

Perspectives

Teaching Legal Research and Writing

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In 100 words or less, we want to hear what you (and your students, law clerks, or attorneys) have to say about our next micro essay prompt:

- "Will Artificial Intelligence (AI) change how or what we teach in LRW classes? What do you anticipate the impact of AI will be on teaching or learning?"

Be honest; be creative; let these words provoke or inspire you! Don't hold back - we will publish essays anonymously if you ask! We will publish the best selections in our next issue, submissions are welcome through September 1.

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Avoiding "Ally Theater" in Legal Writing Assignments

By Emily A. Bishop

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Writing assignments play an important role in our students' first year of law school. Students immerse themselves in the fact patterns and relevant rules of law for weeks at a time, inhabiting a fictional world with very real issues and problems. That immersion creates a long-lasting impact. Thus, legal writing assignments provide a good opportunity to introduce topics that require students to "address the needs and problems of a multicultural society."¹ Topics that implicate issues of race, gender, or sexual orientation can spark student interest and generate challenging but enlightening discussions. The most substantive method of incorporating issues of diversity into legal writing assignments involves an assignment centered on "competing claims or values among diverse populations."²

In 2018, the need for these assignments seems particularly strong. Events such as the 2015 United States Supreme Court decision in *Obergefell v. Hodges* suggest that we are "teaching in the tip," as certain issues are "teetering between becoming closed or remaining open as a matter of public policy debate."³ Events such as the August 2017 white supremacist rally in Charlottesville, Virginia, show that battles for basic civil rights are not over. When law schools decline to address current

events that lay bare the role of the legal system in perpetuating inequality, all students suffer from the lost opportunity for dialogue, and students from marginalized communities can find the school's silence demoralizing and dehumanizing.⁴

A complete discussion about incorporating these issues—particularly issues of race—into the legal writing curriculum requires acknowledging that the legal writing profession is overwhelmingly white. "[I]n the 2014–2015 academic year, 88.6% of all [LRW] faculty were Caucasian," as were 73% of new hires for the 2014–2015 academic year.⁵ Thus, at many law schools, first-year writing assignments are likely planned and executed by an all-white or majority-white team of professors.

This fact carries risks. A possible solution to these risks involves the diversification of the legal writing community.⁶ But that takes time. Meanwhile, if white professors collectively back away from writing assignments implicating issues of race, effectively sitting in a holding pattern until law faculties diversify, they risk signaling to students of color that these issues are not important, or not relevant to the work of a novice legal writer. A better strategy

“Topics that implicate issues of race, gender, or sexual orientation can spark student interest and generate challenging but enlightening discussions.”

⁴ See, e.g., Taifha N. Baker, Note, *How Top Law Schools Can Resuscitate an Inclusive Climate for Minority and Low-Income Law Students*, 9 *Geo. J. L. & MOD. CRITICAL RACE PERSP.* 123, 124 (2017). Student coalitions at several prominent law schools have expressed dissatisfaction with administrators' silence in response to police shootings of Black men, women, and children. E.g., Harvard Law School Affinity Group Coalition Letter to Dean Minow and Harvard Law School Administration (Dec. 7, 2014), <https://harvardlawcoalition.wordpress.com/2014/12/08/letter-to-dean-minow-and-harvard-law-school-administration-december-7-2014/> (“Your silence denies humanity to the lives lost and minimizes the gravity of the palpable anguish looming over campus.”).

⁵ Association of Legal Writing Directors & Legal Writing Institute, 2015 NATIONAL SURVEY RESULTS ix, available at <http://www.alwd.org/wp-content/uploads/2017/03/2015-survey.pdf>.

⁶ See, e.g., Teri A. McMurtry-Chubb, *Writing at the Master's Table: Reflections on Theft, Criminality, and Otherness in the Legal Writing Profession*, 2 *DREXEL L. REV.* 41, 56 (2009) (noting that teachers from minority groups offer perspectives that “challenge closely held norms and create, and re-create, different legal truths.”).

¹ Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 *LA RAZA L.J.* 140, 140 (1995).

² *Id.* at 153.

³ Jamie R. Abrams, *Experiential Learning and Assessment in the Era of Donald Trump*, 55 *DUQUESNE L. REV.* 75, 78 (2017). In *Obergefell v. Hodges*, 135 S. Ct. 2584, 2604-05 (2015), a majority of the United States Supreme Court held that the right to marry is a fundamental right protected by the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and therefore states must recognize lawful same-sex marriages performed in other states.

for white professors involves more thorough study of the construct of race, racial bias, and their effects on law students of color before introducing writing assignments on potentially charged topics. This may allow them to use their privilege to provide a forum for discussion of issues of race,⁷ in a way that will not disproportionately burden students of color.

In this article, I use the concept of “ally theater” to reframe some of the risks inherent in white professors’ use of legal writing problems centered on issues of race. In Part I, I explain the origins of “ally theater” in online social media, discuss the risk that a similar phenomenon could occur within legal writing courses, and identify a more effective form of allyship for white legal writing professors. In Part II, I recommend that white law professors—whose privilege makes them less inclined to notice the conditions that cause law students of color to bear additional burdens in comparison to their white counterparts—assume that these conditions are present in their classrooms. In Part III, I list specific strategies that white legal writing professors can use to address the assumptions presented in Part II.

I. What is “ally theater”?

I have borrowed the concept of “ally theater” from BGD, a blog and online forum designed “to amplify the voices, experiences and expressions of queer and trans people of color.”⁸ There, Princess Harmony Rodriguez, a trans woman, described an online phenomenon she calls “violent solidarity”: a member of an in-group, who wants to be seen as an “ally” to a marginalized group, engages in a kind of theater, performing acts of public allyship. The self-described ally supposedly “calls out” oppressive behavior by sharing content on social media depicting violence against marginalized group members. In sharing this content,

however, the ally engages in “a form of mental and emotional violence” by reminding readers from the marginalized group “how much [they are] despised, detested, and reviled for being who [they are]” without actually providing meaningful help. Whether the self-described ally does this only to earn “a pat on the head” from readers or with less self-serving intentions, “neither one is okay.”⁹

In another post, BGD Editor-in-Chief Mia McKenzie observed that “‘allyship’ has become more pointless performance than anything actually useful to marginalized people.”¹⁰ McKenzie urged privileged people to avoid ally theater and instead strive for real solidarity, which requires action—specifically, “*listen[ing]* to what marginalized groups ask of them and then *do[ing]* *that*.”

The potential exists for white professors to engage in ally theater, perhaps unwittingly, in the legal writing classroom. White privilege and ignorance could lead a well-meaning white professor to execute an assignment in a way that magnifies the problems faced by law students from marginalized groups. The facts of a writing assignment on a racially charged issue will likely implicate violence toward, or institutional oppression of, a marginalized group. By introducing the assignment, the professor requires students from the marginalized group to confront the historical and ongoing mistreatment of their group. Not only that, but they must do it while competing academically alongside dominant-group classmates who do not face the same burden. If the professor introduces the writing assignment without mitigating its burdens on students from marginalized groups, and without provoking dominant-group students to reevaluate their perspectives, the result is a form of ally theater.

In the rest of this essay, I offer suggestions to combat that risk. In Part II, I recommend

⁷ See VERNÁ A. MYERS, MOVING DIVERSITY FORWARD: HOW TO GO FROM WELL-MEANING TO WELL-DOING 156-60 (discussing use of white privilege to fight bias).

⁸ About BGD, <https://www.bgdblog.org/about-bgd/> (last visited July 16, 2017). BGD stands for “Black Girl Dangerous.” Mia McKenzie, the Director/Creator/Editor-in-Chief of BGD, publishes her own writings at www.blackgirldangerous.com; she has also published a collection of essays from the website, and her commentary to reader responses. See MIA MCKENZIE, BLACK GIRL DANGEROUS: ON RACE, QUEERNESS, CLASS AND GENDER (2014).

