

Perspectives

Teaching Legal Research and Writing

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The Art and Architecture of Paragraphs: Focus, Flow, and Emphasis, Part II

By Stephen V. Armstrong and Timothy P. Terrell

Tim Terrell is Professor of Law at Emory University School of Law. Steve Armstrong is the principal of Armstrong Talent Development, which provides consulting services and training programs to law firms. Both have conducted many programs on legal writing for law firms and departments, bar associations, and federal and state judges. Together, they are the authors of Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing (3rd edition, 2008), and regular contributors to the Writing Tips column.

This is the second in a trilogy of articles on the topic of writing strong paragraphs that will impress even the most ferocious editors—the kind your students are likely to encounter once they graduate. Our starting point has been a painful psychological fact about how readers, especially readers who are habitually skeptical, approach a document. At every level, from its very beginning all the way down into the innards of its paragraphs, they are constantly asking annoying questions: Why am I reading this? Where are we going? Why are we going there? These three articles are about how writers should respond to these questions at the paragraph level, so they can keep the reader with them on the page and moving comfortably through the document.

Our first article dealt with creating “focus” at the paragraph’s beginning.¹ As it tried to demonstrate, that requires more than a casual, formulaic approach to writing a topic (or thesis) sentence. Instead, it requires careful thinking about what we called the paragraph’s internal and external points—why the reader should read the paragraph and how the paragraph fits with preceding paragraphs to move the analysis forward.

Flow: Moving from Logic to Coherence

This article assumes that we have an adequate beginning and now have to develop the paragraph’s point through its interior. Most novice writers assume that the standard here is relatively straightforward and modest: As long as the paragraph proceeds logically from one sentence to another, the reader will be satisfied. Once again, novices badly underestimate their responsibility. If they stop there, they create documents that become quite irksome to a reader rather quickly. Indeed, when we hear partners in law firms complain that “the associates can’t write,” they often mean that the documents they are handed are a struggle to wade through, even though they are logically organized.

What these documents lack is the quality of “flow.” It is based in the critically important difference, also noted in our previous articles, between a document’s “logic” and its “coherence.” The former is about order; the latter, the perception of order. Logic or, more generally, clear thinking is a necessary condition for coherence, but not a sufficient one.

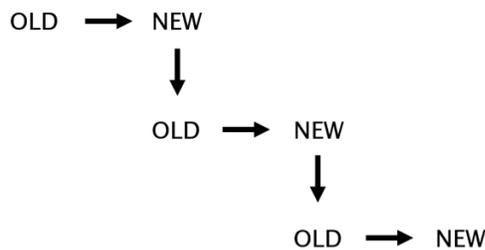
Understanding Coherence: Old to New

The key to flow within a paragraph is a simple proposition: Readers are best able to understand and absorb information if they can base each new piece of information on something they already know. The idea, in its most general form, is “Put old information before new information.” Start the reader with something familiar to them, and then move them to the unfamiliar. This is the reason behind our previous article’s emphasis on the responsibility of a paragraph’s topic sentence to provide an “external” point, which links the current paragraph (new information) to those that preceded it (old information).

“Our starting point has been a painful psychological fact about how readers, especially readers who are habitually skeptical, approach a document.”

¹ Stephen V. Armstrong and Timothy P. Terrell, *The Art and Architecture of Paragraphs: Focus, Flow, and Emphasis*, 23 Perspectives: Teaching Legal Res. & Writing 20 (2014).

Now we are simply extending that idea into the interior of the paragraph. To represent this phenomenon schematically, the following is a template—familiar to the readers of this column, we assume—that your students could lay on top of any paragraph to determine if the quality of flow is present:



Each sentence should begin with an idea that is not coming in from left field, but is instead obviously linked to previous material. In the diagram above, note that the “new” information in each successive sentence becomes “old” information for the reader as he or she progresses to the next sentence. No step within the paragraph’s sequence is, therefore, a surprise.

Editing for Flow and Coherence

Here are three examples. The first we will not bother to revise, using it simply to illustrate how writers operating on automatic pilot may well overlook the difficulties they are imposing on the reader:

“Indispensable instrument” is defined in the Restatement of the Law, Security § 1 comment (e) as “formal written evidence of an interest in intangibles, so representing the intangible that the enjoyment, transfer or enforcement of the intangible depends upon possession of the instrument.” See *Annot. Pledge by Transfer of Instrument*, 53 A.L.R.2d § 2 (1957). A passbook that is necessary to the control of the account has been held to be an indispensable instrument. *Peoples Nat’l Bank*, 777 F.2d at 461; *Walton v. Piqua State Bank*, 204 Kan. 741, 466 P.2d 316, 329 (1970). In *Miller v. Wells Fargo*, the corporation did not have a passbook account, but rather gained access to

its account by telex key code. The bank argued that ...

The second sentence is upside-down, beginning with the new information of “passbook” and ending with the linking idea of “indispensable instrument.” And the third sentence begins with a case citation that has no evident link at all to the previous two sentences. This kind of glitch happens not because writers are incompetent. Instead, they, like all of us, have a tendency to begin the next sentence somewhat mindlessly with the information that is important to them at that point (the new information about the passbook and the next case to be analyzed), and then end with what they consider boring (the old information from previous sentences).

The next example also has a middle sentence that is upside-down, but we will use it to raise a question: Why is it so hard for so many writers to see that their writing lacks flow?

Before:

The Fourth Amendment protects citizens of the United States against unreasonable searches by the government. The Supreme Court applies a reasonableness test to determine whether a citizen’s rights have been violated in unreasonable search cases. The test balances the citizen’s privacy interests against the government’s interests that are furthered by the search.

After:

The Fourth Amendment protects citizens of the United States against unreasonable searches by the government. To determine whether a citizen’s rights have been violated in a search, the Supreme Court applies a reasonableness test. This test balances the citizen’s privacy interests against the government’s interests that are furthered by the search.

In the original, the second sentence begins with new information (“Supreme Court” and “reasonableness test”) and only then, at its end, provides the connective tissue from the first sentence (“unreasonable search cases”). The revision fixes that problem and, in the process, also

“... they, like all of us, have a tendency to begin the next sentence somewhat mindlessly with the information that is important to them at that point ... and then end with what they consider boring”

creates a smoother link between the second and third sentences. This revision is not the only way to create flow, of course. Perhaps, for example, the word “search” should be placed earlier in the second sentence to tie it even more closely to the first:

The Fourth Amendment protects citizens of the United States against unreasonable searches by the government. When a search is challenged, the Supreme Court applies a reasonableness test to determine whether a citizen’s rights have been violated.

On these details, reasonable people can disagree, which we don’t mind. That discussion simply means that a very sophisticated editing session is under way.

But let’s turn to the question we raised. We suspect that many of you found the original paragraph not all that difficult to read, and the revision only, at best, a modest improvement. If so, you probably considered the beginning of the original second sentence relatively smooth because the information there did not seem unexpectedly “new.” This can be explained by the breadth of what counts as “old” information in a reader’s head: It is not limited to information the writer is currently supplying the reader; it also includes everything he or she already knows as he or she approaches the document. So for a legally trained reader, the initial reference to “the Fourth Amendment” alerts him or her to the fact that the discussion is about constitutional litigation, and hence, the references at the beginning of the second sentence to “Supreme Court” and “reasonableness test” are not a surprise.

This breadth of knowledge means that lawyer writers face a particular challenge. Because of the vastness of the “old” information in their heads, it can become difficult for them to see the points of disconnect for their readers, especially when they are writing within their area of expertise. To demonstrate, we give you the following “legal” example. Many lawyers will lack enough “old” background information to make up for the misordering of the sentences after the first:

Before:

This case is not so much a contest between the United States Department of Justice and the

two defendant companies as a skirmish in a broader battle over the direction American economic life will take in the coming years. The concept of the conglomerate corporation—not a particularly new idea, but one that lately has gained great momentum—is at the center of this struggle. The attempt of companies to expand through acquisition of other firms, while avoiding the antitrust problems of vertical or horizontal mergers, is one reason for the recent popularity of this concept. The resulting corporations have had none of the earmarks of the traditional trust situation, but they have presented new problems of their own. Although the market shares of the several component firms within their individual markets remain unchanged in conglomerate mergers, their capital resources become pooled—that is, concentrated into ever fewer hands. Economic concentration is economic power, and the government is concerned that this trend, if left unchecked, will pose new hazards to the already much-battered competitive system in the United States.

Every sentence after the first begins with information unlinked to the previous sentence. The second sentence is indeed a dramatic example of being upside-down—only at its very end do you finally get the connection (“this struggle”) to the first sentence’s theme (“contest”).

Below is a revision. The first sentence remains the same, but thereafter the words within the sentences are rearranged to begin with more familiar, linked information and then move on to new material.

After:

This case is not so much a contest between the United States Department of Justice and the two defendant companies as a skirmish in a broader battle over the direction American economic life will take in the coming years. At the center of this struggle is the concept of the conglomerate corporation—not a particularly new idea, but one that lately has gained great momentum. One reason for its

“Because of the vastness of the ‘old’ information in their heads, it can become difficult for them to see the points of disconnect for their readers, especially when they are writing within their area of expertise.”

“... a paragraph that does not ‘flow’ can be not only difficult to read, but actually confusing and misleading.”

recent popularity is the attempt of companies to expand through acquisition of other firms, while avoiding the antitrust problems of vertical or horizontal mergers. The resulting corporations have had none of the earmarks of the traditional trust situation, but they have presented new problems of their own. In these conglomerate mergers, although the market shares of the several component firms within their individual markets remain unchanged, their capital resources become pooled—that is, concentrated into ever fewer hands. Economic concentration is economic power, and the government is concerned that this trend, if left unchecked, will pose new hazards to the already much-battered competitive system in the United States.

Logic, Coherence, and the Dangers of Relying on Logic Alone

Even with this example, we suspect you did not find the original a chaos of random sentences. That is because the sentences fall into place in a logical sequence. The revision does not improve the logic: It gives us the same points in the same order. But only the revision is also *coherent*: It does not make the reader perform extra steps to *perceive* that logical sequence. The original paragraph, in contrast, makes the reader turn each sentence upside-down to fit it into the sequence. In a single paragraph, this extra work may not matter much; however, over the length of a document, it is increasingly annoying and, eventually, exhausting.

Sometimes, however, a paragraph that does not “flow” can be not only difficult to read, but actually confusing and misleading. To see this, read the next original assuming that the writer is competent—that is, that he or she is following the old→new pattern—but then note what you discover at the end of the second sentence.

Before:

Governmental immunity is the doctrine under which the sovereign, be it country, state, county or municipality, may not be sued without its consent. *Osborn v. Bank of the United States*, 22 U.S. 738 (1824). The purpose

of the immunity of public officials is not directly to protect the sovereign, but to protect the public official while he performs his governmental function, and it is thus a more limited immunity than governmental immunity. Courts have generally extended less than absolute immunity for that reason. The distinction between discretionary acts and ministerial acts is the most commonly recognized limitation. The official is immune only when what he does while performing his lawful duties requires “personal deliberation, decision, and judgment.” See Prosser, *Law of Torts* 132 (4th ed. 1971).

Any reader who does not happen to be an expert in the area of immunity doctrine would read the second sentence thinking that, if it is beginning with “old” information, then the concepts of “governmental immunity” and the “immunity of public officials” are the same, just in different terminology. Only at the end of the second sentence do you discover that they are two very different concepts.

Here is a possible revision that announces this difference much earlier.

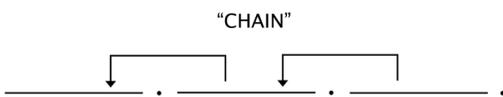
After:

Governmental immunity is the doctrine under which the sovereign, be it country, state, county or municipality, may not be sued without its consent. *Osborn v. Bank of the United States*, 22 U.S. 738 (1824). The immunity of public officials, in contrast, does not protect the sovereign directly, but only the public official while he performs his governmental function. For this reason, courts have generally extended less than absolute immunity. The most commonly recognized limitation arises from the distinction between discretionary and ministerial acts. Under this distinction, the official is immune only when what he does while performing his lawful duties requires “personal deliberation, decision, and judgment.” See Prosser, *Law of Torts* 132 (4th ed. 1971).

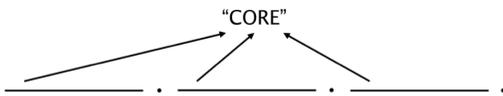
The second sentence could (and probably should) put “in contrast” at its beginning to prevent any possible confusion about the link here, but that is a judgment call we need not resolve.

Topic Chains and Topic Cores

One final piece of advice for novice legal writers: The old→new principle can be applied in two ways, which can be mixed in any given paragraph as the writer prefers. The first is a “topic chain,” where a sequence is established by connecting ideas like a chain-link fence, with the beginning of one piece hooked to the previous piece:



This has been the technique employed primarily in the examples in this article. But there is also a second technique, usually labeled a “topic core.” This technique begins with a core topic that links the first three sentences by being the grammatical subject of each.



Here is a final example that shows a paragraph that mixes the two approaches. It begins with “board of directors” as the core topic, and then switches to a chain with “this requirement” at the beginning of the fourth:

During the contest, Unocal’s board of directors adopted a series of four defensive measures,

only the last of which Mesa challenged in court. In the first three, unchallenged steps, the board foreclosed hostile bidders from calling special meetings by allowing only Unocal’s own directors to call them, prohibited action by shareholders by written consent, and classified the board. The board then took another, more aggressive step: It amended Unocal’s by-laws to limit access to the agenda of an annual meeting by requiring that a shareholder give notice at least 30 days before the meeting of any proposal to nominate a candidate for the board or to raise any other business. This requirement became even more onerous later during the takeover contest, when Unocal’s board announced a stringent interpretation of the amendment: If an annual meeting were adjourned, Unocal would determine whether a shareholder had satisfied the 30-day notice requirement by reference to the original meeting date, not the new date. This interpretation was announced in a letter mailed to shareholders 22 days before a scheduled meeting, thus preventing any change to the agenda no matter when the meeting was held.

