide more attention to the legislative and administrative law processes than typical first year legal research instruction can provide, the author created a specialized legal research course on legislation and administrative practice and procedure. Set forth within this article is a very brief background on the substantive law an instructor for a course would need to know. Also included is an overview of the resources taught, assignments given, and evaluation tools used.” Abstract.

Adam Stephenson, *Arizona Juvenile Law Legal Research: Resources and Strategies*, 2 *Phoenix L. Rev.* 193–281 (2009).

“This article provides a comprehensive review of the history of Arizona juvenile law and available Arizona legal resources along with their usefulness and accessibility for the Arizona juvenile legal practitioner. It also provides assessments of the cost, best applications, overall utility and locations of the various resources around the state. The appendices include outlines of the Arizona case law regarding both delinquent and dependent juveniles.” *Id.* at 194–195.

Ken Strutin, *Basic Legal Research on the Internet*, LLRX.com, June 24, 2010 (available online at <<http://www.llrx.com/features/basiclegalresearchinternet.htm>>).

This article explores 20 legislative, judicial, regulatory, and secondary authorities on the Internet that are important for legal research. For the most part, the databases and search tools noted are free, although some might require a library card.

Sarah Valentine, *Legal Research as a Fundamental Skill: A Lifeboat for Students and Law Schools*, 39 *U. Balt. L. Rev.* 173–226 (2010).

In the “sea change” of today’s curricular responses to improve skills training and the “ever-growing waves of information” that threaten to overwhelm law students, the author shows how “[l]egal research, recognized and taught as both a legal and a lawyering skill, can be a lifeboat for law schools and law students riding out this storm.” *Id.* at 173. She argues that current legal research education is “dangerously deficient,” and explains the consequences of continuing this state of instruction. *Id.* at 179. After showing how legal research can bridge the education-practice divide, she offers four principles for rebuilding legal research education.

Amy Vorenberg & Margaret Sova McCabe, *Practice Writing: Responding to the Needs of the Bench and Bar in First-Year Writing Programs*, 2 *Phoenix L. Rev.* 1–38 (2009).

The article addresses the disconnect between what is taught in legal writing programs and what level of writing ability is expected of new attorneys. The authors administered two surveys—one for lawyers, judges, and clerks, and another for judges only (who were also asked to read student papers and were then interviewed by the authors)—in order to understand whether there was a real gap between legal education and practice needs. After explaining survey results and determining such a gap exists, the authors explore many of the ideas that came from the surveys and the analysis of responses, and describe how some of the ideas have been integrated into their first-year curriculum.

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