⁹ Princess Harmony Rodriguez, *Caitlyn Jenner, Social Media and ‘Violent Solidarity’: Why Calling Out Abusive Material by Sharing It Is Harmful*, (June 8, 2015), <https://www.bgdblog.org/2015/06/caitlyn-jenner-social-media-and-violent-solidarity-calling-out-abusive-material-sharing-it/>.

¹⁰ Mia McKenzie, *How to Tell the Difference Between Real Solidarity and ‘Ally Theater’*, (Nov. 4, 2015), <http://www.blackgirldangerous.com/2015/11/ally-theater/>.

“White privilege and ignorance could lead a well-meaning white professor to execute an assignment in a way that magnifies the problems faced by law students from marginalized groups.”

assuming that existing classroom conditions disproportionately burden law students of color. In Part III, I offer specific strategies that the professor might use to mitigate those burdens.

II. Assumptions about the legal writing classroom

Law students of color must work to overcome burdens that do not exist for white law students. White professors cannot simply hope that students of color will automatically feel included in the classroom, or that no white student will ever make a biased remark. A better strategy incorporates the assumption that the following conditions impact any class discussion of race and the law.¹¹

A. The legal writing classroom is a white space

First, white professors can assume that no participant in the legal writing classroom is a blank slate when it comes to matters of race. In many law schools, the legal writing classroom is a white space because human actions and events

are evaluated mainly by reference to white perspectives and experiences.

1. White experiences are the baseline for evaluating all other events

As the longstanding beneficiaries of laws and institutions that benefit Caucasians, white people tend not to think about their own whiteness. Nor do they tend to think about individual norms as inherently white-specific. As a result, law schools operate within a “white racial frame,”¹² and white professors and law students are disinclined to examine their school’s history of exclusion of people of color, or its focus on a curriculum that prioritizes the theories of white elites. Furthermore, within this white frame, white perspectives are the baseline for understanding human experience, including the legal system. Thus, evaluations of the law are held out as “objective” or “neutral” even though they stem from a white world view.

Many community members of color navigate law school as outsiders. Meanwhile, because of the white racial frame, white participants tend to view their own experiences as the norm (instead of as products of their race), and the experiences of law students of color as abnormal. Thus, white law students may expect that law students of color will discuss the law without reference to their own experiences. And when law students of color do reference their own race-related experiences, white participants may judge these comments negatively as a failure to maintain objectivity.

2. White participants are likely to view racism only as a problem for people of color, and perpetrated only by individuals with invidious intent

The white racial frame also may affect white participants’ understanding of racism. First, white participants may view racism as a problem that does not involve them

“White professors cannot simply hope that students of color will automatically feel included in the classroom, or that no white student will ever make a biased remark.”

¹¹ In this section, I rely on studies conducted by sociologists Dr. Wendy Leo Moore and Dr. Yung-Yi Diana Pan. See WENDY LEO MOORE, *REPRODUCING RACISM: WHITE SPACE, ELITE LAW SCHOOLS, AND RACIAL INEQUALITY* 179 (2008); YUNG-YI DIANA PAN, *INCIDENTAL RACIALIZATION: PERFORMATIVE ASSIMILATION IN LAW SCHOOL* 64 (2017).

I have also relied on the work of other scholars inside and outside the legal field. See generally Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635 (2008); Kim D. Chanbonpin, *Crisis and Trigger Warnings: Reflections on Legal Education and the Social Value of the Law*, 9 CHI.-KENT L. REV. 615 (2015); Kimberle Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN’S STUD. 33 (1994); Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability Into Law School*, 32 WILLAMETTE L. REV. 541 (1996); Barbara J. Flagg, *“Was Blind, But Now I See”: White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953 (1993); Angela P. Harris & Marjorie M. Shultz, *“A(nother) Critique of Pure Reason”: Toward Civic Virtue in Legal Education*, 45 STAN. L. REV. 1773 (1983); DEBBY IRVING, *WAKING UP WHITE AND FINDING MYSELF IN THE STORY OF RACE* (2014); McMurtry-Chubb, *supra* note 6; MOVING DIVERSITY FORWARD, *supra* note 7; VERNĀ A. MYERS, *WHAT IF I SAY THE WRONG THING? 25 HABITS FOR CULTURALLY EFFECTIVE PEOPLE* (2013); Madhuri Sathish, *How To Actually Be An Ally To Students Of Color On College Campuses (And Beyond)*, Bustle (Nov. 13, 2015), <https://www.bustle.com/articles/123643-how-to-actually-be-an-ally-to-students-of-color-on-college-campuses-and-beyond>; Judith A.M. Scully, *Seeing Color, Seeing Whiteness, Making Change: One Woman’s Journey in Teaching Race and American Law*, 39 U. TOL. L. REV. 83 (2007); Rita Sethi, *Speaking Up! Speaking Out! The Power of Student Speech in Law School Classrooms*, 16 WOMEN’S RTS. L. REP. 61 (1994); Palma Joy Strand, *We Are All On The Journey: Transforming Antagonistic Space in Law School Classrooms*, 67 J. LEGAL EDUC. 176 (2017); Rob Trousdale, *White Privilege and the Case Dialogue Method*, 1 WM. MITCHELL L. RAZA J. 28 (2010); Stephanie M. Wildman & Adrienne D. Davis, *Essay, Language and Silence: Making Systems of Privilege Visible*, 35 SANTA CLARA L. REV. 881 (1995).

¹² PAN, *supra* note 11, at 64. (explaining the “white racial frame” as “institutional, cultural, and historical processes that normalize whiteness at the expense of those who are not white”).

“When these students do speak with emotion, listeners frequently dismiss their reactions as irrelevant and label the speakers 'too angry' or 'too emotional.'”

because they do not personally feel its effects. Second, white participants may be more inclined to “think of racism as voluntary, intentional conduct done by horrible others,”¹³ and not as institutional or structural racism.

This limited understanding of racism can lead white participants to assume that avoiding racism requires either colorblindness or the mastery of “some magical set of cross-racial manners”¹⁴ that will allow them to come across as a “good person.” They then may not recognize or acknowledge their role in perpetuating systemic racism.

3. White participants assume that white space is comfortable for everyone

Because white participants tend to think of whiteness as the norm, they tend to assume that the classroom is equally comfortable for all participants. In her study of students at two elite law schools, Dr. Wendy Leo Moore observed that white law students in the schools’ student council organizations typically chose bars frequented mostly by white patrons for law school social events, despite repeated requests from students of color for more racially mixed venues. She concluded that the white students “assumed that white cultural spaces would be acceptable to everyone.”¹⁵ Similarly, if the typical legal writing classroom functions as a white space, then the white students participating in the class are less likely to realize that others are apprehensive about it and the discussions that occur there.

¹³Wildman & Davis, *supra* note 11, at 897. See also MIA MCKENZIE, *Whack Jobs Are Not The Problem (You Are)*, in BLACK GIRL DANGEROUS, *supra* note 8, at 57-58.

¹⁴IRVING, *supra* note 11, at 126.

¹⁵MOORE, *supra* note 11, at 99-100.

B. Typical legal instruction emphasizes unemotional neutrality and objectivity

Next, the white professor can assume that elsewhere in law school—and perhaps even in the classroom—the students are learning that “thinking like a lawyer” requires both divorcing reason from emotion and prioritizing reason. This approach is superficially attractive because successful attorneys and business leaders are often known for their emotional restraint. But this “bleached out” view of law practice “assumes that it is possible for people to ‘check’ their identities at the door once they become lawyers”¹⁶ and likewise possible for law students to reject emotional responses to oppression in the law school classroom. This view disproportionately impacts students from historically-oppressed groups. When these students do speak with emotion, listeners frequently dismiss their reactions as irrelevant and label the speakers “too angry” or “too emotional.” Thus, students of color learn that to succeed in law school and law practice, they must suppress their emotional reactions to oppression.