The next, and last, article in our series will add some finishing touches to the character of a paragraph by discussing techniques for managing the emphasis it gives each piece of information within it—without the usual resort to italics or bold type. It will also be based on a psychological phenomenon: the “natural emphasis” that readers give to certain places in any sequence, including the sequence of words and sentences in a paragraph.

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Law Blogging Engages Students in Writing That Connects Theory to Practice and Develops Professional Identity

By Jodi S. Balsam

Jodi S. Balsam is Associate Professor of Clinical Law, Director of Civil Externship Programs at Brooklyn Law School.

Introduction

Law school doctrinal courses often require students to produce a writing assignment—e.g., a brief or research paper—in addition to taking an exam. Such assignments can stimulate meaningful learning, but students may not engage as thoroughly because the end product is not put to any purpose other than generating a grade. Students often perceive such writing as overly formal and/or theoretical, and chafe that their efforts are not being put to work in the service of a client, cause, or larger conversation about the law.¹ One way to introduce authenticity and immediacy into writing assignments in the doctrinal classroom is to assign law students to research and author a blog entry to be posted on an Internet forum relevant to the subject matter of the course. A blogging assignment by nature connects theory to practice and by its process advances students in professional role formation.

Law Blogging Background

Law blogging has become integral to the international discourse of legal institutions and topics. The legal community has long accessed and exchanged information electronically—using subscription services such as Westlaw[®] and Lexis[®] and through privately administered electronic

mailing lists. But over the last 10 years, the exchange of ideas about the law and legal education has extended into the free, public Internet, largely through law blogs, or blawgs as they are often called.

Law blogs are a dynamic and flourishing platform for connecting the larger community of lawyers. The legal community now regularly recognizes and commends the best of them.² Law blogs exist for virtually every practice area—from art law to zoning law—and for every subject matter and cause. They are authored by all types of legal professionals, including law firm partners and associates, corporate and public interest lawyers, judges, law professors and students, government lawyers, and legal journalists. Law blogs typically focus on breaking advancements in law and issues of immediate concern. At their best, law blogs enable efficient sharing of, and broader discourse about, developments in the law and lawyering, justice system best practices, and legal scholarship.

Law students are often drawn to law blogs because many address the issues from a practical perspective and adopt a less formal style of writing that can be understood by those with and without legal training. Most law students come to law school with some familiarity with the blogosphere from prior educational, work, and recreational experiences. The appearance and accessibility of law blogs offer students a reprieve from the more complex reading demanded of them in casebooks, statutes, and treatises.

¹ *But see* Mary Nicol Bowman, *Engaging First-Year Law Students Through Pro Bono Collaborations in Legal Writing*, 62 *J. Legal Educ.* 586 (2013); Nantiya Ruan, *Experiential Learning in the First-Year Curriculum: The Public-Interest Partnership*, 8 *Legal Comm. & Rhetoric: JALWD* 191 (2011).

² *See, e.g.*, ABA Journal Annual Blawg 100 <http://www.abajournal.com/blawg100>; Above the Law, “The 12 Awesome Law Blogs of 2014,” <http://abovethelaw.com/2014/12/the-12-awesome-law-blogs-of-2014>.

“Students often ... chafe that their efforts are not being put to work in the service of a client, cause, or larger conversation about the law.”

Blawg Entry vs. Research Paper

Given these attributes of blogging, a writing assignment requiring a student to author a blog entry is a welcome and useful change from the typical law school course writing assignment. Many doctrinal law courses grade students solely based on a final exam, in part because shepherding a large class through drafting, revising, and evaluating a writing assignment imposes significant burdens on faculty. Best practices recommend, however, that even large doctrinal courses should provide multiple opportunities for assessment of student learning. To ease the burden this entails, commentators have proposed alternatives to the default research paper assignment, such as drafting exercises or in-class short-answer tests.³ But a substantive writing project is more likely to immerse students in the subject and enrich class discussion. Each student becomes an expert in the paper's topic and can contribute to the entire class's learning when that topic intersects with what is happening in the classroom. Asking students to write a blog entry can achieve assessment goals, while better managing faculty workloads.

Further, assigning a blog entry rather than a research paper requires the student to engage with the course materials in a way that illustrates doctrine at work. Blog readership often comprises practitioners, policy makers, and pundits who are interested in how legal developments affect the here and now. Many blawgs naturally focus on the immediate significance of legal developments, the practical application of the law, and trend-spotting in the short and long term. Correspondingly, blawg writing is typically punchier and targeted to keep its audience's attention. But that does not mean blawg writing can be sloppy or imprecise. Blawgers—especially those who practice and/or teach law—understand that everything they put in writing, especially when it is for publication, reflects on their reputation and credibility.

Accordingly, professional development goals also come into play in this assignment. The prospect of the writing assignment being published requires

students to consider questions of accountability and audience. Whatever they might publish would perhaps remain in the public domain and be accessible to a wide audience indefinitely. Their professional reputation would be at stake. Through blogging, students also begin to see themselves as participating in an ongoing conversation about trends in the law, and how they might help shape those trends. Their words could leave a real imprint, especially to the extent that a blog entry could be a recommendation for a future course of action or direction of the law. They would need to invoke their professional judgment.

Blogging Assignment Design

I first used the law blog assignment in my Sports Law course, with 32 students enrolled. The course traditionally assessed the students using only a final exam. When I started teaching it, rather than assign a conventional paper, I asked students to also write a blog entry about a current issue in sports law for the school's own sports law blog. For law schools that do not publish blogs, a professor interested in using a blog assignment can seek a partnership with an existing law blog that covers topics relevant to the course. Many blogs actively seek guest bloggers and outside sources of content.

The principal pedagogical goal of the blogging assignment was for the students to engage with the course materials in a way that illustrates the practical application of doctrine, as opposed to a more theoretical approach. By the same token, the assignment was intended to heighten their appreciation of the need to maintain current awareness—through reading law blogs and other sources of legal information—of the issues critical to the area of law they study or will practice. I also anticipated that students would welcome the blogging format's greater flexibility and opportunity to impart something of their personality, as opposed to a dry research paper. And because only the work that received an "A" grade would actually get published on the blog, students were invested in the finished product for better reasons than getting a good grade. Students were motivated to produce their best work because it would pay dividends in the form of a publication

“Through blogging, students also begin to see themselves as participating in an ongoing conversation about trends in the law, and how they might help shape those trends.”

³ See Andrea A. Curcio, *Moving in the Direction of Best Practices and the Carnegie Report: Reflections on Using Multiple Assessments in a Large-Section Doctrinal Course*, 19 *Widener L.J.* 159, 160-66 (2009).

credit on their résumé, aiding their search for postgraduate employment and jump-starting conversation in networking and interview settings.

Assignment Instructions and Requirements

The first phase of the blogging assignment asked the students to familiarize themselves with the blogging format and reader expectations (if they were not already familiar). They read the law school's sports law blog and other recommended law blogs. They read the blogging style manual I created. In this phase, they also reviewed my grading rubric for the final product so that they could begin to cast a critical eye on what makes for an effective blog entry. I informed the students that I would not be applying a "curve" in grading this assignment, and that I would be pleased to award an "A"—and publication on the blog—to every deserving submission. The blog entry grade would be weighted as 15 percent of the final grade for the course.

In the second phase, the students drafted an ungraded practice blog entry: 500 words on one of three current topics in sports law that I had selected for them. Rather than individually critique each entry, I set aside part of one class session to workshop the practice blog entries in small groups. The groups comprised of three or four students who exchanged their practice entries and evaluated them according to explicit critique guidelines. We discussed in class what made a successful blog entry and what was less effective.

The third phase required students to submit at least two ideas for the blog entry that would be graded. Ideas had to address a current issue in sports law, but beyond that the students had considerable latitude in suggesting topics. They submitted their ideas to a shared document accessed online through Google Groups, which allowed the students to review each other's proposals and avoid duplication. Although there was some overlap in the proposed topics, enough ideas were generated to ensure that every student would be writing on a unique topic of real interest to that student. Students were then divided into four groups (eight students in each), with deadlines staggered throughout the semester

for the submission of a first draft and a final blog entry. This avoided burdening me with 32 drafts and 32 papers to critique and grade all at once, and also allowed for content to be available to the blog on a rolling basis throughout the semester.

Lastly, the students got to work. They were required to research and draft a blog entry of at least 1,000 words (a four- to five-page paper). For many, the research stage had the benefit of requiring them to access less familiar sources, such as dockets of pending litigation and legislation, Web sources on labor relations and intellectual property, sports league contracts and policy statements, and even historical documents on Cuba-U.S. relations through the lens of baseball. Their written work had to go beyond merely the journalistic, and develop a thesis around the legal topic they explored. Citation to authority was required in the form of ample hyperlinks to other Web sources for support and to connect to the larger dialogue on that topic. For each group of students, their batch of first drafts received detailed professor feedback within a week of submission. The students then had another week to revise and submit the final version for a grade, and hopefully publication. The grading rubric evaluated the blog entries over nine areas, including topic relevance, critical thinking skills, positioning, support and connections, writing quality, community, and professionalism.

Although a blogging assignment allowed for greater flexibility in format and tone, it did not mean less rigorous writing standards. The students were required to adhere to formal grammar, punctuation, and style criteria. And one unanticipated benefit of the blog format in terms of writing was that the students intuitively understood they could not use legalese or jargon. Because the audience for a law blog could encompass a broad range of legal knowledge—from the layperson to the expert—the students quickly absorbed the need to adopt a simple, direct, and cogent writing style.

Law Blog Assignment Outcomes

The law blog assignment met with enormous success in terms of student interest in the assignment and investment in the outcome. Some of the more successful entries addressed the trend among athletes

“Because the audience for a law blog could encompass a broad range of legal knowledge—from the layperson to the expert—the students quickly absorbed the need to adopt a simple, direct, and cogent writing style.”

to seek trademark protection for their unique poses and catchphrases, fan privacy rights under the NFL's highly restrictive stadium bag policy, the emerging market for stock linked to the value of a professional athlete, and the football contract implications of the Aaron Hernandez murder prosecution.

Most gratifying, 15 of my 32 students achieved an "A" grade and publication on the sports law blog. For those students whose work was not of sufficient quality to publish, I offered to work with them individually to revise the entry in the hopes of publication, although it would not change their grade. Two more students managed to publish their blog entry through this route. Students reported back to me the following learning outcomes, which exceeded even my expectations:

- Improved writing skills and ability to intelligibly communicate complex legal issues;
- Excitement about writing something for possible publication and participating in the wider conversation about the law;
- Greater proficiency in applying substantive law to practical situations;
- Greater connections between course work and skills development;
- Development of professional identity and judgment;
- Deeper appreciation of the importance of current awareness and of the value of law blogs;

- Interest in additional research and writing opportunities, for Internet publication and elsewhere; and
- Career advancement through the résumé boost provided by a publication credit and employer interest in hearing about the blogging experience in networking and job interview settings. (One student even got a summer job specifically to craft content for her employer's law blog.)

Conclusion

My experience with the law blog assignment dovetails with many of the goals identified in the ongoing efforts to reform legal education.⁴ The blog assignment methodology engages law students, delivers a formative assessment, and provides authentic experience in the life of the law. It connects students to an increasingly important mechanism for ongoing conversation among a diverse legal community, and teaches them how to effectively participate in that conversation. It can even broaden faculty's perspective on current issues that dominate the conversation about the field of law being taught. And it can serve as a vehicle for students to find their professional voice and develop their professional identity.

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“The blog assignment methodology engages law students, delivers a formative assessment, and provides authentic experience in the life of the law.”

⁴ See Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Roadmap* 236-39 (2007); William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 164-67 (2007).

THE OFFICIAL REVIEW STYLE GUIDE

How to submit your blog post:

1. Blog posts should be submitted as a Word document. Name the Word file as follows:
 - **LastName.FirstName.Subject.Draft#.Date.doc**
 - (Example: “Lamer.Jacqui.BiogenesisScandal.Draft3.07-11-2013.”)
 - The email subject line submitting the blog post should be the same as the name of the Word file.
 - Send the proposed post to [Jodi. Balsam@nyls.edu](mailto:Jodi.Balsam@nyls.edu).
2. Include a proposed headline for your blog post, no more than one line of print. (Clear, clever, and punchy is good.)
3. Include your byline as you would like it to appear on the blog (i.e., specify if you want to go by a nickname, use a middle initial, etc.). Specify your NYLS affiliation (e.g., year of graduation, other identifying information).
4. Format:
 - Times New Roman, 12pt font
 - Double-spaced
 - Left-justified with 1-inch margins all around (top, bottom, left, right)
 - Extra space between each paragraph (two hard returns after the last sentence of the previous paragraph)
5. Sources:
 - Italicize the names of any books, cases, or other published sources you mention
 - Hyperlink all sources and do not link to the same source more than once throughout your article.
 - Anytime you state a fact (or quote an opinion or story) you learned from an outside source, you should link to that source.
 - In most versions of Word, to insert a [hyperlink](#), highlight the text you want linked, click “insert” from the main menu, and then select “hyperlink.”

Copy and paste the URL you want the text linked to into the “link to” box and click “ok.”

- DO NOT LINK TO LEXIS OR WESTLAW, or to any other subscription-required sources. (However, you may certainly use Lexis and Westlaw to conduct your research for your blog post.)