1. Emotional reactions are frequently dismissed as irrelevant, and students who express emotion are labeled “too angry” or “too emotional”

Many law professors deliberately or unconsciously discourage expressions of emotion in the classroom. The ability to recognize and isolate emotional responses is important to legal work. Nonetheless, the automatic labeling of personal speech as unacceptable tends to legitimize the comments of white men (whose comments are not viewed as personal because white experiences form the basis for social and legal norms), and to devalue the comments of students of color and women. Professors might signal the unacceptability of emotional comments by fumbling to incorporate them

¹⁶PAN, *supra* note 11, at 73.

into the broader discussion or dismissing them entirely. Fellow students can signal that these comments are unimportant by rolling their eyes or holding side conversations while a classmate speaks.

In a classroom where most participants assume that legal reasoning requires absolute neutrality, expressions of emotion do not merely expose students of color to short-term embarrassment. They can also be costly in the long term, because the law professor and classmates may view these students as “biased” and “unlawyerlike.”¹⁷ In two studies of racism and racialization in the law school environment, the examiners observed white law students’ tendency to characterize students of color who challenged the white frame as angry. Dr. Moore observed white students dismissing the perspectives of black men as “angry” or “too focused on issues of race” regardless of how much care the men took to manage their demeanor when speaking about race, or even whether they spoke about race at all.¹⁸ During her two-year observation of students at two law schools, Dr. Pan observed that Latina and Asian American women law students feared that when they spoke on issues concerning disenfranchised communities, they “risk[ed] delegitimizing their position among peers and instructors who perceive them as angry.” Even when these women tried to temper their remarks, “many still [felt] stereotyped as angry the moment they open[ed] their mouths to speak about a gendered or raced topic.”¹⁹ These reactions from professors and classmates can heighten students’ fears that they will suffer academically if they do not sufficiently

distance themselves from the subject matter they must discuss.

C. Law students of color have borne the burden of white classroom space in the past

The next set of assumptions white professors must confront pertains to the classroom dynamics that students of color may have experienced in the past. The students’ past experiences may affect their perception of the legal writing classroom and their willingness to discuss race and the law.

First, law students of color may have been the targets of overtly racist comments from professors or may have witnessed professors fail to address racist comments by other students. When professors decline to address students’ racist reactions, students of color may feel compelled to address the racism themselves.

Second, law students of color likely have experienced microaggressions, or actions that reveal a negative or erroneous assumption by the member of a privileged group about a marginalized group.²⁰ Even when microaggressions are unintentional, the professor’s actions can confirm stereotypes or generate negative messages about students of color. Microaggressions can make it more difficult for students from underrepresented groups to function in the classroom.

Law students of color also may have felt both hypervisible and invisible in the same classroom. Hypervisibility can result if students of color are underrepresented in the classroom, and their white instructors and classmates interpret their comments as representative of their entire race. White instructors may even call upon students

“Microaggressions can make it more difficult for students from underrepresented groups to function in the classroom.”

¹⁷ Crenshaw, *supra* note 11, at 37.

¹⁸ See MOORE, *supra* note 11, at 153-56 (noting white students’ description of one particular student as “an ‘angry black man’” simply because his computer screen background featured a picture of the Black Panthers).

¹⁹ PAN, *supra* note 11, at 155, 157.

²⁰ WHAT IF I SAY THE WRONG THING?, *supra* note 11, at 58-59 (2013). One incident frequently cited in discussions of microaggressions of academia is professors’ mispronunciation of the names of students of color. *E.g.*, PAN, *supra* note 11, at 91-93.

“[S]tudents of color may choose either to squelch emotion in their reasoning or to disengage from these discussions altogether. Each choice comes with a heavy cost.”

of color directly to speak about their own experiences, offering “some sort of minority ‘testimony,’”²¹ signaling that their experiences are outside the norm. Because the white experience is associated with objectivity, white students may feel entitled to question the validity of the perspectives of students of color, or to dismiss these perspectives as subjective. Thus, immediately after the white professor makes them hypervisible, the professor and classmates could render students of color invisible by questioning and dismissing their perceptions.

When faced with the burdens imposed upon them by white classroom space, students of color may choose either to squelch emotion in their reasoning or to disengage from these discussions altogether. Each choice comes with a heavy cost. The sublimation of emotion to reason often results in feelings of alienation. On the other hand, when students of color disengage, they forfeit an opportunity to hone their skills formulating cogent arguments about race and the law.

D. Law students of color need to be encouraged, not “saved”

Finally, a white professor’s efforts will be most successful if they acknowledge the ongoing efforts of law students of color to resist the white racial frame and promote each other’s success. This recognition will allow the professor to understand how students of color might process a racially charged writing assignment and related in-class dialogues. Additionally, it may deter the white professor from adopting a paternalistic stance toward students of color.

Law students of color often form informal social groups to discuss comments made by white students and professors, free from the risk that white participants will devalue their perspectives or emotions. Many also join

official organizations as a means of coping with adversity and ensuring success in law school. Members of “panethnic student organizations”²² often commiserate about the lack of camaraderie in law school and receive guidance from upper-class students. Additionally, panethnic organizations assist members with networking, outlining, and preparing for final exams. Panethnic organizations also frequently organize programming on race-related topics that would not otherwise be available at the law school. The students who run these organizations often provide programming and support despite the heavy workload it imposes. Thus, the building and maintenance of support networks imposes another burden upon law students of color that their white counterparts do not have to bear.

Awareness of these activities may reduce the white professor’s susceptibility to paternalism. White people are accustomed to depictions of white protagonists and white leaders. Thus, a white legal writing professor might easily imagine herself as the instigator of fundamental change within the law school. In reality, however, she is the one who is jumping in mid-stream. When executed with a white-leadership mindset, solidarity can easily become paternalism. This assumption of leadership by the privileged person is disempowering to students of color, and it is likely to lead to the unintentional version of ally theater discussed in Part I. A more reasonable goal for the white professor might be to play a meaningful supporting role.

III. Potential burden-lowering strategies

Aware of the assumptions identified in Part II, the white professor can avoid becoming overwhelmed by them, and can instead identify strategies to facilitate effective classroom discussion. Many tactics for effectively addressing race in the classroom will be

²¹ Crenshaw, *supra* note 11, at 40-41.

²² Dr. Pan uses the term “panethnic” “to denote the conflating of ethnicity and race and the racialization process of ethnic individuals.” PAN, *supra* note 11, at 195 n.5

familiar;²³ the challenge is deploying them with a new perspective. In Part III, I present a synthesized, non-exhaustive list of teaching techniques aimed at reducing the burdens identified in Part II.

A. Attempt to deconstruct the white space in the legal writing classroom

First, challenge the notion of whiteness and white experiences as the norm against which all human actions are evaluated. This may involve an initial introspective phase, in which the white professor examines her own bias and privilege, a preparatory reading phase for the students, and a phase of classroom activity.

The initial phase requires consultation of books, law review articles, newspaper or magazine articles, websites, and films that address the concept of white privilege. The professor might also consult practitioners who frequently address issues of race. By being proactive about research, the white professor can avoid calling upon people of color to provide education. By taking time for self-reflection, the white professor will be better able to recognize her own racial identity and how her teaching may have enforced the white frame in the past. She will also be better positioned to notice and

discuss issues of bias when they arise during the course.

Next, use reading assignments to give students context before they receive the writing assignment. Readings that address the role of race, class, and gender in the law could set the stage for more meaningful discussion of objectivity as a construct defined by whiteness. Readings on the role of storytelling in the law could prepare students to address the role of personal experience in thinking like a lawyer, and could signal to students of color that they need not divorce their feelings from the subject matter.

Although the literature identified in the first two steps might include white authors, it will be incomplete if it includes only white authors. Scholarship on whiteness from only white authors is incrementally better than a “bleached out curriculum” that does not address race at all, but it is more likely to exclude or distort the perspectives of people of color.

Further, when discussing matters of race, the professor could teach whiteness as one type of racial construct among many, instead of as the norm. This instruction could motivate students to question systems of law that evaluate behavior through the lens of white experience.

B. Acknowledge the role of emotion in thinking like a lawyer

A white professor might also reduce burdens on students of color by challenging the notion that thinking like a lawyer always involves the complete sublimation of emotion to reason. Throughout the course, the professor can explicitly note situations in which emotion plays a role in the lawyering process. For instance, the professor can explain the role of emotional competencies in effective interactions with clients, opponents, and decision makers, or note the role of morality when discussing policy considerations as a component of rule synthesis.

“Readings that address the role of race, class, and gender in the law could set the stage for more meaningful discussion of objectivity as a construct defined by whiteness.”

²³ Dark, *supra* note 11, at 543 (noting that most of the skills necessary to facilitating a discussion of race and the law are simply part of “good teaching”).

The list of strategies in Part III stems from the following sources: Patti Alleva & Laura Rovner, *Seeking Integrity: Learning Integratively from Classroom Controversy*, 42 SW. L. REV. 355 (2013); Frances Lee Ansley, *Race and the Core Curriculum in Legal Education*, 79 CAL. L. REV. 1511 (1991); Armstrong & Wildman, *supra* note 11; Lorraine Bannai & Anne Enquist, *(Un)examined Assumptions and (Un)intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 SEATTLE U. L. REV. 1 (2003); Chanbonpin, *supra* note 11; Dark, *supra* note 11; Pamela Edwards & Sheilah Vance, *Teaching Social Justice Through Legal Writing*, 7 J. LEGAL WRITING INST. 63 (2001); Harris & Shultz, *supra* note 11; McMurtry-Chubb, *supra* note 6; Sheila I. Vélez Martínez, *Towards an Outcrit Pedagogy of Anti-Subordination in the Classroom*, 90 CHI.-KENT L. REV. 585 (2015); MOORE, *supra* note 11; MOVING DIVERSITY FORWARD, *supra* note 7; Eric W. Orts, *Quality Circles in Law Teaching*, 47 J. LEGAL EDUC. 425 (1997); Jennifer L. Pierce, “Racing For Innocence”: Whiteness, Corporate Culture, and the Backlash Against Affirmative Action, 26 QUALITATIVE SOC. 53 (2003); Sathish, *supra* note 11; Scully, *supra* note 11; Robin Wellford Slocum, *An Inconvenient Truth: The Need To Educate Emotionally Competent Lawyers*, 45 CREIGHTON L. REV. 827 (2012); Strand, *supra* note 11; Kathryn M. Stanchi, *Resistance is Futile: How Legal Writing Pedagogy Contributes to the Law’s Marginalization of Outsider Voices*, 103 DICK. L. REV. 7 (1998); Tracy Turner, *Core Values in the Classroom: Preparing Students for the Emotional Challenges of Lawyering*, 25 NO. 2 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 107 (2017); WHAT IF I SAY THE WRONG THING?, *supra* note 11.

“[T]he professor could encourage students to participate in difficult discussions about race by allowing them to create ground rules for those discussions.”

Once students receive the writing assignment, the professor can offer a corresponding opportunity for students to write about their personal reactions to the material. Journaling may allow students to tell stories that they want to share but feel uncomfortable presenting in class, or to respond to in-class controversies after further reflection. Finally, the students’ journal entries will allow the professor to more effectively gauge how they are reacting to the assignment and classroom events.

Journaling will be most effective when the professor is clear about how journal entries will be evaluated and who will read them. Students are less likely to find journaling meaningful if the professor signals that it is busy work, or if they must worry that the professor will share their thoughts with a broad audience.

C. Use strategies to lower the burdens white space imposes on students of color, and to prevent “forum failure”

The next set of strategies aims to minimize the extra burdens that students of color often face in the classroom by encouraging students to take risks, and by protecting against “forum failure.” Forum failure occurs when a tense in-class conversation “exceeds the comfortable and becomes devastating,” alienating speakers and chilling future speech.²⁴

1. Earn students’ trust before introducing an assignment on a racially charged topic

First, a white professor could resist assuming that students will automatically trust her to facilitate a discussion about race and the law, and therefore could wait until several weeks into the semester to introduce the writing assignment. In the meantime, she can cultivate an environment of trust. For example, the syllabus could contain a content advisory that the course will cover issues of race that will provoke intense classroom discussions. The content advisory

could allow students to mentally prepare for engagement with the subject. The syllabus could also explain the “core values” that the professor expects students to embody during these discussions. In the weeks before the students receive the writing assignment, the professor could demonstrate her commitment to these core values by modeling them inside and outside the classroom.

2. Develop, with student input, ground rules for class discussions

Second, the professor could encourage students to participate in difficult discussions about race by allowing them to create ground rules for those discussions. As consumers of online content, we live in the era of the “epic takedown.” The viral videos that appear in our Twitter and Facebook feeds often involve one-sided displays of rhetoric and wit that appear to leave the speaker’s opponent no room for rebuttal. Although it can be satisfying to watch when the speaker espouses views that we share, it does not prepare us for meaningful discussions with opponents. If the students have been subsisting on a steady diet of epic takedowns, they may be wary of the upcoming classroom discussions and thankful for rules that promote a more measured exchange of ideas.²⁵

The professor might begin the guideline-setting discussion by explaining that discussing race and the law is difficult, but members of the legal community have a responsibility to do it. She could then identify specific lessons that students can learn from in-class controversy, including a greater understanding of underlying legal and policy

²⁴ Alleva & Rovner, *supra* note 23, at 399 (internal quotation marks and citation omitted).

²⁵ Creating ground rules is also a less ambitious project than full collaborative course design, which may not be possible in a first-semester 1L course, *see* Gerald F. Hess, *Collaborative Course Design: Not My Course, Not Their Course, But Our Course*, 47 WASHBURN L.J. 367, 379 (2008) (noting that 1Ls “start their legal education as dependent learners who look to their teachers to make initial course design decisions”), or teaching techniques that are harder for less experienced or untenured professors to spearhead, *see, e.g.*, Susan Sturm & Lani Guinier, *Learning From Conflict: Reflections on Teaching about Race and Gender*, 53 J. LEGAL EDUC. 515, 541 (2003).

considerations. Additionally, she could point out that thoughtfully formulating the guidelines will strengthen the communication skills they will need for the remainder of law school and in practice. The guidelines could be few and broad or numerous and specific, as long as they ensure that “minority opinions are respected, that no one is allowed to dominate the group, that divergent views are allowed full and free expression, and that there is no pressure to reach premature and artificial solutions to the problems posed.”²⁶

After establishing the guidelines, the professor could present students with a hypothetical in-class disagreement and ask them to apply the guidelines to solve it. If students establish and practice the ground rules before difficult discussions begin, they will feel more confident holding themselves and their classmates accountable as the course progresses.

3. Don't call on students of color to “testify,” but don't dismiss voluntarily offered stories

A professor can avoid the problems with hypervisibility and invisibility described in Part II by offering students the opportunity to share personal experiences through written assignments. Outside of class, the professor could practice extracting general principles from voluntarily offered personal anecdotes, and connecting those general principles to the subject under discussion, so that she will not be quick to dismiss a voluntarily offered story in class. For example, a professor could use a student's specific story as a springboard for identifying substantive law or policy issues, underlying assumptions or biases, or ethical and professional considerations that would arise if a client were in the same situation.

4. Assume that mistakes will happen, and teach the technique of deliberate apology

When preparing students for discussions about race, the professor could prepare them for what will happen when someone makes a comment that offends others. When my students prepare for oral argument, I advise them to assume that mistakes will happen and to practice techniques for overcoming them. Similarly, executing a writing assignment that raises issues of race may go better if the professor and students do not live in fear of mistakes. Instead, everyone—including the professor—can assume that mistakes will happen during class discussion and prepare to deal with them.

The professor can set the stage for effective apologies in advance by distinguishing a deliberate apology (in which the speaker acknowledges that his statement caused pain or offense, directly apologizes, and, if necessary, asks the listener to identify the precise offending statement so the speaker does not repeat it) from “racing for innocence,” in which the speaker proclaims his innocent intent, avoids admission of wrongdoing, and cites irrelevant information to try to prove that he is a good person. The professor can also model the technique of deliberate apology for the class and have students practice using a hypothetical mistake. Practicing deliberate apology before an offense has occurred will make everyone in the classroom more likely to use the technique during a real discussion.