Grammar, Style, and Usage

“There is no alternative to correct punctuation. Incorrect punctuation can change the meaning of a sentence. Even if the meaning is not changed, bad punctuation, however inconsequential, can cause the reader to give up reading.”

- The Associated Press Stylebook
1. **Point of View.** Write in the third person, not first or second (no I, you, or we, except in quotes).
 2. **Voice.** Prefer the active voice over the passive.
 3. **Concision.** Use clear, straightforward English and short, simple sentences.
 4. **Possessives:** Singular: Add ‘s, for example. *James’s*. Plural: Add just the apostrophe after the plural form, for example: *the lions’ manes*; *the Joneses’ wedding anniversary*. If the plural doesn’t end in *s* (children, men), then make possessive by adding ‘s: As in *children’s*, *men’s*.
 5. **First mention of a name** is first and last name, i.e., “Anthony Crowell”. **After that**, Mr., Ms., Dr., etc. before all references, i.e., “Dean Crowell”. **Exception:** Cher, Madonna, etc.
 6. **Case references:** For Supreme Court cases: Case name, year, link. For non-Supreme Court cases: unless famous or the focus of the blog post, we don’t need the name. Need court, state, year, link, i.e., *a 1984 U.S. Court of Appeal case*.
 7. **Months:** When you write only month and year, no commas. When month, date, and year, place commas before and after the year when midsentence. Examples: *January 2010 was the coldest January on record.* *February 19, 2010, was the target date.*

8. **Dates:** Write dates like this: *May 2* (not *May 2nd*); *October 23* (not *October 23rd*); *June 1* (not *June 1st*); *March 11* (not *March 11th*).
9. **Acronyms.** Spell out acronyms or abbreviations the first time you use them. *Performance-enhancing drugs; PEDs.*
10. **a.m., p.m.:** lower case, with periods.
11. **Ages:** *A thirty year-old man* (hyphen); *He was thirty years old* (no hyphen).
12. **Amendments:** *First Amendment.* (spell it out and capitalize)
13. **Animals:** Don't use personal pronoun unless sex is established or it has a name: *The dog was scared; it barked.* But: *Rover was scared; he barked.*
14. **Attorney general, attorneys general:** Capitalize only when used as a title before a name: *Attorney General Eric Holder.*
15. **Bible:** Capitalize when referring to Scriptures, i.e., *Genesis; the Gospels.* Lower case when using as a nonreligious term: *The dictionary is my bible.* Lower case *biblical* in all uses.
16. **Chief justice:** Capitalize only as a formal title before a name: *Chief Justice John Roberts.*
17. **Constitution:** Capitalize
18. **Court names:** Capitalize the full proper names of courts. Keep capitalization if *U.S.* or a state name is dropped: *the state Superior Court, the Superior Court.* For courts identified by a number: *the Second Circuit Court of Appeals.* If referring to a court you just referred to: *the court.*
19. **Height:** *Six feet tall.* But *the 6-foot-2-inch man.*
20. **Dollars:** *One hundred million dollars.* Or *\$100 million.* But avoid redundant use of \$ and *dollars together.*
21. **First degree/ first-degree.** Hyphenate when used as a compound modifier: *It was murder in the first degree. He was convicted of first-degree murder.*
22. **Follow up (verb)/ follow-up (adjective).** *She made sure to follow up with her professor. After the sales call, he made a follow-up list of things to do.*
23. **Fractions:** Spell out with a hyphen, as in *two-thirds.*
24. **Full time/ full-time:** Hyphenate when used as a modifier. So *he worked full time. He had a full-time job.*
25. **Indict:** To avoid any suggestion that someone is being judged before a trial, don't say *indicted for bribery* but *indicted on a bribery charge.*
26. **In spite of:** *Despite* means the same thing, and is shorter, so use *despite.*
27. **Internet:** Capitalize.
28. **Numbers:** Numbers under 10 are spelled out. (zero through nine). But: They had a fleet of 10 limousines and two minivans. Exception: Something that's known as an entity, i.e., The Twelve Apostles. Spell it out. In addition, never begin a sentence with a numeral: spell it out or rewrite the sentence. Large whole numbers should be spelled out: one billion. Large numbers that are not whole should be written in numeral format: Not 5,600,000, but 5.6 million.
29. **Pronouns:** A pronoun must agree with its antecedent. *The NFL requires its [not: their] players to comply with a strict drug policy. Everyone must take his or her [not: their] seat.*
30. **Quotes generally:** Use double quotes unless for a quote within a quote. *According to the player's agent, "My client never used performance-enhancing drugs." A "morals clause" establishes grounds for terminating an endorsement deal.*
31. **Quotes within quotes:** *The witness said, "I told him, 'stop doing that!!' but he didn't listen."*
32. **So as to:** Just say **to.**
33. **Supreme Court:** *U.S. Supreme Court,* or if obvious, just *Supreme Court.* After that, *the Court.* (If playful, *the Supremes.*)

Sports Law Blog Post

FINAL POST Assessment Rubric

Question to Consider	Score (one to five)	Comments
<p>Topic Relevance</p> <p>Have you tackled a topic that is interesting, appropriate, and timely for your intended audience? Does the topic closely connect to concepts and themes addressed in the course?</p>		
<p>Critical Thinking Skills</p> <p>Does your post reflect that you have thought deeply about your topic? Is there evidence of analysis, synthesis and evaluation here?</p>		
<p>Positioning</p> <p>To the extent you are tackling a controversial or unresolved issue, have you expressed your position in an articulate, convincing, and responsible manner?</p>		
<p>Support</p> <p>Have you used legal authority, statistics, quotations, and factual information effectively to express your point? Are readers likely to be influenced by this post?</p>		
<p>Connections</p> <p>Have you included extensive links to reliable outside sites (websites, legal archives, blogs) that are designed to provide readers with evidence for central claims or sources for continued study?</p>		
<p>Writing Quality: Large Scale</p> <p>Is your writing clear, concise, and easy to understand? Are your paragraphs coherent and well-structured, using effective topic sentences and transitions?</p>		
<p>Writing Quality: Small Scale</p> <p>Are your sentences short and direct? Do you use the active voice, strong verbs, and parallel phrasing? Are your word choices precise and accurate? Have you used proper grammar, punctuation, and spelling?</p>		
<p>Community</p> <p>Is your post likely to spark conversations with readers by asking provocative questions or expressing interesting positions in this post? Will readers want to respond to this blog entry?</p>		
<p>Professionalism</p> <p>Did you meet all deadlines and comply with format and other submission requirements? Have you carefully proofread the post?</p>		
<p>RAW SCORE</p> <p><i>(out of 45)</i></p>	0.00	
<p>FINAL GRADE WEIGHTED SCORE</p> <p><i>(out of 15)</i></p>		

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Teaching Empirical Legal Research Study Design: Topics & Resources

By Sarah E. Ryan

Sarah E. Ryan is Empirical Research Librarian and Lecturer in Legal Research at Yale Law School in New Haven, Conn., and Dean's Fellow at Quinnipiac Law School in North Haven, Conn.

This article was derived from materials developed for the Introduction to Empirical Legal Research course taught by the author at Yale Law School. Scott Matheson contributed valuable insights and resources to that course and this article.

This article provides a list of teaching topics and resources for class sessions and workshops on empirical legal research study design. Topics include constructing hypotheses and research questions, conducting an empirical literature review, crafting significance and impact statements, and articulating a research methodology. This article aims to contribute to social science research support and instruction in U.S. law schools.

Good research takes planning, especially empirical research. Developing a research plan, or “study design,” is important for student researchers, who often operate under tight deadlines and budgets. Writing and research instructors can assist students in crafting solid empirical legal research (ELR) study designs that describe project goals and research methods. Effective study designs can keep students on track and help them explain their projects to faculty mentors, coauthors, institutional review boards, grant-making agencies, and the like. Incorporating ELR study design sessions into Legal Writing, Advanced Legal Research, or Law and Social Science courses addresses a growing demand for social science research support and instruction in law schools.¹

¹ Sarah E. Ryan, *Data, Statistics, or Secondary Statistical Analysis: Helping Students Articulate and Acquire the Numbers*

A number of recent texts describe ELR research methods generally² and in reference to exemplary legal studies.³ However, no succinct list of ELR study design teaching topics exists. This article fills that gap. Though study designs vary in length, level of specificity, organization, and tone, the four components presented in this article are common to most study designs and serve as excellent lecture or workshop topics.

Component 1. Hypothesis(es) or Research Question(s)

The heart of empirical legal research is the hypothesis(es) being tested or research question(s) guiding the inquiry (note: many studies have both). In general, a good hypothesis includes:

1. an outcome of interest to the researcher, such as homicide rates or number of cases heard (i.e., dependent variable);
2. one or more items that potentially trigger, impede, nudge, or occur alongside that outcome (i.e., independent variable);
3. a verb/verb phrase that relates the outcome and the nudging item(s) (e.g., *X increases Y*); and
4. boundary words that include and exclude some groups, time periods, conditions, etc. For example:

They're (Really) Seeking, 22 Perspectives: Teaching Legal Res. & Writing 30 (2013).

² Peter Cane & Herbert Kritzer, *The Oxford Handbook of Empirical Legal Research* (2012); Lee Epstein & Andrew D. Martin, *An Introduction to Empirical Legal Research* (2014); Robert M. Lawless, Jennifer K. Robbennolt & Thomas S. Ulen, *Empirical Methods in Law* (2010).

³ Lee Epstein, William M. Landes & Richard A. Posner, *The Behavior of Federal Judges: A Theoretical and Empirical Study of Rational Choice* (2013); Bart van Klink & Sanne Taekema, *Law and Method: Interdisciplinary Research into Law* (2011).

“A number of recent texts describe ELR research methods generally ... [h]owever, no succinct list of ELR study design teaching topics exists. This article fills that gap.”

H₁: New York City's stop-and-frisk program decreased homicides from 1990-2010⁹

↑ ↑ ↑ ↑ ↑

boundary independent variable verb dependent variable boundary

The hypothesis-crafting process can serve to clarify students' thinking about what they're hoping to achieve. For instance, a student recently met with me to discuss her interest in law and health in South Africa. Specifically, she wondered if judicial rulings in health law cases were beginning to translate into better health outcomes. I explained to her that court decisions might be “nudges” or independent variables, and asked “what are the decisions about?” She mentioned a host of topics, including drug trademarking and government clinic-building requirements. We made a list of topics and then brainstormed corollary outcomes. For instance, a decision relaxing patent or trademark standards might increase the number of people taking generic antiretroviral medicines (i.e., dependent variable). I suggested that she collect relevant cases and develop thematic codes for each independent variable (e.g., 1=drug patent/trademark ruling). She left with a clearer sense of how court decisions might influence health outcomes. And, her new hypotheses helped her crystalize her next steps.

For more information, see the Hypotheses entry in the Research Methods Knowledge Base (RMKB) website,⁴ and chapter 9 of Lawless et al.'s *Empirical Methods in Law*.⁵

Research questions do not offer testable premises like hypotheses do. Still, they should be “clear, focused, concise, complex and arguable.”⁶ Since students need to answer their research questions after completing their quantitative and/or qualitative data collection, their questions need to indicate the boundaries of what they will collect, focusing on who, what, when, and where. For instance, a student and I developed research questions to guide his broad inquiry into

cyberhacking. At the start of our conversation, I asked him who might be the victims, who might be responsible for protecting these victims, and who might perpetrate the crimes. This line of formative questions helped the student clarify that he was interested in tort liability for corporations that failed to assiduously protect their customers from cyber attacks. Further discussion illuminated his interest in federal duties and remedies. His first research question was: What federal laws govern the duties of corporations who do business over the Internet?

For more on research question construction, see Patton's *Qualitative Research & Evaluation Methods*, particularly chapter 5.⁷

Component 2. Literature Review

Students should be reminded that no empirical study occurs in a vacuum. Previous scholarly discoveries, political and cultural happenings, and natural events provide context for new research. Within a scholarly community, a new study addresses unanswered questions, provokes previous results, and/or responds to a scholarly conversation. Typically, a quality literature review will identify a framing or guiding theory, survey debates in the field, interrogate seminal essays, and highlight unresolved theoretical, methodological, or applied research issues.

When a literature review is found lacking, the author is assumed to be unprepared or unable to fully contribute to the discussion. Although the social sciences do not adhere to the principle of stare decisis, they also do not encourage radical departures from accepted rules or solid prior findings. In that vein, a thorough literature review should demonstrate a solid grasp of disciplinary “truths,” standard research methods (e.g., ways of recording narrative data), and the state of discovery about a particular topic, event, group of people, phenomenon, etc. “Preemption checking” is a good start, but like a legal brief, a literature review is complete when there are no critical omissions.

⁴ Research Methods Knowledge Base, *Hypotheses*, <http://www.socialresearchmethods.net/kb/hypothes.php> (last visited April 14, 2015).

⁵ Lawless, *supra* note 2, at 227.

⁶ The Writing Center at George Mason University, *How to Write a Research Question*, <http://writingcenter.gmu.edu/writing-resources/wc-quick-guides> (last visited April 14, 2015).

⁷ Michael Quinn Patton, *Qualitative Research & Evaluation Methods* 209 (2002).

“Research questions do not offer testable premises like hypotheses do.”

A quality ELR study design should include a first draft of the literature review. In assembling that draft, students often need to consult sociobehavioral databases such as EBSCO, PubMed, Scopus, Web of Science, etc. They should be reminded that each database covers a distinct set of journals, employs proprietary search algorithms, and presents results differently.⁸ In the case of Web of Science, some of the tools are boons to research assistants (RAs). For instance, one of our RAs needed to trace the rise and fall of studies on human greed across the social sciences, over time. I showed her how the “Create Citation Report” feature of Web of Science automatically produces a graph of yearly citation counts on a given keyword or phrase. Beyond such tools, students can increase their efficiency by employing timeworn search and retrieval techniques such as drafting a list of near-synonyms (e.g., income, wealth, socioeconomic status), and understanding a database’s controlled vocabulary—particularly in health research.⁹

For more on conducting literature reviews, see Aveyard’s *Doing a Literature Review in Health and Social Care: A Practical Guide*, particularly chapter 1.¹⁰

Component 3. Significance and Impact

Most grant applications, many institutional review board applications, and some journal articles speak directly to issues of research significance and impact. In a nutshell, significance refers to the novelty or importance of a research study to a field (e.g., seminal study of sociology seminars in selected law schools), while impact refers to the broad positive outcomes that could

result from the research (e.g., how sociologically trained might better represent indigent clients). The two concepts can blur, as recent National Institutes of Health (NIH) guidelines illustrate:

Significance: Does the project address an important problem or critical barrier to progress in the field? If the aims of the project are achieved, how will scientific knowledge, technical capability, and/or clinical practice be improved? How will successful completion of the aims change the concepts, methods, technologies, treatments, services, or preventative interventions that drive this field?

Impact: ...the likelihood for the project to exert a sustained, powerful influence on the research field(s) involved¹¹

While the formal statements of significance and impact listed in a grant proposal might not appear in resulting journal articles or reports, developing these statements is an important aspect of ELR study design for three reasons. First, significance and impact statements locate the research in a larger conversation or quest for knowledge, akin to the literature review. Second, the statements contribute to the development of an “elevator pitch” that can help a newer researcher gain partners and supporters. Third, the statements impose boundaries on the research, akin to a hypothesis or research question. With these outcomes in mind, it is important not to write overbroad significance and impact statements. Students need to know that each research project should truly matter—or it won’t be worth its costs in human and other capital—but that few research projects will change the course of human understanding. Significance and impact statements enable student researchers to locate their projects somewhere between mattering and materially altering life on earth. For guidance on authoring significance and impact statements, visit federal grant-making agency websites, particularly the NIH and National Science Foundation sites.

“Significance and impact statements enable student researchers to locate their projects somewhere between mattering and materially altering life on earth.”

⁸ See Matthew E. Falagas, Eleni I. Pitsouni, George A. Malietzis, and Georgios Pappas, *Comparison of PubMed, Scopus, Web of Science, and Google Scholar: Strengths and Weaknesses*, 22 *FASEB J.* 338 (2008).

⁹ See Loet Leydesdorff & Tobias Opthof, *Citation Analysis with Medical Subject Headings (MeSH) Using the Web of Knowledge: A New Routine*, 64 *J. Assoc. Info. Sci. & Tech.* 1076 (2013); Henry J. Lowe & G. Octo Barnett, *Understanding and Using the Medical Subject Headings (MeSH) Vocabulary to Perform Literature Searches*, 271 *J. Am. Med. Assoc.* 1103 (1994).

¹⁰ Helen Aveyard, *Doing a Literature Review in Health and Social Care: A Practical Guide 1* (3rd ed. 2014).

¹¹ National Institutes of Health, *Overall Impact versus Significance*, http://grants.nih.gov/grants/peer/guidelines_general/impact_significance.pdf (last visited April 17, 2015).

Component 4. Research Methodology

The research methodology, or how the study will unfold, is what most students think of when they hear “study design.” Curious, then, that it is the final part of most formal study design documents. Researchers can describe what they plan to do only after a clear direction and boundaries have been set by the hypothesis/research question, literature review, and significance/impact sections. The research methodology flows logically from the prior parts of the study design and prescribes specific goals, foci, and activities aligned to the study’s broader parameters. The methodology section is divided up differently depending upon the study design purpose or template. For instance, institutional review board applications typically feature a stand-alone section on confidentiality.¹² Regardless of variance, the following are typical components of the “how the research will get done” section of the study design.

4a. Unit of Analysis

In an ELR study, the unit of analysis is the level of the social group studied. Supposing that “all living beings” is the largest possible unit of study and a single person is the smallest, a typical social science unit of analysis is somewhere in between. Units of analysis include continent, nation-state, province, metropolitan area, neighborhood, group, family, dyad, individual, etc. Oftentimes, a student will be interested in a phenomenon that cuts across several units, such as a neighborhood-city-state issue like the quality of local public schooling. Selecting a focal unit of analysis clarifies—and sometimes provokes rewriting of—the research hypothesis or question. It guides data collection or retrieval (e.g., household-level data versus neighborhood-level data) and prescribes contextual literature (e.g., city council reports on citywide crime). For more on units of analysis, see chapter 5 of Patton’s *Qualitative Research & Evaluation Methods*.¹³

¹² Sarah E. Ryan, *The Rhyme and Reason of IRBs: Navigating the Human Subjects Research Review Process*, 18 AALL Spectrum 30 (2014).

¹³ Patton, *supra* note 8, at 228.

4b. Description of Population

Once a unit of analysis has been selected, the student needs to describe who or what is in that unit. This can include geographic markers (e.g., census tracts 1413, 1414), demographic statistics (e.g., 76 percent are under the age of 25), political and cultural indicators (e.g., one synagogue within study area), etc. While describing population parameters is not easy, it can also be difficult to estimate the size of a population. Recently, a student sought my assistance in estimating the percentage of certain city populations composed of released prisoners. We could find no agency data, so we decided to estimate using crime rates. We reasoned: if 10 percent of Connecticut crime happens in New Haven, and released prisoners tend to return to wherever they lived and committed crimes, then 10 percent of prisoners released in Connecticut this year will (re)locate to New Haven. Admittedly, we employed arguable logic; we are searching for better estimates.

Accurate population estimates and robust descriptions enable researchers to critically analyze the representativeness of any sample they obtain. For example, if Census Bureau data indicates that the median age in a city is 37, and the median age of a sample drawn from the city is 57, the sample is likely not a good representation of the population. Because many law students utilize existing datasets, sampling issues are difficult to remedy. If a student is collecting “original” data, she might address this issue by adjusting her sampling plan or techniques.

4c. Sampling Plan/Techniques

When a population is sufficiently large (e.g., >99), researchers usually select a sample of that population to study. If the sample is selected randomly and near-optimal data collection methods are followed, then the researcher can use statistical techniques to infer information about the broader population. This set of circumstances is the basis of inferential statistics. While many students will know the ideal conditions for sampling (e.g., each participant has an equal chance of being selected, most of those selected opt to participate, etc.), sampling is often the messiest part

of empirical work. The sampling plan/techniques portion of a study design should thus read like a best case-worst case handbook. It should announce the student's aims, describe impediments to those aims, and detail and justify work-arounds. For example, today, the median age of residents listed in print telephone books is typically older than the median age in the community. So, to sample most members of the community, additional or different lists of residents must be used. Definitions of key sampling terms are available via the RMKB;¹⁴ chapter 6 of Lawless et al.'s *Empirical Methods in Law*¹⁵ also discusses sampling.

4d. Data Collection Procedures

Once a plan for sampling has been established, the student can describe how research data will be collected from the individuals or groups in the sample. Data can be collected in myriad ways, including surveys, interviews, focus groups, participatory activities, observation, etc. Often, specific research instruments will be designed to collect the data (e.g., interview script) and attached as appendixes to the study design. Like every other part of the study design, data collection procedures and instruments need to map onto the hypothesis or research question. For instance, when researchers from two U.S. universities sought to understand the impact of health messages (i.e., the independent variable) embedded within radio dramas in northern Sudan (i.e., the boundary) upon the attitudes of illiterate women (i.e., the dependent variable and unit of analysis), they asked local women to sketch the themes, characters, and ideas they remembered from the programs.¹⁶ The method enabled the researchers to explore broad research questions and collect meaningful data from participants who could not independently

complete typical surveys. Most research methods textbooks contain several chapters on data collection procedures, including chapters 3 through 5 of Lawless et al.'s *Empirical Methods in Law*¹⁷ and chapters 5 through 7 of Patton's *Qualitative Research & Evaluation Methods*.¹⁸ Additionally, see the SAGE *Research Methods* online resource.¹⁹

If a student is collecting data from humans, the issue of consent must be addressed in the ELR study design. There are instances in which consent is inferred, such as when the researcher is observing participants in public (e.g., at a baseball game) or when another researcher or agency previously collected the data. The latter example can get thorny, particularly when data is repurposed for ends that the participants might not have anticipated. In that case, an institutional review board consultation or application might be necessary. When data is being collected directly from participants for the first time, university-affiliated researchers must secure the participants' voluntarily consent to participate in the research project. Often, researchers will create scripts and/or forms to aid in gaining and recording voluntary consent.²⁰

4e. Data Management Procedures

Many students—and seasoned researchers—omit data management sections from their initial study designs. Instead, they confront the challenges of the “data life cycle” as they arise. This reactive approach is not only a poor research practice, it can also jeopardize research funding, particularly from large government agencies.²¹

Data management starts at the study design stage and concludes years after the research is completed. Data about potential participants (e.g., telephone

“Data can be collected in myriad ways, including surveys, interviews, focus groups, participatory activities, observation, etc.”

¹⁴ Research Methods Knowledge Base, *Sampling Terminology*, <http://www.socialresearchmethods.net/kb/sampterm.php> (last visited April 20, 2015).

¹⁵ Lawless, *supra* note 2, at 139.

¹⁶ Karen Greiner, Arvind Singhal, & Sarah Hurlburt, *With an Antenna We Can Stop the Practice of Female Genital Cutting*: A Participatory Assessment of Ashreat Al Amal, an Entertainment-Education Radio Soap Opera in Sudan, 15 *Investigación & Desarrollo* 226 (2007).

¹⁷ Lawless, *supra* note 2, at 60.

¹⁸ Patton, *supra* note 8, at 209.

¹⁹ SAGE, *Research Methods*, <http://srmo.sagepub.com/> (last visited April 17, 2015).

²⁰ Ryan, *supra* note 9.

²¹ Chris Jordan et al., *Responses to Data Management Requirements at the National Scale*, in *Research Data Management: Principles, Practices, and Prospects* (2013), <http://www.clir.org/pubs/reports/pub160/pub160.pdf#page=73>.

“A study design is complete when it provides a solid road map for research and makes sense to outside readers.”

numbers), from participants (e.g., a response to a question), and related to the research (e.g., participant payment rates) all need to be stored in a reliable and ethical manner. In terms of reliability, the data needs to be consistently available to the researcher nearly on-demand in a readable and useable format (e.g., using the latest version of a statistical software package). This aspect of data storage requires conscious planning on the part of the researcher and investments in hardware and software technology ranging from locks for file cabinets to the purchase of external hard drives. For students, free long-term data storage often expires at graduation, so considerations of alumni access to university resources are important.

In addition to the technical aspects of data management planning, research data needs to be handled in ways that safeguard research participants from harm. Data storage ethics concentrate on two concerns: anonymity and confidentiality. Anonymity shields the identity of the participant from the researchers and/or readers of the study results. Confidentiality safeguards the participants' data from all unauthorized users. Anonymity is like a veil while confidentiality is like a lock. Some studies provide both and nearly every study aims at confidentiality. Data security responsibilities conclude when absolutely all of the data has been destroyed, typically years after the study has concluded. For a longer discussion of these topics, see the RMKB.²²

4f. Data Processing/Analysis

Once students have constructed a hypothesis or research question, identified sampling strategies, addressed the protection of human subjects and data, etc., they can turn to “everything else” in a research methods textbook to complete the final section of the study design. This section of the study design outlines a cursory plan for data processing

and analysis. It can include proposed statistical operations and/or qualitative analysis procedures (e.g., thematic analysis), as well as technical specifications related to those procedures (e.g., significance level). Writing this part of the study design can stimulate refinement of other parts of the study design. For instance, once a student realizes that he wants to employ a particular statistical test, he might revisit how his survey questions are structured (e.g., as either-or, as “rank these items”). A UCLA page entitled “What statistical analysis should I use?”²³ suggests some of the refinement that might result from the drafting of this section of the study design. For more on data processing and analysis, see chapters 7 through 13 of Lawless et al.'s *Empirical Methods in Law*²⁴ and chapters 8 through 9 of Patton's *Qualitative Research & Evaluation Methods*.²⁵

Conclusion

A study design is complete when it provides a solid road map for research and makes sense to outside readers. It functions best when it both tethers the research project to rules of operation and frees the researcher to fruitfully explore within delineated boundaries. While crafting effective empirical legal research studies is an art, the topics and resources described in this article can assist emerging empirical scholars in developing their talents and fulfilling their scholarly aspirations.

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²² Research Methods Knowledge Base, *Ethics in Research*, <http://www.socialresearchmethods.net/kb/ethics.php> (last visited April 14, 2015).

²³ UCLA: Institute for Digital Research and Education, *What Statistical Analysis Should I Use?*, http://www.ats.ucla.edu/stat/mult_pkg/whatstat/ (last visited April 17, 2015).

²⁴ Lawless, *supra* note 2, at 165.

²⁵ Patton, *supra* note 8, at 431.

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Designing Spaces: Planning the Physical Space for a Legal Writing Program

By Jan M. Levine

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Introduction

Very little has been written about designing new law school buildings or renovating existing law school buildings.¹ There are a handful of articles about the process of building a new law school,² or about a dean's legacy being reflected

in a building.³ Other articles have been written about designing law school libraries⁴ and about building law libraries for other patrons.⁵ Law school rankings often reflect student satisfaction or dissatisfaction with the school's physical plant.⁶ But almost nothing has been published about creating spaces for skills-based programs such as clinics⁷ and writing programs, despite the special considerations that apply to those parts of the law school's educational program. This article describes what went into the renovation of existing space within the Duquesne University School of Law to accommodate a new legal research and writing program, and offers suggestions to others who may be embarking on a similar endeavor.