5. Practice techniques for teaching through tense in-class interactions

Apology alone will not resolve an underlying dispute if a speaker persists in expressing the beliefs that generated it. Therefore, students must also learn to help students navigate passionate discussions and disputes. In preparation for helping students to build this skill, the professor could practice techniques

“[E]xecuting a writing assignment that raises issues of race may go better if the professor and students do not live in fear of mistakes.”

²⁶ Alleva & Rovner, *supra* note 23, at 396-97.

“Digesting student feedback is often harder than obtaining it.”

for directly addressing biased remarks and teaching through conflicts between students. A white professor might be able to leverage her authority as the professor, and her privilege as a white person, to directly address biased remarks. Specifically, students may view her as less personally sensitive to issues of race. A white offender may have an easier time being corrected by another white person. And by proactively addressing the remark, the white professor relieves students of color of the burden of dealing with it.

With adequate preparation, the professor can also address a biased remark without derailing the discussion. The goal is not to change the speaker’s way of thinking but instead to get the speaker to consider the origin of his position. The professor could address the speaker in a manner that is not superior, accusatory, or sarcastic, and could ask the speaker clarifying questions to reveal the assumptions or beliefs underlying the comment. Then, the discussion of the underlying assumptions or beliefs can continue in a more abstract way, allowing the professor or other students to question the relevance or validity of the concepts without attacking the offending speaker directly.

Additional techniques are available when two students engage in a heated debate. First, the professor could quickly assess the reactions of the other students, acknowledge the tension, and reiterate the group’s earlier commitment to working through disagreements. The professor might also consider referencing previously-generated discussion ground rules. Depending on the situation, she could ask clarifying questions of each speaker (or, if they are calm enough, allow the speakers to ask questions of each other); she could ask each speaker to apply his broad declarations to other contexts, ask for data or information to support a claim,

and identify morals and values underlying each position, then ask the class to discuss what role they should play in the formulation of rules of law. If she determines that the classroom is too volatile for the discussion to continue, the professor could end it temporarily and ask the students to write a short reflection paper on the topic for the next class. If necessary, the professor could speak to individual students between class meetings. During the next class session, she could ask the class to offer thoughts on the debate now that some time has passed.

6. Don’t mistake silence for contentment, and create opportunities for real-time student feedback

Given the risk that some students of color will disengage when the emotional burden of class discussion becomes too high, the assumption that all students are satisfied with the execution of the writing assignment simply because none have complained is risky. Instead, the professor could provide at least one method for students to provide anonymous feedback while the assignment is ongoing. For example, she could use quality circles or student advisory groups, both of which involve regular meetings with a subset of students from the class who have agreed to act as representatives. Of course, some students might feel comfortable discussing their dissatisfaction face to face, and the professor can encourage these conversations, as well. By obtaining feedback in real time, she can engage in course correction.

D. Remain accountable to students

Digesting student feedback is often harder than obtaining it. If a professor has engaged in extra preparation and ventured outside her comfort zone for an assignment, negative student feedback may be especially difficult to process. Nonetheless, remaining receptive to the input of students who feel dissatisfied, angry, or personally attacked in a discussion is

essential to the professor's own growth,²⁷ and to being an actual ally.²⁸ Even the best professor cannot make all students feel welcome, safe, and competent all of the time; but a professor can demonstrate to them that she is trying, that she values their concerns, and that she strives for improvement.

E. Foster—but do not dominate—spaces in which students of color can discuss the assignment's impact

A white legal writing professor's efforts should, when possible, complement the activities of organizations designed to support students of color. For example, she might notify the leaders of these organizations that the 1L students will be tackling a writing assignment that addresses issues of race. This would allow them to decide whether to provide additional contextual programming or opportunities for discussion.

However, a white legal writing professor should think carefully before inserting herself into these spaces. A student organization's meeting is not a place for the professor to explain the assignment, her feelings about it, or her feelings about the students' reactions. It is not a space for her, period, unless and until the students extend an invitation.

F. If possible, make work visible to colleagues

Finally, the professor might share her work and reflections with other law professors. Particularly in a school whose curriculum offers few opportunities to discuss race and the law, this work could motivate other professors. They might worry less about the risks associated with

the endeavor knowing that they can learn from a predecessor's mistakes.²⁹

Incorporating issues of race and the law into legal writing assignments involves a certain degree of risk. With specific advance preparation, transparency, and accountability to students, professors may be able to ensure that the benefits of these assignments outweigh the burdens they often impose on law students of color.

“Incorporating issues of race and the law into legal writing assignments involves a certain degree of risk. . . . professors may be able to ensure that the benefits of these assignments outweigh the burdens . . . ”

²⁷ See IRVING, *supra* note 11, at 163 (“Facing up to the unintended impact I could unleash on people through sheer ignorance was painful. . . . It taught me that efforts to defend my intent in the name of my ‘good person’ status had no place in this world or in my efforts to learn and grow.”).

²⁸ Cf. MOVING DIVERSITY FORWARD, *supra* note 7, at 54 (“Being able to listen to a black person who is upset at you for something you did that offended them or at a racial situation that doesn’t involve you, may not be easy. However, it is part of learning to be an ally to black people.”).

²⁹ Of course, the ultimate decision to share this information may depend on the professor's level of seniority and job security.

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The Complete Professional: How Our New Professional Ideals for Law Students Help Us in the Legal Research and Writing Classroom

By Michele Bradley and Nancy Oliver

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Students who understand that they have entered the professional realm of lawyers while still in law school make a smoother transition to law school and to the legal profession. These students understand that they must meet the expectations of their professors, their advisors, and their employers while in law school, just as they will need to meet the expectations of clients, employers, bar examiners, and many others once they graduate. Building this professional identity during law school helps students transition from being undergraduate students to students in a professional program. No longer should assignments, work, and professional activities be viewed as merely necessary to earn credits and avoid disciplinary actions from professors and colleges. These activities must be viewed as the first steps in creating a rewarding professional career. In fact, we hope that our students feel the joy and power of being at the beginning of something that will be very important to their lives.

In 2014, the University of Cincinnati College of Law adopted professional ideals that we call “The Complete Professional: Professional Ideals for Law Students.”¹ These ideals were designed by the law school under the leadership of our Associate Dean and Chief of Staff, Mina Jones Jefferson, who leads our Center for Professional Development. Seeking a common language to

discuss professionalism concepts tailored to the experience of law students, our staff introduced these ideals to our community in the fall of 2014.

In this article we will describe why professionalism is such an important concept in law school, particularly in the first year; how we designed and adopted The Complete Professional; and how these ideals have impacted our first-year legal research and writing courses.

A. A Law School’s Role in Moving Students Toward a Professional Mindset

It is incumbent on law schools to teach professionalism. High levels of professionalism are important for success in the practice of law,² and the lawyers who will one day hire our graduates place a high premium on professionalism.³ Therefore, “legal educators should take leadership roles in making professionalism instruction a central part of law school instruction.”⁴ The legal writing classroom is an ideal place to discuss these concepts because of small class sizes, multiple opportunities to submit

² See Susan Swaim Daicoff, *Expanding the Lawyer’s Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795, 825-829 (2012) (identifying interpersonal skills such as practical judgment, managing one’s own work, and understanding others as “important to success in the legal workplace and in the practice of law”).

³ See Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 547, 562 (2014) (concluding that among the “most important competencies” that employers consider when hiring new lawyers are “professional formation competencies, or professionalism”); Susan C. Wawrose, *What Do Legal Employers Want to See in New Graduates? Using Focus Groups to Find Out*, 30 OHIO N.U. L. REV. 505, 522 (2013) (reporting hiring “preference for attorneys who have well-developed professional or ‘soft skills[.]’ such as a strong work ethic, willingness to take initiative, the ability to collaborate well with colleagues and clients, and the ability to adapt to the demands of supervisors”).

¹ The text of this policy can be found on the University Of Cincinnati College of Law website by visiting <https://www.law.uc.edu/sites/default/files/Citizenship-Final-Working-Draft.pdf> (last visited January 16, 2018).

⁴ ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 21 (2007), http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf.

“No longer should assignments, work, and professional activities be viewed as merely necessary to earn credits and avoid disciplinary actions from professors and colleges. These activities must be viewed as the first steps in creating a rewarding professional career.”

work and receive feedback, and assignments that simulate the real-life work of a lawyer.

The authors are by no means the first legal writing professors to speak to students about professionalism.⁵ However, instilling professionalism in the legal writing classroom has often been hampered in at least two ways; first, the term “professionalism” is vague and ill-defined,⁶ making it difficult to discuss consistently and coherently, and second, efforts to instill professionalism in the legal writing classroom are not consistently reinforced elsewhere in the law school. As a result, students may perceive a legal writing professor’s request for professionalism as an expectation that applies only to that professor, not elsewhere. In short, inconsistency and lack of clarity can “prolong and reinforce the habits of thinking like a student rather than an apprentice practitioner.”⁷ If students are to internalize the ideals and values of the profession, “professionalism needs to become more explicit and better diffused throughout legal [education].”⁸ As explained below, The Complete Professional addresses both of these concerns.

B. Designing and Adopting The Complete Professional

In supporting the journey of students into the profession of law, Cincinnati Law faculty and staff transition students from being undergraduates to young professionals. As part of this work during the summer of 2014, Associate Dean Jefferson

and the rest of the staff⁹ decided that adopting a common language to use with students would help better communicate the importance of professionalism during the law school experience.

For many years, the College shared the *Professional Ideals for Ohio Lawyers & Judges*,¹⁰ adopted by the Ohio Supreme Court, with incoming students to aid in their professional formation. These ideals supplement the formal code of ethics that bind all Ohio attorneys¹¹ and include aspirations that seek to elevate the profession generally. Thus, they are pertinent to all lawyers and judges as well as law students. These professional ideals focus on relationships with clients, opposing parties and counsel, courts and other tribunals, colleagues, the profession, and the public, including the system of justice.¹²

The Ohio Supreme Court Commission on Professionalism has also published a series of *Professionalism Dos & Don'ts* that offer specific examples of how to include the concepts of professionalism in a variety of practice settings, including depositions, the courtroom, and legal writing generally.¹³ The *Professionalism Dos & Don'ts* related to legal writing are particularly helpful, especially in the context of professional advocacy, including advice such as “do provide a consistent, coherent argument[;] ... do present an honest, accurate position[;] ... [and] do adopt a clear and persuasive style.”¹⁴ However, while the *Professional Ideals for Ohio Lawyers & Judges* may be helpful to law students, these ideals are more focused on professionalism for practicing lawyers and judges. As such, they do not directly address the particular concerns of being a law student. One can imagine students thinking that

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⁵ See, e.g. Beth D. Cohen, *Instilling an Appreciation of Legal Ethics and Professional Responsibility in First-Year Legal Research and Writing Courses*, 4 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 5 (1995); Sophie Sparrow, *Practicing Civility in the Legal Writing Course: Helping Law Students Learn Professionalism*, 13 J. LEGAL WRITING INST. 113, 134-137 (2007); Melissa H. Weresh, *Fostering a Respect for Our Students, Our Specialty, and the Legal Writing Profession: Introducing Ethics and Professionalism into the Legal Writing Curriculum*, 21 TOURO L. REV. 427 (2005); Beth Hirschfelder Wilensky, *Assignments with Intrinsic Lessons on Professionalism (or, Teaching Students to Act Like Adults Without Sounding Like A Parent)*, 65 J. LEGAL EDUC. 622 (2016).

⁶ “Legal scholars have not been able to construct and agree on a widely-accepted, clear, and succinct definition of professionalism.” Neil Hamilton & Verna Monson, *The Positive Empirical Relationship of Professionalism to Effectiveness in the Practice of Law*, 24 GEO. J. LEGAL ETHICS 137, 143 (2011); “[T]he definition of ‘professionalism’ is, of course, almost maddeningly elusive.” Wawrose, *supra* n. 3, at 542.

⁷ WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 188 (Jossey-Bass 2007).

⁸ *Id.* at 14.

⁹ During the summer of 2014, Professor Oliver was a member of the staff while serving as the Associate Dean for Curriculum and Student Affairs and participated in these activities. She has now returned to teaching full time.

¹⁰ THE SUPREME COURT OF OHIO COMM’N ON PROFESSIONALISM, *PROFESSIONAL IDEALS FOR OHIO LAWYERS & JUDGES* (updated July 2017), <https://www.supremecourt.ohio.gov/Publications/AttySvcs/proIdeals.pdf>.

¹¹ OHIO R. PROF’L CONDUCT (2015).

¹² THE SUPREME COURT OF OHIO COMM’N ON PROFESSIONALISM, *supra* note 10, at 4.

¹³ *Id.* at 13, 25, 35, 39.

¹⁴ *Id.* at 26.

“Cincinnati Law students do a good job of adhering to the formal rules of conduct, but the law school staff has been frustrated at times with students who seemed to underestimate the importance of other aspects of professionalism.”

these are ideals they will someday need to apply to their work once they graduate, but not yet.

The staff of the law school decided to provide a similar set of ideals for Cincinnati Law students that are designed specifically for their experience while in law school. Like Ohio lawyers who are bound by the Ohio Rules of Professional Conduct, Cincinnati Law students were already bound by formal rules including the Honor Code¹⁵ and the University of Cincinnati Student Code of Conduct.¹⁶ Both codes subject students to discipline if they break the rules. Nonetheless, the staff realized that to be successful, students must aspire to conduct and behaviors that exceed the expectations of formal rules, and the staff sought to create a common language for Cincinnati Law to share these ideals with the law school community.

Cincinnati Law students do a good job of adhering to the formal rules of conduct, but the law school staff has been frustrated at times with students who seemed to underestimate the importance of other aspects of professionalism. The group discussed how each member had observed a student's behavior and thought, “you won't be able to get away with that when you are in law practice.” For example, staff members who work in the Center for Professional Development sometimes were frustrated with students not showing up at networking opportunities with local attorneys sponsored by the school. Other staff members also noted periodic frustration when students weren't responsive to their communications. For example, the staff person who organizes the hooding ceremony routinely needs to get information from graduating students through email but has to send out many reminders before they respond. Professors were also frustrated when they occasionally had to apply sanctions to students who violated their attendance policies. After discussing these experiences, the staff decided that the law school community would benefit by articulating its expectations of law

students who are about to enter the profession. The group further decided that students would benefit from professional ideals tailored to their law school experience that included specific examples of the professional behavior they are expected to emulate.

In order to design The Complete Professional, Dean Jefferson led a series of meetings in which staff members discussed their observations about student professionalism and the ways it was falling short. The staff was asked to review relevant professional standards such as the *Professional Ideals for Ohio Lawyers & Judges* and law school websites to see if other schools had done anything similar. For example, the Duke University School of Law website includes the “Duke Blueprint to LEAD”¹⁷ that describes the transformative experience of Duke's law program, which aims not only to make students into lawyers, but also aims to impart “a strong ethical compass, leadership skills, and a positive outlook,” among other important attributes.¹⁸

Conversations with staff began with the task of achieving better student engagement and responsiveness based on their recent experiences and then moved into other, related professionalism concepts, including respect, resilience, and integrity. The group also discussed Cincinnati Law values, including honesty, diversity, and inclusiveness. Dean Jefferson broke the group into subcommittees to draft language for each of the five ideals eventually identified and had the group meet again to adopt the final version.

The final document, *The Complete Professional: Professional Ideals for Law Students*, follows:¹⁹

A COMPLETE PROFESSIONAL . . .