Informal discussions among legal writing teachers about a writing program have most frequently addressed the location and size of the offices given to the faculty within the program, reflecting the historical second-class status given to writing professors. Clinicians often face the same issues.⁸ At the time Duquesne hired full-time

* This article grew from a conference presentation prepared by Julia M. Glencer, Jan M. Levine, and Tara Willke, *Designing Spaces: Planning the Physical Space for a LRW Program* (ALWD Conf., June 2013). Because of travel problems that prevented our attendance at the conference, our colleague Ann Schiavone delivered the presentation. The author thanks Julia Glencer for suggesting that this article be written and for her insights, and thanks Daniel Sodroski and Richard James for their research assistance.

¹ For a good overview of the history of architectural design issues associated with university campuses, see Rifca Hashimshony and Jacov Haina, *Designing the University of the Future, Planning for Higher Education*, January-March 2006, at 5. There is a website devoted to college design, with examples of recent projects and ways to find local architects for projects. CollegeDesigner.com, (accessed January 31, 2014).

² There is one article with a detailed overview of the process of renovating a law school. See Richard J. Wood, *Capital Improvements: A Guide for the Construction of a Modern Law School*, 27 *Cap. U.L. Rev.* 709 (1999). Others have written about the political and financial issues involved with construction of a law school building or renovating an existing building. See, e.g., Elliot S. Milstein, *Reflections in Brick and Mortar: Building a Vision, Realizing a Dream*, 45 *Am. U.L. Rev.* 947 (1996); Michael M. Greenfield, *Confessions of a Hard-Hat Junkie: Reflections on the Construction of Anheuser-Busch Hall*, 76 *Wash. U.L.Q.* 147 (1998); Robert H. Jerry, II, *A Brief Exploration of Space: Some Observations on Law School Architecture*, 36 *U. Tol. L. Rev.* 85 (2004). Of course, construction of a new law school building often leads to publication of one or more short public-relations pieces and Web pages about the project. See, e.g., John Kelly, *Eight-story Building Will Serve Business And Law Schools*, 22 *Colum. Univ. Record* 20 (1997), <http://www.columbia.edu/cu/record/archives/vol22/vol22-iss23/record2223.20.html> (accessed January 29, 2014); University of Chicago Law School, *Law School Architecture*, <http://www.law.uchicago.edu/school/architecture> (accessed January 31, 2014); University of Baltimore School of Law, *The New Angelos Law Center*, <http://law.ubalt.edu/about/news/newbuilding/> (accessed January 31, 2014).

³ Kristin Booth Glen, *To Carry It On: A Decade of Deaning After Haywood Burns*, 10 *N.Y. City L. Rev.* 7, 50-53 (2006).

⁴ See Paul Hellyer & James S. Heller, *A New Library for America's Oldest Law School*, *AALL Spectrum*, May 2008, at 16; Cynthia Kemper, *At the Heart of a Law School*, *AALL Spectrum*, May 2008, at 14; Jack McNeill, *Architects? We Don't Need No Stinkin' Architects*, *AALL Spectrum*, May 2008, at 18.

⁵ See, e.g., Sue Bellevue, *A Place of Our Own*, *AALL Spectrum*, May 2008, at 22.

⁶ The Princeton Review's annual publication, *The Best 169 Law Schools* (2014) includes reports on "Best Quality of Life" and asks students about "how aesthetically pleasing the school is" and to rate "the school's classroom facilities." The Princeton Review, *User's Guide to Our Law School Rankings*, <http://www.princetonreview.com/users-guide-law-rankings.aspx> (accessed January 31, 2014).

⁷ Philip G. Schrag, *Constructing a Clinic*, 3 *Clinical L. Rev.* 175, 222-225 (1996).

⁸ See Schrag, *supra* note 7 at 224 ("Physical distance between clinicians and other faculty members can contribute significantly to

faculty for the writing program, only the director was tenured (having been hired with tenure from another school). The other three positions were initially governed by short-term contracts, but that soon changed to meet the long-term contract requirements of ABA Standard 405(c) (eligibility for a contract of five years or more)⁹ and the additional requirements of participation in faculty governance. Within three years of their hiring, all three new writing professors were placed on the clinical tenure track, with all of the perquisites accorded other tenure-track faculty at the school.

Dean Robert H. Jerry II has noted, “At the risk of stating the obvious, architecture matters. The nature of the space in which we work, teach, and study is important. The design of our surroundings affects our attitudes, moods, self-esteem, efficiency, and sense of community.”¹⁰ This is particularly true for a group of faculty members who, along with their courses, have been relegated to second-class status within law schools. Until the recent improvements in the status of writing professors across the nation, it was not uncommon for teachers of legal writing to have no offices (if they were adjuncts or upper-level students) or to have small and subpar offices located in the basement or away from the rest of the faculty (if they were on short-term contracts). If the offices of legal writing teachers were the same size and quality of those given to other professors within a law school, then the discussion among writing professors often revolved around whether the offices should be dispersed among the other faculty, grouped together in a wing or other area of the school’s office space, or placed elsewhere in the building.¹¹ These discussions

lack of knowledge and appreciation by those other faculty members regarding what clinicians do, and how they contribute to the law school.”)

⁹ *Standards and Rules of Procedure for Approval of Law Schools*, Standard 405(c), A.B.A. Sec. Of Legal Educ. & Admissions to the Bar. (2013-14), available at http://www.americanbar.org/groups/legal_education/resources/standards.html (accessed January 29, 2014).

¹⁰ Jerry, *supra* note 2 at 86.

¹¹ Association of Legal Writing Directors & Legal Writing Institute, *Report of the Annual Legal Writing Survey* (2013), available at <http://www.alwd.org/surveys/2004-2012-survey-report/> (accessed January 29, 2014) [hereinafter Survey]. Question 69 of the Survey asks “What is the size and location of LRW Offices?” *Id.* at 65. The question has been asked for many years, and the responses are remarkably stable for years, probably because a law school physical plant changes infrequently. For

then turned to the location of support staff, accommodations for the frequent visits by students to their writing teachers (usually for conferences), and the need for space to be available for dealing with yearly events, such as the distribution of hundreds of appellate briefs and administration of the appellate oral argument component of the program.

Arguments in favor of dispersed placement are that it tends to minimize distinctions among faculty and promote collegiality among all faculty members. Such dispersion, however, can create problems, such as complaints by other faculty about the frequent visits by students to the writing professors and the isolation of writing teachers from each other. Arguments in favor of grouped placement, regardless of the separation of the writing program faculty from other professors, are that it promotes collegiality within the program, facilitates discussion among the writing teachers, and permits more efficient administration of the program and the sharing of support staff (such as writing specialists and teaching assistants). Having a special location for grouped offices could serve to protect the program from

2013, 189 U.S. law schools and 1 Canadian law school responded to six Survey options for that question *Id.* at i. For the six possible answers, 126 schools (up from 109 in 2009) reported that the LRW offices were “Comparable to most non-writing faculty offices,” while 38 schools reported that the LRW offices were “Smaller than most non-writing faculty offices” (compared to 39 in 2009). *Id.* at 65. Nine schools reported that LRW offices were in a “More desirable location than most non-writing faculty offices” (up from 2 in 2009), while 35 schools reported that LRW offices were in a “Less desirable location than most non-writing faculty offices” (compared to 34 in 2009). *Id.* Seventy-four schools reported that LRW offices were “integrated among most non-writing offices” (up from 70 in 2009), while 42 schools reported that LRW offices were “segregated from most non-writing offices” (compared to 37 in 2009). *Id.*

¹² Writing specialists and teaching assistants need a place to work, and at many law schools this implies creation of a “writing center” for the nonfaculty staff. Question 31 of the Survey, *supra* note 11, asked if the school’s LRW program has a formal writing center, followed by asking for the number of professionals and teaching assistants on staff. Only 35 schools reported that they had a formal writing center in 2013. *Id.* at 22. Professor Terrill Pollman has described some of the functions of a student-staffed “writing clinic,” but noted that the “physical needs for starting a Clinic are few,” including conference space, a computer, a filing cabinet, and a telephone. Terrill Pollman, *A Writer’s Board and A Student-Run Writing Clinic: Making the Writing Community Visible at Law Schools*, 3 *Leg. Writing* 277, 284 (1997).

“Arguments in favor of dispersed placement are that it tends to minimize distinctions among faculty and promote collegiality among all faculty members. Such dispersion, however, can create problems ...”

elimination or cutbacks, but might lead to faculty jealousy based on their perceptions that writing faculty might be afforded special privileges.

History, Planning, and Design

When Duquesne's faculty and administration decided to hire a director and several full-time faculty members for an expanded and enhanced writing program that had been composed of more than a dozen adjuncts supervised by a "regular casebook" professor, there was one obvious matter the school did not address when making the decision: Where was the school going to put all those new full-time professors? This may have been overlooked because the school did not previously have an experienced expert faculty member specializing in teaching legal writing, so no one was aware of the unique needs of a modern writing program and the ways in which such a program would require dedicated space within the building in order to perform optimally.

Duquesne went on to hire the author as the legal writing program director in 2006 and a year later hired three additional full-time faculty members. Adjuncts were retained in what was now a hybrid program, to teach approximately half of the enrolled students, and upper-level student teaching assistants played a significant role within the program. Furthermore, the new program involved alumni judging the students' appellate oral arguments in the spring semester, and the new director and writing program faculty began planning to host national conferences and teach new upper-level writing-intensive courses. Fortunately, as soon as the program was created and the director was hired, the publicity and dean's efforts led to the receipt of a generous gift to the program from an alumnus. This provided the resources to design and create a special place within the law school building for the new writing program, converting space within the law library to meet the new program's needs. The new "Bridget and Alfred Peláez Legal Writing Center," which opened in

2009, is named for a senior faculty member and his late wife, at the request of the donor.¹³

The planning for Duquesne's new writing center began with the creation of a committee composed of the director, three full-time writing professors, the law librarian, the law school's office manager, and a representative of the university's physical plant office. The decision was made to retain an independent architectural firm to develop a proposal for the new Legal Writing Center, and two architects from that firm came to all of the committee's meetings. The university did not have the in-house capability to do the kind of design and construction work needed for the project, which was all provided by outside contractors. The university did, however, provide oversight of the electrical, HVAC, and related matters.

When the planning began, the program director had an office on one of the two floors of the law school wing that housed the school's other faculty. There were no faculty offices available for the three new full-time writing professors, either dispersed among the other faculty or located adjacent to each other. The only available space was within the law library, directly under the two faculty floors of the school, accessible via stairs and an elevator from the faculty floors (or from within the library itself). That floor was partially on-grade with the street, and partially below-grade because of the hilly nature of the Duquesne campus.

The decision was made immediately to minimize any physical reflections of status differentials by matching the "look" and size of the writing professors' offices with those provided for other faculty at the school. That meant creating offices of the same size as those given to other professors, with matching trim, furniture, and fixtures. Of course, everyone had to have a window, and there was one wall of the available space that was on the same grade as the outside street, with several windows

¹³ See *A Lesson in Gratitude*, The Duquesne Lawyer, at 2 (Fall 2009). See also Duquesne University School of Law, Legal Research and Writing Program, <http://www.duq.edu/academics/schools/law/academic-programs/legal-research-and-writing-program> (accessed January 27, 2014).

having a normal outside view. Another wall was below grade, and had windows which were, on the interior, located near the ceiling of what were small rooms two or three students could reserve for studying. Because of the limited opportunities for admitting natural light in the writing center, and the relatively low ceilings in the library, we asked the architects to be profligate in the provision of recessed ceiling lights and to use as much glass as possible in walls and doors to maximize the effects of natural lighting and to avoid the feeling of being closed in.

The committee also made lists of other needs. The hybrid nature of the writing program staff meant that we wanted to have rooms for use by adjuncts, teaching assistants, and a possible writing specialist. Adjuncts are the orphaned children of the law school and typically have no office assigned to them, or even a shared one. But in a writing program, all teachers, including adjuncts, need to meet frequently with students to discuss work,¹⁴ whether those are required or optional courses. If no space is reserved for the use of adjuncts, then adjuncts have to use public spaces within the school or try to reserve small meeting rooms. Because there were approximately eight adjuncts within the program, we decided to create two offices for the adjuncts' use. That meant they would have a place to prepare for class, use a computer and printer, leave their coats and briefcases, and meet with students. The rooms would also be available to our upper-level teaching assistants, who need to meet with 1-Ls in private.

Because students usually arrive before a scheduled conference with a professor, we wanted to have an area where they could wait without disturbing faculty or other students. We wanted space for the meetings of the writing program faculty, where we could discuss common issues and hold training sessions, and which would be under our control so we would not have to search for, and reserve, a room. We thought this common space could also be used for preparing for special events, such as mailing briefs for oral arguments or preparing for national or regional legal writing faculty conferences;

we also wanted to be able to meet as a group for lunch. With at least three full-time faculty members and several adjuncts in a location one flight from support staff, we wanted to build in a work area for an administrative assistant to the legal writing program, even though the program had not been authorized to hire anyone, and a place for the storage of documents and supplies. Along those lines, we also realized we needed to have a program-specific photocopier included in the design. Furthermore, we wanted to create an informal place for discussions among all the writing instructional staff, whether full-time, adjunct, or student. Finally, we hoped we could use the space as a backup location for meetings of a small class section.

There were other important matters to put on the table at the start. We began planning in the fall semester, with the goal of having a contract in place to have the work done over the summer and having the writing center open for the start of the fall semester. We were working with a \$500,000 budget;¹⁵ although we wanted to spend less so we could have funds reserved for things we missed, and for future needs of the program, we did not design to a particular price. Our goal was to see if we could get everything we wanted before we started cutting back on spending. We also wanted to make sure that security was addressed in the design, because there were no other faculty members or staff in this area of the building; this was particularly important because some of the legal writing program faculty, notably adjuncts, would teach evening classes.