. . . is ENGAGED

Engagement is the level to which an individual devotes his or her energy and skills toward both personal and shared objectives. It is more than mere attendance or accomplishments; engagement exceeds the passive absorption

¹⁵ UNIV. OF CINCINNATI COLL. OF LAW, HONOR CODE (2017), [http://www.law.uc.edu/sites/default/files/Honor%20Code%20\(rev.%2004%202017\).pdf](http://www.law.uc.edu/sites/default/files/Honor%20Code%20(rev.%2004%202017).pdf).

¹⁶ UNIV. OF CINCINNATI, STUDENT CODE OF CONDUCT (2017) <https://www.uc.edu/content/dam/uc/conduct/docs/SCOC.pdf>.

¹⁷ Duke Law, *Duke Blueprint to Lead*, <https://law.duke.edu/studentlife/blueprint/> (last visited January 18, 2018).

¹⁸ *Id.*

¹⁹ University of Cincinnati College of Law, *supra* note 1.

of knowledge and requires deliberate process and reflection. Fundamentally, engagement is a personal choice derived from commitment, occurring when one takes ownership of his or her work and decisions.

Engaged students . . .

- Prepare consistently and thoroughly for classes and meetings, ask thoughtful questions, and plan ahead using weekly calendars and daily schedules.
- Seek opportunities to connect with mentors and colleagues through professional and peer organizations and build professional experiences each year of law school to create a compelling story for potential employers.
- Proactively check relevant resources, including Symplicity,²⁰ TWEN, and University email.
- Arrive early, meet deadlines, and *willingly* contribute their skills and abilities toward the betterment of the enterprise.
- Honor both mandatory and voluntary time commitments with sincerity, enthusiasm, and professional conduct.

. . . is RESPECTFUL

Respect is acting in a way that demonstrates an awareness of others' rights, beliefs, diversity, and human dignity. Demonstrating respect is a critical part of cultivating and maintaining personal and professional relationships. The College of Law community is committed to modeling the civility required and expected in a professional atmosphere.

Respectful students . . .

- Conduct themselves professionally and in a manner that will generate a level of esteem for the law and the profession.
- Actively listen. They consider what others have to say before expressing their viewpoint.
- Treat members of the College of Law community as they would colleagues and supervisors—with courtesy, politeness, and kindness.

- Recognize that a series of small actions over time may erode respect.

... is RESPONSIVE

To be responsive is to communicate in a timely and effective manner. In particular, all correspondence should be clear in meaning, appropriate for the audience, and communicated professionally. A responsive student is diligent and reliable in fulfilling obligations as they relate to the various modes of communication utilized at the College, including but not limited to E-mail, Symplicity, TWEN, and Blackboard.

Responsive students . . .

- Promptly reply to email messages in an appropriate tone. Emails should include a descriptive subject line and the sender's contact information.
- Use the communication mode most appropriate given the circumstances, noting when a phone call or in-person meeting is more suitable.
- Utilize University of Cincinnati email to communicate with faculty and administration.

... is RESILIENT

Resilience is the capacity to endure stress and overcome obstacles. A resilient student has the ability to adapt, balance risk, and persist through adversity. Resilience is found in a variety of behaviors, thoughts, and actions that can be learned and developed throughout law school and one's career.

Resilient students...

- Build a community with peers, faculty, and administration.
- Manage strong feelings and impulses, particularly following disappointment or personal failure.
- Develop and refine problem-solving and communication skills.
- Seek help and resources when appropriate.
- Take care of their physical and mental health. This includes managing stress in healthy ways and avoiding harmful coping strategies such as substance abuse.

²⁰ Symplicity is a software program used by the Center for Professional Development to share information with students about their job searches.

... models INTEGRITY

Substance matters. Integrity is consistently displaying strong moral character. Students at the College of Law must act with both personal and professional integrity. The ABA Model Rules of Professional Conduct state that a lawyer must be guided by more than just the Rules of Professional Conduct; attorneys must be guided by personal conscience. To be trusted to handle the affairs of others and give counsel, law students must act with honesty, fairness, and strong moral principles as they work to enhance justice for all people.

Students with integrity...

- Learn and follow the College of Law Honor Code and the University Student Code of Conduct as well as incorporate the Rules of Professional Conduct into daily interactions.
- Demonstrate consistency between word and deed, and remain steadfast even in the face of negative consequences.
- Consider other points of view, ideas, and criticisms, while critically reflecting on their own actions and ideals.
- Build their reputation by presenting themselves professionally, both in person and online.
- Take responsibility for decisions and actions and credit others when appropriate.

The College of Law introduced The Complete Professional to the faculty and incoming students during the Fall 2014 orientation program and to continuing students through a series of emails discussing each of the ideals that were called “Ethics in the Air.”

The process for drafting and implementing The Complete Professional: Professional Ideals for Law Students addressed the two limitations noted above—vagueness and lack of reinforcement. First, The Complete Professional explicitly defines the characteristics that make up “professionalism.” Then, the drafters drew on pedagogy common in the legal writing field, where professors tell students to use factual examples from case law to illustrate a rule and make it concrete and

understandable. The Complete Professional does this by giving specific examples of behaviors that express those characteristics in the law school setting.

The College of Law also uses the Complete Professional to address the second limitation—the need for reinforcement throughout the law school experience—by returning to The Complete Professional repeatedly in different settings: in classrooms, in meetings with faculty and staff, and in written communications. In this way, the professional ideals are “more explicit and better diffused” throughout the law school experience.²¹ Cincinnati Law now has a common vocabulary, used throughout the College, to talk about professionalism and how it can be exhibited in a variety of settings and circumstances.

C. Using The Complete Professional in Lawyering Courses and Beyond

Using The Complete Professional has been extremely beneficial in first-year courses. For instance, legal writing professors use these ideals in the first-semester Lawyering I: Legal Research and Writing classes, a three-credit course that introduces legal research, writing, and analysis skills and focuses on predictive writing. In the spring, professors use The Complete Professional in Lawyering II: Advocacy, also a three-credit course, which furthers the study of legal research, writing, and analysis with a focus on written and oral advocacy.

Because these lawyering courses offer students their first opportunities to perform lawyering tasks, professionalism concepts are easily integrated into the classes. Students in their first year of law school are also open to such new concepts because they are excited and hungry to learn. These classes, therefore, offer a unique opportunity to teach The Complete Professional in the context of lawyering tasks to a receptive audience. To take advantage of this teaching opportunity, writing professors integrate these professional ideals in many aspects of these courses, including discussing them at the beginning of the courses, including them in the syllabi, and returning to them multiple times during the semester.

“Cincinnati Law now has a common vocabulary, used throughout the College, to talk about professionalism and how it can be exhibited in a variety of settings and circumstances.”

²¹ SULLIVAN ET AL., *supra* note 7, at 14.

Aspirations take on meaning when they are reinforced and applied in specific real-life situations. By way of example, Professor Bradley’s legal research and writing syllabus tells students that their grade will depend in part on their professionalism, and it explains what a Complete Professional looks like in a legal writing classroom using concrete examples. Here’s an excerpt that illustrates how the general policy is implemented in Professor Bradley’s course:

Professionalism: Adopting high standards of professional behavior will help you to master the knowledge and skills that are central to success in this course and as a lawyer. You learned about “The Complete Professional: Professional Ideals for Law Students” during Orientation. Here is how you can be a Complete Professional in this class.

- Be ENGAGED in the material and the class activities, showing enthusiasm and an eagerness to learn. Be an active participant in class discussions and team projects. Be prepared for every class and conference by arriving on time and ready to work with all assignments completed.
- Be RESPECTFUL of your classmates, faculty, and staff, whether in person or in email, inside class or out. Don’t interfere with others’ ability to learn, for example by talking excessively, walking into class late, or using your computer for personal matters during class.
- Be RESPONSIVE by honoring your commitments to me and your classmates. Stay on top of your calendar, carefully check papers to be sure they comply with assignment instructions, and turn assignments in on time. Read your emails frequently and answer them quickly. Look for ways to be helpful to your classmates.
- Be RESILIENT by taking unexpected events in stride, by seeking help when necessary, and by responding constructively to disappointments or criticisms. I will give you frequent feedback on your written work; strive to listen with an open mind, to reflect on the feedback, and to use it to grow as a writer and a law student.
- MODEL INTEGRITY by putting forth your best effort in all assignments, by complying

fully with class and College policies, by honoring your commitments, by dealing with others with honesty and compassion, and by taking responsibility for your decisions.