During the series of meetings to develop our "wish list," every member of the committee contributed ideas, with suggestions from one or more members leading the others to further develop and elaborate the ideas. The librarian reminded us about the security needs, while the director knew what other writing program offices looked like; the director also focused on the likely future needs of the program. We learned from each

¹⁴ See, e.g., Sourcebook on Legal Writing Programs, at 60 (Eric Easton gen. ed., 2d ed., ABA 2006).

¹⁵ The project ended up costing approximately \$375,000. The remainder was set aside as a special fund for the program, and we often have drawn on that account for purchase of furniture and technology.

other about how computer screens should not be oriented to reflect venetian blinds, the best ways of laying out furniture to promote effective student conferences, and what kinds of document and supply storage would be needed. The collaborative spirit of the legal writing program faculty, and our positive relationship with our law library, were greatly enhanced by the planning of the center.

After reviewing a series of preliminary architects' drawings, we realized that we could have only three offices for full-time faculty. The limiting factors were the sizes of the offices and the available windows, which meant the director's office could not be relocated in the writing center. All of the plans also included a dedicated space for a writing program administrative assistant (the position did not exist at the time, but was authorized later). The plans provided us with two large shared offices for the eight adjunct legal writing professors and teaching assistants, and another office and kitchenette that could be used by the approximately ten teaching assistants (and a future writing specialist). The construction of three full-time professor's offices, with four additional offices and the common area, meant that there would never be a need to seek additional locations for student conferences held by the faculty and teaching assistants. The common area was designed around a work area for an administrative assistant modeled upon a law firm receptionist's station, with a large counter for a computer and other office equipment. A special alcove was built for a photocopier. The architects created a kitchenette for program faculty and teaching/research assistants, and drafted a plan with seating that could be configured for multiple purposes. The offices and common areas all included built-in storage space for coats, papers, supplies, and equipment. Unfortunately, we learned that we could not have running water in the kitchenette because of structural limitations imposed by the distance from existing plumbing in the former library space.

The architects' plans maximized the transmission of natural light, avoiding the feeling of a basement, by putting glass transoms at the top of all the interior walls, using frosted glass doors in all the

offices, building a large glass window adjacent to a library skylight in one office, and creating a huge glass entry area to the library. Fluorescent light fixtures were all recessed into the ceiling, so they were flush and created a feeling of a higher ceiling. High-hat halogens were placed through critical areas for accent and flood lighting, and under-counter lights were put into the kitchenette. Additional accent lighting, connected to dimmers, was placed over the administrative assistant work area, and all offices had dimmer switches for overhead lighting. The plans included locations for electrical outlets, light switches, and network and telephone drops.

The architects brought in an interior designer, and we held several meetings to pick out specific light fixtures, flooring, wood stain colors, countertop materials, window treatments, wallpaper, paint colors, fabrics, and furniture. The starting point was the color scheme and materials used for the fairly recent renovation of the faculty wing of the law school. The cherrywood used for faculty offices, wainscoting, and furniture, as well as the design of support staff areas, were all duplicated in the writing center plan. That meant custom wood stain had to be mixed, and wood trim and molding patterns had to be duplicated. To separate the entrance meeting areas within the common area, and address traffic patterns, two different types of flooring were used; the entryway and high-traffic areas were designed for easy-maintenance faux-wood-plank flooring, while the portion of the common area to be used for meetings and all offices were carpeted.

The architects and interior designer helped us choose furniture for all areas outside of the faculty offices that we could easily move and reconfigure for various purposes. This meant that the adjunct offices and common area each had two tables that could be moved around, along with 16 chairs, a dozen of which would have casters, that could be used interchangeably throughout the center. The full-time faculty offices had wraparound desk areas and built-in cherrywood bookcases like the other faculty offices in the school, but we also planned for separate round conference tables and two additional chairs for student conferences. The common area furniture included three overstuffed

“We learned from each other about how computer screens should not be oriented to reflect venetian blinds, the best ways of laying out furniture ... and what kinds of document and supply storage would be needed.”

chairs for students to sit in while waiting for their professors, with end tables for lamps.

As a final step in the design process, the architects created a computer-generated 3-D movie that gave us a feeling of a walk-through of the center. This was incredibly helpful, leading to several design changes, and proved to be remarkably faithful to the final results. It was also placed on the legal writing page of the law school website, so it could be viewed by others. The cost of the entire project was within our budget, and nothing had to be cut back or eliminated to save money.

A timetable for construction was part of the architects' final proposal, and demolition began right after the spring semester's final exams. The summertime construction work was completed on schedule, several weeks before the start of the fall semester. The writing program faculty, particularly the director, visited the construction site every day during the summer, which seemed to make the contractors more appreciated (and probably more careful). This monitoring also helped everyone resolve questions and problems in a speedy fashion, but, apart from the relocation of some lighting fixtures because of what was learned after the existing walls and ceiling were removed, there were no major issues to be addressed.

Details, Details . . .

One scholar has noted, "Sweat the little things. It is impossible to pay too much attention to apparently minor details. Little touches can make a difference in how well the facility functions."¹⁶ The writing center is located on the main floor of the law library, in an area where there are study carrels but no shelving. The study carrel area has no windows, but it does have a large skylight, and one of the nonfaculty offices in the writing center has a very large window (with a privacy shade) that forms part of the channel for that skylight. The writing center spans the width of the study area, and there are two doors to the center. The main entrance is on the left side, part of a floor-to-ceiling, nine-foot-

tall glass panel with a swinging full-glass door. The door handle is a vertical bar with a concealed locking bar that goes into the floor. A vinyl decal was used across the entrance glass to display the name of the writing center and has a horizontal accent strip to alert people to the presence of the glass. The secondary fire exit is on the right side, about 15 feet away, with a frosted glass half-panel door. The exterior wall of the entrance is faced with cherry stained wood wainscoting matching the wainscoting used in the writing center and throughout the faculty wing of the law school (the fire door also matches that color).

Adjacent to the entry is a panel listing the faculty and staff members of the program, their office numbers, and telephone extensions. Beneath the panel is a wall-mounted telephone that can be used to call into the writing center. The administrative assistant's workstation uses design elements common to a framed entry to a law firm office. It is located between two floor-to-ceiling pillars (inside of which are structural steel beams) and is visible from outside the glass entryway, showing off the internal cherrywood wainscoting. Above the workstation are three dimmable halogen light fixtures, which come down on poles from the ceiling, and on the wall behind the workstation are large metal letters displaying the name of the center.

The administrative assistant's work area is set up like a law firm receptionist's station. There is plenty of desktop area, which is made of a solid-core faux-marble material in an L-shape that doesn't chip or show wear. The counter-height front piece of the desktop is curved to span the two pillars, just as it was done in other parts of the law school, and prevents the worktop from being seen. The desktop houses the administrative assistant's computer, to which two printers are attached; one is a high-speed black-and-white laser printer and the other is a wireless color laser printer, available to all the program's faculty and staff. Under the desktop are two filing cabinets that can be wheeled out when needed for cleaning. After the center was built, we added a color sheetfed scanner, a paper shredder (on wheels, placed under the desktop), a label maker, and a lockable hidden key

¹⁶ Greenfield, *supra* note 2 at 158.

case with keys to all the center's offices. Adjunct professors, teaching and research assistants, full-time faculty, and our administrative assistant all have keys to the center (a single key will open the fire door we have marked for "staff" and one of the interior shared offices), and if someone needs to get into another person's office, we all have the combination to the key case. This arrangement has saved us from carrying multiple keys and has meant we need not trek to the law school main office to retrieve a key to someone else's office.

Flanking the administrative assistant's workstation, attached to one of the dual pillars, is a wall-mounted magazine/literature holder that matches the cherrywood stain used throughout the writing center. We also bought smaller matching brochure holders to place on the countertop. On the other pillar is a 2' x 4' framed print. Hidden behind one pillar is a water cooler that was installed after the center was completed; it cannot be seen from outside, and the three-gallon jugs are small enough to be stored under the adjacent desktop of the administrative assistant.

The workstation has been used as the background for a photograph of the assembled LRW program faculty taken for the school's website¹⁷ and a program brochure. The workstation has also done double duty. After the removal of the computer equipment, it has been transformed into a server-staffed open bar for receptions, including those held at the close of "Colonial Frontier" legal writing conferences hosted by Duquesne.¹⁸

Between the administrative assistant's workstation and the entry is a large area with comfortable stuffed chairs for students and other guests to use while waiting to see one of the program's professors (or for anyone to just relax). The interior designer had planned for three chairs, but we ordered a

fourth a year after the center opened. Between each pair of chairs is a cherrywood end table, on top of which is an incandescent lamp with dark shades, for indirect lighting. We bought coasters to protect the tabletops, and some extra brochure holders are placed on the tables. Above and behind each pair of chairs is a wall-mounted magazine/literature holder matching the cherrywood stain. Wood wainscoting covers all of the walls below the chair rail, and linen-look wallpaper was used for all of the interior walls. A cherry coat tree rack is located next to one pair of chairs.

As the program has matured and we have hosted conferences, we have framed three dry-mounted conference placards that the university prepared for each of our conferences, and they hang strategically throughout the writing center. In addition, we have framed another poster that recognizes the program's U.S. News and World Report ranking, and we have one more framed item which is described at the end of this article. All of these items on the walls were sized the same, and all have been framed to match. The materials on the walls remind students and other visitors about the program faculty's work outside of the classroom. We also bought a very large wall-mounted clock, which is centered on the longest wall in the room.

To the left of the administrative workstation and down a short corridor are two offices to be shared by adjuncts and teaching assistants; the corridor ends with an office for a full-time professor. Across from the second adjunct office is a set of built-in storage cabinets above and below built-in mailboxes. The mailboxes match the solid-core countertop for the administrative assistant workstation, and we planned for enough individual mailboxes for all faculty (full-time and adjunct), the administrative assistant, and some extras. One mailbox is used for the writing specialist who was hired after the center was built, and one mailbox is shared by teaching assistants and research assistants (it always has blank timesheets for them). The storage cabinets are for supplies that are frequently needed by everyone in the program, such as envelopes, pens,

¹⁷ Duquesne University School of Law, Legal Research and Writing Program, <http://www.duq.edu/academics/schools/law/academic-programs/legal-research-and-writing-program> (accessed January 31, 2014).

¹⁸ See, e.g., Duquesne University School of Law, Legal Writing Conference 2013, <http://www.duq.edu/academics/schools/law/academic-programs/legal-research-and-writing-program/legal-writing-conference-2013> (accessed January 31, 2014).

paper clips, tape, staples, toner cartridges, etc. We also store spare light bulbs, extension cords, doorstops, and similar items in the cabinets.

Each adjunct office has two three-foot square tables with four chairs, which accommodate class preparation. The chairs and tables fit through the doorway in case we need to bring them into the common area. These offices are partly below street level, but there are casement-style windows across the top of the back wall, right under the ceilings of each. Matching glass transoms at the top of the inner walls of these offices and frosted glass full-length panels on the doors permit transmission of natural light into the common area but preserve the privacy of anyone in the office. Each office has a large whiteboard on the wall for use in student conferences, a telephone, and a printer. We also bought magnetic clips for use on the metal doorframes for holding notices about room reservations.

The full length of the exterior wall in each adjunct office houses desk-height storage cabinets that are one foot deep. The top of the cabinet is a solid-core countertop material. These cabinets are used for long-term storage by the program and hold materials for our national conferences and the administration of the spring semester appellate oral arguments, as well as reams of printer paper, soft drinks, and bottled water. Research assistants also store their work product in the cabinets. Our administrative assistant has labeled each cabinet to help us remember what has been stored in each location.

In the spring semester, one of these rooms is put to use as “Appellate Brief Central,” where we store, sort, and prepare for mailing appellate briefs used by alumni for judging our students’ appellate oral arguments. Extra briefs for faculty are kept here until after the argument period is over, and we also store all items used for the oral argument receptions in the room.

To the right of the administrative assistant’s workstation is a hidden alcove, behind the second pillar, for a networked photocopier/scanner/printer, to which all program faculty and staff can print via the wireless network. The flooring in all of these offices and areas is a faux-wood-

plank material for ease of cleaning, and because the traffic is heaviest there. The other, larger portion of the common area is carpeted.

That large section of the common area holds two three-foot square tables and eight movable chairs, which we reconfigure as needed. The area can accommodate 18 people and has been used for program meetings; training sessions on Westlaw, Lexis, and Bloomberg research tools; lunch gatherings; class meetings; and receptions. On one end of the common area is a wood bookcase we ordered after the center was completed; it was stained to match the cherrywood color and holds examination copies of all available legal research and writing texts, several volumes of computer help books, and copies of our publications. On top of the bookcase, we have placed a teaching award the students gave to the senior faculty member for whom the center was named.

Between the small office for our writing specialist and our kitchenette is a 50-inch high-definition plasma display recessed in the wall, with a connection panel for all conceivable computer and audio/video inputs, and ceiling-mounted hidden stereo speakers. This area was originally going to be used for artwork, but we realized we could extend the common area’s utility by substituting the plasma display. We had a glass shelf fabricated and placed under the wall-mounted display to hold an iPad® or our networked Blu-ray player. The purchase and installation costs of adding the plasma display have been the largest amount spent from the reserve we held for post-construction additions, but it has been worthwhile.

Having this display in the writing center has allowed us to hold training sessions for program faculty right in our center, without having to find and reserve a classroom. Furthermore, we have held many classes in the center itself, ranging from smaller sections of the first-year course to our upper-level seminars. The presence of the display and the layout of the writing center itself have allowed one series of upper-level seminars, a law office simulation course, to have a meeting location that is very much like that of a small law firm. After hours, we have had students gather for semester-ending “legal writing

“The presence of the display and the layout of the writing center itself have allowed one series of upper-level seminars, a law office simulation course, to have a meeting location that is very much like that of a small law firm.”

movie night,” to watch law-related films that the library has purchased. We set up a semicircle of chairs, and the entry area serves as a snack bar.

The third wall of the common area is an eight-foot coat closet, in which we store robes and signs for the spring semester appellate arguments, associated paraphernalia such as timers and easels, boxes of holiday decorations, a vacuum cleaner, and a hand truck for bringing in refreshments and moving boxes of appellate briefs. We also store extra paint, wallpaper, and flooring in there.

Between the coat closet and plasma display is our kitchenette. Although we do not have a sink, the room has a wall of built-in cabinets. The counter on the cabinet wall holds a coffeemaker, microwave, and toaster oven. The program’s faculty and staff use an under-counter refrigerator, and we store all sorts of reception-related items in the upper cabinets. The room houses a small table that can accommodate two people for lunch or a student conference. One short wall is taken up by a whiteboard, and located on the wall opposite from the cabinetry is an armoire in which we store paper, loose-leaf binders, folders, and electronics. Our Blu-ray player is on one shelf, along with two video cameras and two tripods we, and the appellate moot court students, use for recording practice sessions (the recordings are usually played back on our plasma display). We also have plastic containers in the armoire, holding every conceivable cable and adapter to permit connections to the plasma display. After the center was finished, we purchased two additional items usually found in the kitchenette: a library kick-step stool so we could reach the top cabinets throughout the center and a wheeled laptop cart to be used by program faculty for class or for use in the common area. The kitchenette has three independent types of lighting: under-counter lights, high-hat accent lighting, and a motion-controlled fluorescent ceiling fixture that can be set to turn itself on when someone enters the room and shuts itself off a while later.

The writing specialist’s office is a small office off of the common area, on the other side of the plasma display. It was originally intended for use by teaching assistants, so they could study or meet

with 1-L students, but starting a year after the center opened, it has been used primarily by the program’s part-time writing specialist. The room holds one table and two chairs, and one wall has built-in cabinets for storage. On the table-high counter, there’s a printer and telephone, and there is a whiteboard on one wall. The room is very bright because one wall is made up of a huge glass panel that allows the entry of natural light from the adjacent library skylight. A privacy screen can be pulled down over that glass panel when the room is in use. Outside of the office is the center’s fourth wall-mounted magazine/literature holder, which holds handouts and exercises developed by the writing specialist.

This side of the center includes the entryway to two of the three offices for full-time faculty. Each faculty office has one or two large windows facing the street in front of the law school. The wood trim, built-in wood bookcases, and L-shaped desk are similar to those in the other faculty offices in the building. Each room also holds a round table for student conferences. The rooms are slightly different from each other, but comparable in size to those of other faculty offices. These rooms have frosted glass panels on the doors, but no glass transoms near the ceilings.

Aftermath

The writing center has encouraged a high esprit de corps within the program for all faculty and teaching assistants. Having three full-time faculty together has provided many impromptu opportunities for discussion and collaboration. The director usually visits the center in the morning and afternoon, often joining the other program faculty in the common area, and the central location has made it very easy to hold group meetings without any advance planning or notice required. Other members of the law school administration and day division writing program adjuncts often meet the full-time faculty for lunch in the center, because our classes usually meet after 1:00 p.m. Our teaching assistants frequently eat in the center along with everyone else, and they enjoy their ability to hold private conferences with 1-Ls. Many teaching assistants use the center for their own private studying during the afternoon and evening, especially when exams are looming.

“Having three full-time faculty together has provided many impromptu opportunities for discussion and collaboration.”

Adjuncts who teach in the evening division usually arrive at the center 30 to 60 minutes before class, to prepare or talk about class. This means that the full-time faculty and director know when and where the adjuncts will be on those afternoons, so informal monitoring and discussion happens very frequently. Our administrative assistant works late those days, too. The center has also meant that the adjuncts are integral parts of the program and no longer feel isolated; because they have their own offices, they don't need to worry about seeking out rooms for conferences.

The center's location in the library has also forged connections with students that would otherwise not exist. Because the writing program faculty, unlike other members of the law faculty, are located in the library and often walk through the library, we are constantly seen by our students, and when we see them, we often stop to chat. Many of our best students study right outside the center, and the offices of the student journals and appellate moot court board are on the same floor. Other faculty have started to come downstairs more frequently, particularly the junior faculty and the dean.

A visit to the center has become a piece of the tour given to prospective students and to alumni, and it highlights the importance of the writing program by demonstrating the investment the school has made in skills training. As noted earlier, the center has also been a boon to our upper-level writing courses by serving as a "law firm office" and a place for presentations by students to outside guests, such as members of the state legislature.

The downside of the center's location and grouping of faculty is that the program faculty are somewhat isolated from other faculty members, which is the same problem faced by faculty in many clinical programs. Although the center is not located on one of the two faculty floors, it looks identical to the rest of the faculty wing and is actually the most attractive and well-designed portion of the building, which ameliorates any sense of the program being segregated or being composed of second-class faculty (particularly now that the writing program faculty are on tenure-track appointments). The law school's clinic is undergoing renovation and is located several

blocks away, so the writing program faculty are less isolated than the clinicians. However, the other faculty are often unaware of the constant presence of the writing professors in the building. They are not cognizant of the volume of student traffic to the writing professors' offices, so they often are ignorant of how busy the program faculty are with individualized teaching and review of student work, although the writing faculty take the same path to get to their classes. The director's office is on one of the two main faculty floors, however, and his office is visited by students frequently, so there is one reminder of the importance of student contact for an effective writing program. On the other hand, the other faculty do not complain about the presence of students near their offices at conference time. We have found, however, that in the afternoon our conversations in the center can disturb students in the nearby carrels.

The architects' designs have worked out very well, but our current photocopier is noisy, and because it's in the common area next to two offices, it can be bothersome, although we are not sure that any other option would have ameliorated the sound. The center's heating and air conditioning is very dependent upon the library's settings, and because it is at the end of a trunk line, sometimes it can be very cold or very warm. We found that the small under-counter refrigerator is too small for the large number of users, and probably should have planned for a full-size unit. And we wish that we could have built two more offices in the center, for the director and a possible additional teacher in the future.

Conclusion

When the writing center construction was complete, the law school dean and university president held a reception to inaugurate the center. The event was the cover story in our alumni magazine¹⁹ and further showcased the importance of the writing program to the school. Because Duquesne is a Catholic institution

“The center's location in the library has also forged connections with students that would otherwise not exist.”

¹⁹ See *A Lesson in Gratitude, The Duquesne Lawyer*, at 2 (Fall 2009).

founded by the Spiritan Order;²⁰ the center was blessed by a priest at the dedication ceremony. We all thought his words were so wonderful that we had them turned into a framed poster on the wall of the center. Here is what he said:

Let us pray ...

Life-giving God

You are the Inspiration of creation,
the Maker of all good things in our lives.

Bless now this space and place dedicated to you,
and bless all who will teach, study, research,
and write here.

Let this place of learning
Welcome all sincere scholars with truth and integrity,
opening their minds to a deeper understanding of your law
and opening their hearts to new hope.

Inspire all who gather here
to move beyond narrow interpretations of the law and life;
to resist being bound by hopelessness or despair,
and to refuse striving for resources and wealth
for personal gain alone.

Let them instead build upon and expand the precedents of the past.
Ever mindful of the needs of your world
let your Holy Spirit open their eyes to new possibilities

and thus discover new opportunities for service.

And remind all of us always
that your first law is always a law of Love:
a guiding beacon of your Spirit Who loves us all
and calls us all into a deeper relationship with you.
We pray all of this with profound thanksgiving,
in the name of the Father, and the Son
and the Holy Spirit. Amen.²¹



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²⁰ Duquesne University, Who Are the Spiritans?, <http://www.duq.edu/life-at-duquesne/spiritan-campus-ministry/who-are-the-spiritans> (accessed January 31, 2014).

²¹ Rev. James McCloskey, C.S.Sp., *Blessing for Dedication of the Bridget & Alfred Peláez Legal Writing Center* (August 28, 2009).

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Team Up for Collaborative Teaching

By Susan M. Chesler and Judith M. Stinson

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It's a common dilemma for professors: How can I add new skills to my writing class when I don't necessarily feel comfortable with my level of knowledge and don't necessarily want (or have time) to become an expert in this new skill? How can I expand my students' learning experiences more efficiently? Collaborative teaching may be the answer.

Collaborative teaching (or co-teaching) involves two or more faculty who regularly and purposefully share instructional responsibility for a single group of students. Collaborative teaching has been used in secondary education, special education, and undergraduate courses for quite some time, but has been slow to catch on in legal education—including in legal writing and other skills courses.

There are numerous ways to incorporate the models of collaborative teaching into legal writing classrooms, whether for a single classroom exercise or an entire course, that take advantage of its vast potential while minimizing its possible downsides. This short article describes the primary models of collaborative teaching and each of their potential impacts on the classroom, and suggests ways to effectively use each model in legal writing classes.

1. Types of Collaborative Teaching

Collaborative teaching has a broad definition; it ranges from little coordination to fully collaborating on planning, teaching, and assessing the same students. There are four basic models of collaborative teaching: team teaching,

complementary co-teaching, station teaching, and alternative (or tag-team) teaching.¹

a) Team Teaching

In the team teaching model, the members of the team co-teach alongside one another and share responsibility for planning, teaching, and assessing the progress of all students in the class throughout the entire course. Team teaching involves the greatest level of collaboration among the professors.

b) Complementary Co-Teaching

With complementary co-teaching, one member of the co-teaching team supplements or complements the instruction provided by the other member of the team; one person has primary responsibility for teaching, while the other professional may provide more individualized assistance to students. Complementary co-teaching is very similar to team teaching and is often used where the complementary teacher provides more individualized instruction to a subset of students within the class as needed. Both faculty members are, however, covering the same course material.

c) Station Teaching

In the station teaching model, the teachers divide both content and students. Each teacher teaches certain content to one group and then, moving to the next "station," repeats the instruction to the next set of students. This type of collaborative teaching is almost like creating smaller classes within a bigger classroom. Each faculty member focuses on teaching different material, ultimately to the same set of students in the larger class.

¹ Francis J. Buckley, *Team Teaching: What, Why, and How?* 3-4 (2000); *Team Teaching: Across the Disciplines, Across the Academy* (Kathryn M. Plank ed., 2011); State Education Resource Center, *Teaching & Learning Initiative: Six Approaches to Co-Teaching* (September 14, 2007), <http://www.ctserc.org/initiatives/teachandlearn/coteach.shtml>.

d) Alternative (or Tag-Team) Teaching

With alternative teaching, teachers take turns presenting different content to the same group of students. Alternative teaching can be used for an entire course or select topics. Teachers could, for example, alternate by teaching different topics every class period throughout the semester, or one faculty member may teach only one (or a few) topics throughout the course. Alternative teaching does involve more than just being a guest lecturer; both faculty have responsibility, to some extent, for planning, teaching, and assessing students.

2. Potential Benefits and Drawbacks of Collaborative Teaching

Collaborative teaching can have a number of potential benefits, to both the faculty and the students. Although collaborative teaching provides a variety of benefits, there are, of course, some potential drawbacks. Keeping these in mind can help minimize the potential for problems.

a) Potential Benefits

First, collaborative teaching can improve the quality of faculty teaching and scholarship. Through collaborative teaching, faculty can learn new perspectives, teaching techniques, and areas of expertise; they can learn from each other and broaden their horizons in terms of how they teach, what they teach, and what knowledge they have to offer others (in terms of scholarship and conference presentations). Learning from each other can occur during planning discussions, through sharing teaching ideas, and by watching each other in the classroom. Collaborative teaching can also promote effective mentorship to new faculty, presenting unique opportunities for hands-on mentoring of newer teachers or teachers who are new to the particular field. Furthermore, sharing some of the workload involved in planning, teaching, and assessing students can lessen faculty fatigue and burnout, especially for those of us that have been teaching the same courses for a long time. Collaborative teaching also provides an incentive to do things differently in your classes. We often think about really “shaking it up,” but then tend to resort to what we’ve always done

(because of time constraints and simple inertia); involving a colleague can dramatically increase the chances of actually doing things differently.

More importantly, a collaborative teaching environment can provide a variety of benefits to students. Generally, students can benefit from broader coverage of course material, expanded teaching styles, and hearing differing viewpoints. The course can cover additional material due to the expanded expertise of the teachers. In addition, collaborative teaching can prevent boredom and keep students more engaged by allowing for more creativity and flexibility in teaching approaches. Collaborative teaching also increases the chance that students will be exposed to varied teaching styles, which can appeal to a broader array of students with different learning styles. Hearing from more than one teacher in the classroom can be more interesting to students and breaks up the monotony (we know we often get bored with ourselves in front of the classroom week after week!). By providing differing viewpoints, collaborative teaching can also allow students to see more than one side of an issue, which is often essential to fully understanding complex legal issues. Finally, co-teachers can model critical thinking, professionalism, and effective collaboration—such as the respectful exchange of ideas and debate. Working well with others is a key practical lawyering skill that is often overlooked in law school courses.

b) Potential Drawbacks

In addition to its benefits, collaborative teaching may present some disadvantages for faculty. First, it requires a greater level of coordination and planning, especially the first few times a course is taught collaboratively. Coordination and planning take time, so collaborative teaching may actually increase both faculty members’ workloads, at least initially. In addition, course scheduling can become much more complicated. Collaborative teaching also creates a potential for conflict between faculty members; the literature highlights the importance of collaborative teaching being voluntary and the need to carefully select who teaches together. Faculty should not be forced to collaborate; for

example, having legal writing faculty arbitrarily teamed up with a doctrinal faculty member may pose problems if there is a power imbalance (and one professor should never end up effectively serving as a “TA” for another professor!).

Collaborative teaching may also present downsides for at least some students. Following up on the challenges collaborative teaching may pose for faculty, if those issues are not properly addressed, poor planning, disorganization, and conflicts between faculty can lead to student confusion. The course can, to the students, feel like separate courses (rather than one course being taught collaboratively). This is likely to enhance students’ anxiety over course objectives and assessment. In addition, some students may flourish in a highly structured and consistent environment; those students might actually prefer and learn better with only a single voice and a consistent learning style in the classroom. Furthermore, in addition to creating scheduling issues for faculty, collaborative teaching may create scheduling difficulties for students, especially if faculty opt to combine different sets of students for some classes. Finally, collaborative teaching can lead to too much “teacher talk” and less active student participation. Let’s be realistic: faculty like to talk. The more faculty, quite often the more talk (think here: faculty meetings). Faculty who teach collaboratively should pay special attention to this potential problem and keep each other (and themselves!) in check on the amount of “teacher talk” happening in the classroom to ensure effective student engagement.

3. Incorporating Collaborative Teaching into Legal Writing Courses

Legal writing professors can take advantage of the varied benefits that collaborative teaching can bring to skills courses in a variety of ways. Depending on the nature of the particular course or skill you are teaching, team teaching, complementary co-teaching, station teaching, or alternative teaching might work best. Here are a few suggestions on ways to effectively incorporate each collaborative teaching model into legal writing classes.

a) Team Teaching

Team teaching is likely to work best in a summer course or intersession course because those courses are offered over a shortened time frame and often to a small number of students, rather than semester-long courses during the academic year. While team-teaching may not create as many administrative concerns for non-legal writing faculty, in the legal writing context it’s often difficult to allocate two teachers to one group of students without forcing colleagues to absorb additional students and increase the institution’s student-to-teacher ratios.

For example, one of the authors team-taught a summer CLEO-type (Council on Legal Education Opportunity) class with a legal writing colleague. Team teaching made the class much more fun and interesting, both for the teachers and for the students. Team teaching also allowed the teachers to take advantage of individual strengths (and overcome weaknesses); one of the team teachers was much better at big-picture issues and global concepts, and the other was better at detail. Together, the course was stronger than it would have been if taught individually.

b) Complementary Co-Teaching

Complementary co-teaching works well for specific topics, such as research instruction. For example, some of us have used this method of collaborative teaching to offer research labs to our legal writing students. The legal writing professor teaches research skills and strategies in the classroom, and a law librarian provides hands-on research training to students.

Complementary co-teaching would also work well on a smaller scale for in-class exercises or modules relating to additional skills. For example, it could be used to teach negotiation skills or ethical considerations and professionalism, both of which can often be best learned through small-group exercises or simulations. An additional professor could supplement by lending his or her expertise in the specific skills and by working directly with some of the small groups. This would save time because more than one group can get feedback and faculty input or perform the simulation at the same time.

c) Station Teaching

Station teaching is likely to work best for concrete tasks such as citation. For example, in an 18-person legal writing classroom, students could be divided into three groups of six students to work on a number of citation problems. Three faculty could go group to group, instructing them on a specific set of citation rules and having them work through a series of examples for 15 minutes per station. Teacher A could teach case citation; teacher B could teach statutory citation; and teacher C could teach secondary source citation.

Station teaching could be used to introduce a variety of skills at the same time, like a progressive dinner party where students travel to different stations. This method might work well if skills were broken down into transactional versus litigation skills and could be particularly useful during orientation or “transition to law practice” courses, where introduction rather than in-depth instruction is the goal.

d) Alternative (or Tag-Team) Teaching

Alternative teaching is probably the most efficient type of collaborative teaching and the easiest to implement in legal writing and skills courses. Alternative teaching works well in classes with discrete topics that can be naturally divided.

Alternative teaching would work well to introduce additional skills, such as interviewing, counseling,

and drafting, into traditional first-year classes. Similarly, it could be used to introduce additional skills in an advanced survey course, such as including legislative drafting or contract drafting in a transactional skills course.² And it could be used to combine doctrine and skills in a course that focused on, for example, writing and lawyering skills for employment law, for water law, or for criminal law. This method enables each teacher to use his or her expertise to widen the course coverage.

It can be especially helpful when teaching an overload class. For example, one of our colleagues co-teaches a course on Indian Legal Research with a law school librarian using this method; the course is six-weeks long and they divvy up topics based on their knowledge, such as federal legislative history, tribal materials, and treaties. They each need to master their own material, and the students get the benefit of expertise and varying teaching styles of the two faculty members.

In conclusion, collaborative teaching can be an effective teaching tool and one that provides a number of benefits to both faculty and students—so go team up!

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² See William Y. Chin, *The Relay Team-Teach Approach: Combining Collaboration and the Division of Labor to Teach a Third Semester of Legal Writing*, 13 *Perspectives: Teaching Legal Res. & Writing* 94 (2005).

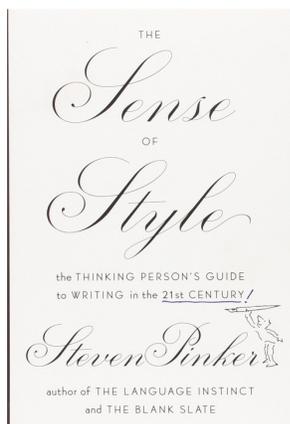
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Review: *The Sense of Style: The Thinking Person's Guide to Writing in the 21st Century!*

By E. Scott Fruehwald

E. Scott Fruehwald is a contributing editor to the Legal Skills Prof Blog, where he discusses legal education, legal skills, and other legal issues.

When I started teaching legal writing 20 years ago, I read many rules in the conventional usage and writing texts on how students should write. While most of these rules made sense, some of them seemed wrong, based on my intuition. What these rules had in common was that they were based on authority; writers had always adopted these conventions. As I continued teaching, I dropped those rules that didn't make sense and relied more on my intuition and how good legal writers actually wrote.



Now, cognitive scientist Steven Pinker has adopted a new approach to grammar and usage, based on linguistics, how the brain works, and common sense, rather than authority. In *The Sense of Style: The Thinking Person's Guide to Writing*

in the 21st Century!, Professor Pinker defines style as “the effective use of words to engage the human mind.”¹ Because style involves the human mind, “the sciences of the mind can illuminate how

language works at its best.”² To do this, one must be an avid reader and reverse-engineer good writing.

Based on his reverse-engineering, Pinker advocates using the classical style, which directs “the gaze of the reader to something in the world she can see for herself.”³ More specifically,

The guiding metaphor of classic style is seeing the world. The writer can see something that the reader has not yet noticed, and he orients the reader's gaze so that she can see it for herself. The purpose of writing is presentation, and its motive is disinterested truth. It succeeds when it aligns language with truth, the proof of success being clarity and simplicity.⁴

Under the classical style, “the writer and reader are equals,”⁵ and writing is a conversation with the reader. Using the classical style helps a writer avoid writing that is bloated, self-conscious, and academic.

The classical style differs from other styles—such as the practical style, the plain style, and the postmodern style—in the relationship of the writer to the reader and in what the writer is attempting to achieve. In the practical style of traditional style texts, the writer assumes a role like a supervisor or a teacher, and the reader is the employee or the student, with the writer's purpose being to fulfill the reader's need. It may employ a fixed template, such as a five-paragraph essay, and it is generally brief. In the plain style, everything is in the open, and the reader doesn't need help in seeing things. Finally, in the postmodern style, “the writer's chief,

² *Id.* at 7.

³ *Id.* at 48.

⁴ *Id.* at 28-29.

⁵ *Id.* at 29.

¹ Steven Pinker, *The Sense of Style: The Thinking Person's Guide to Writing in the 21st Century!* 2 (2014) (emphasis in original).

if unstated, concern is to escape being convicted of philosophical naiveté about his own enterprise.”⁶

In the rest of the book, Pinker shows how to achieve the classical style in order to communicate better with readers. The first difficulty in achieving clarity is the “curse of knowledge”—the failure to realize what the reader does not know. As Pinker declares, “The better you know something, the less you remember about how hard it was to learn it.”⁷ The writer can avoid this curse by imagining being the reader and being aware of specific pitfalls, such as the use of specialized terminology, the failure to explain technical terms, and the overuse of abstraction. Pinker suggests that a writer show his or her draft to others or that the writer set the draft aside for a while and self-correct it later.

A writer can use syntax to organize a web of thoughts into comprehensible prose. Pinker proposes using tree diagrams “to bring the units of language into consciousness.”⁸ Diagrams can help the writer put related concepts together and place concepts within larger concepts in order to lessen the cognitive load on the reader. They also help the writer put concepts in the most comprehensible order, which is generally right-branching. Omitting needless words can also help lessen the cognitive load, and reading his or her writing aloud can help the writer avoid confusing syntax. Writers should also avoid garden paths—temporary slowdowns that delay the reader for a fraction of a second. Garden paths can be overcome by employing proper punctuation, using words that signal syntactic structure, employing structural parallelism, and pulling unrelated phrases apart.

Even if prose follows the advice of the preceding chapters, it can still be incoherent because the writer has not shown the connections between sentences and between larger units (arcs of coherence). Pinker writes, “A coherent text is a designed object: an ordered tree of sections within sections, crisscrossed by arcs that track

topics, points, actors, and themes, and held together by connectors that tie one proposition to the next.”⁹ The first technique in creating arcs of coherence is to make the topic and point clear to the readers to help them keep track of the ideas and the relationship between ideas. The writer also shows the logical connections between propositions through resemblance (similarity, contrast, elaboration, etc.), contiguity in time and place, and cause or effect. Connectives (such as similarly, in contrast, however, etc.) help the reader see these relations. Finally, the writer must make certain that the verbiage and the content of his or her argument are going in the same direction (thematic consistency).

In the final chapter, Pinker produces a style manual for the 21st century. He discusses the rules of grammar, diction, and punctuation through reasoning rather than convention. For example, he attacks the traditional rules against ending a sentence with a preposition and using split infinitives. He also reexamines the use of who and whom, that and which, and masculine and feminine pronouns. Pinker concludes this chapter by stating, “[i]n considering questions of usage, a writer must critically evaluate claims of correctness, discount the dubious ones, and make choices which inevitably trade off conflicting values.”¹⁰

While I agree with how Pinker has reoriented writing to a foundation predicated on how the brain processes information, I do not agree with all of his applications of that foundation. For example, Pinker strongly criticizes “metadiscourse,” such as introductory thesis paragraphs, and signposting (headings and phrases like “the first topic is” or “the previous section analyzed”) that goes with it. Pinker asserts, “It’s not as necessary in writing, where a reader can back track and look up what she’s missed. And it can be intrusive in classical style, which stimulates a conversation.”¹¹ He adds, “The problem with thoughtless signposting is that the reader has to put more work into understanding

⁶ *Id.* at 30.

⁷ *Id.* at 61.

⁸ *Id.* at 78.

⁹ *Id.* at 186.

¹⁰ *Id.* at 300.

¹¹ *Id.* at 38-39.

the signposts than she saves in seeing what they point to . . . It's better if the route is clearly enough laid out that every turn is obvious when you get to it. Good writing takes advantage of a reader's expectations of where to go next."¹²

Pinker's aversion to metadiscourse goes against how the brain learns.¹³ Long-term memory needs repetition to retain information, and thesis paragraphs, conclusions, and signposts provide some of those repetitions. Similarly, humans need clear structure (schemas in long-term memory) to be able to properly retrieve information when it is needed, and metadiscourse and signposts help provide that structure. Finally, having metadiscourse and signposts shifts the cognitive load from understanding the organization to understanding and remembering the content. While I agree that poorly written metadiscourse should be avoided, metadiscourse is necessary for clear communication.

Pinker has presented his ideas in well-written, clear prose. He helps the reader understand his ideas by analyzing examples of good and poor writing in detail (reverse-engineering). His writing, however, would be easier to follow if he used signposts to better demarcate sections and subsections.

In *The Sense of Style*, Professor Pinker has reoriented how we look at writing. No longer are writers slaves of convention; they can base their style on how well they can communicate to their readers. Under his approach, writers understand why they are doing something, rather than just applying rules. While one can disagree with some of the details of his book, Pinker has reoriented the foundation of style. I think writing will be better for it.

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¹² *Id.* at 39.

¹³ For a detailed discussion on how the brain learns, see Duane Shell et. al, *The Unified Learning Model: How Motivational, Cognitive, and Neurobiological Sciences Inform Best Teaching Practices* (2010).

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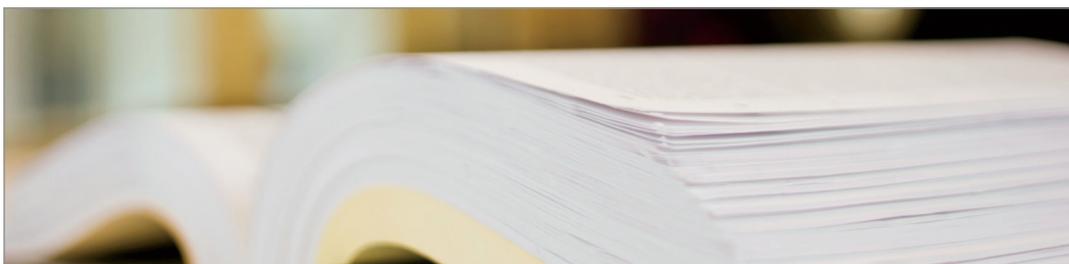
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