Learning often happens best when the material is introduced in a variety of contexts, when it is reinforced through spaced repetition,²² and when the learner is required to use and reflect on it.²³ To that end, legal writing faculty return to The Complete Professional throughout the semester to reiterate and reinforce these principles. For example, when talking about emails in the workplace, professors reference “responsiveness” and “respectfulness” when explaining that emails must be answered in a timely manner using a professional tone. Before returning the first set of papers with comments, professors talk about “resilience” and the need to view feedback as a helpful tool in developing professional skills. And when meeting with students one-on-one in conferences, professors draw on the language of The Complete Professional to open conversations in other areas, such as “engagement” or “integrity,” depending on the needs of the specific student.

After working The Complete Professional into legal writing classes, professors noticed a significant uptick in professionalism in writing classes, including:

- Students have attended classes on time. In fact, recently, Professor Oliver had a 9:00 am class (among our earliest) and many students were in their chairs before she arrived, even when she arrived at about 8:40 a.m. to prepare the classroom.
- Students communicated professionally, including emailing to tell professors in the rare instances when they had to miss class or to ask for an extension on an assignment.
- Students showed greater engagement by routinely doing their best on class exercises and attending office hours to ask questions.

“Aspirations take on meaning when they are reinforced and applied in specific real-life situations.”

²² Gabriel H. Teninbaum, *Spaced Repetition: A Method for Learning More Law in Less Time*, 17 J. HIGH TECH. L. 273, 276 (2017).

²³ Giada Di Stefano, Francesca Gino, Gary P. Pisano, & Bradley R. Staats, *Making Experience Count: The Role of Reflection in Individual Learning* 6-29 (Harvard Bus. Sch. NOM Unit Working Paper No. 14-093 2016), <https://ssrn.com/abstract=2414478>.

“The legal research and writing classroom in particular is perfectly suited for reinforcing these vital concepts because these courses offer the first opportunity for students to do lawyering work.”

- Students treated their classmates with more respect and participated in class discussions and exercises enthusiastically and with good humor (i.e., with minimal grumbling).

While the focus here is on the use of *The Complete Professional* in legal writing classrooms, other colleagues have also used these ideals to discuss professionalism in other contexts. For example, Professor Bradley also teaches an upper-class externship course. She returns to *The Complete Professional* in that class too, exploring how the professional ideals translate from law school to the students' externship placements. Another professor discusses *The Complete Professional* on the first day of her first-year Criminal Law course. She points out where professionalism comes into play in criminal cases, including noting that a lack of engagement and responsiveness to the client's needs can result in a client's wrongful imprisonment or even death. She explains that respect for opposing counsel's arguments can help an advocate identify ways to make the advocate's own arguments better. And when students meet with staff in the Center for Professional Development, they are reminded again of *The Complete Professional* and the professional ideals they will call on during their job search like resilience, responsiveness, and respect.

When other faculty and staff employ the principles and vocabulary of *The Complete Professional*, students get the message that professionalism is not something unique to the legal writing classroom. And when students hear the same message from multiple sources repeatedly over time, it results in greater understanding, acceptance, and application of these principles. In short, the students internalize *The Complete Professional*.

Conclusion

Introducing professionalism concepts at the start of law school lays the foundation for professional identity formation so important to students as they enter the profession of law later on. The legal research and writing classroom in particular is perfectly suited for reinforcing these vital concepts because these courses offer the first opportunity for students to do lawyering work. And we have found that using *The Complete Professional* in our legal writing classrooms has built professionalism competencies in first-year students.

Our law school as a whole has also significantly benefited from *The Complete Professional*. Professors throughout the curriculum have included these concepts in their classes, and staff members have used the concepts in working with students outside the classroom. Adopting and using a common language about professionalism allows us to reinforce its importance each time we refer to it. By the time a student graduates, these concepts will be well ingrained, resulting in a smoother transition to the ethics and professionalism ideals required by the practice of law.

Finally, the process of drafting *The Complete Professional* was an incredibly positive experience for our community. We are grateful to Associate Dean Jefferson for her open and inclusive process in formulating them. The conversation about what makes a student a complete professional prompted a healthy and useful exchange of ideas, which united us. It also prompted each of us to appreciate how important professionalism concepts are in our work with students and each other.

Micro Essay

Deserted island? HeinOnline would definitely be in my back pocket. If I am not studying law, I am studying history, and HeinOnline has deep resources in both. I could idle away for years reading *English Reports - Full Reprint*, all of the law journal literature, publications of the *Stair Society* and the *Selden Society*, not to mention United States legislation and legislative history. As the island is deserted, I wouldn't need law practice materials—but materials that support extended thinking about law—those would ease the exile.

Margaret A. Schilt, Associate Law Librarian for User Services and Lecturer in Law, D'Angelo Law Library, University of Chicago, Chicago, Ill.

Cite as: Kimberly Y. W. Holst, *The Fact of the Matter*, 26 Perspectives: Teaching Legal Res. & Writing 21 (2017).

The Fact of the Matter

By Kimberly Y. W. Holst

Kimberly Y. W. Holst is a Clinical Professor at Arizona State University, Sandra Day O'Connor College of Law in Phoenix, Ariz.

Each spring, we transition from teaching our first-year law students objective writing to teaching them persuasive writing. A great deal of our instructional design centers on identifying which of the basic skills learned by the students in the fall must be transferred and applied by the students in the spring. Year in and year out, the one area of writing that causes the students the most hesitation in the spring is transitioning to writing facts in a persuasive fashion.

It's not difficult to understand why our students struggle with this concept; we've spent the previous semester drilling fundamental concepts about fact writing in their head such as:

- *"Present the facts accurately and objectively."*¹
- *"Your statement of facts should focus on material facts and helpful background facts...."*²
- *"In drafting the fact section your primary tasks are (1) selecting which facts to include, (2) organizing those facts in an effective way, and (3) remembering your predictive role."*³
- *Avoid legal conclusions.*⁴

As the fall semester turns to spring, we require students to rethink the presentation of facts. Now, we tell them things like:

- *"The appellant's statement of facts and the appellee's statement of facts should each bring their*

respective client's story to the fore while stating the facts accurately, fairly, and completely."⁵

- *"The writer must use the existing facts to persuade without appearing to persuade."*⁶
- *"The writer must recite the facts in a manner that is objective enough to be fair and simultaneously persuasive enough to be compelling."*⁷
- *"You can use persuasive writing techniques to tell the story from your point of view, to highlight facts that are in your favor, and to lead the reader to draw honest and favorable conclusions about your client's case."*⁸
- *"Although the statement of facts must be accurate, it need not be objective."*⁹
- *"Be subtly persuasive."*¹⁰

Simply put, we ask our students to use a skill that they've only recently acquired and to manipulate it like an expert. We require them to perform a new task using skills they have yet become comfortable using. It's downright daunting to think about presenting facts in a persuasive fashion. At a "gut" level, students perceive this new persuasive presentation of facts as manipulative and may even border on lying.¹¹ It should not be surprising how difficult it can be getting

“Year in and year out, the one area of writing that causes the students the most hesitation . . . is transitioning to writing facts in a persuasive fashion.”

¹ LAUREL CURRIE OATES & ANNE ENQUIST, *THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING* 193 (Aspen 5th ed. 2010).

² CHARLES R. CALLEROS & KIMBERLY Y.W. HOLST, *LEGAL METHOD AND WRITING I: PREDICTIVE WRITING* 138 (Wolters Kluwer 8th ed. 2018).

³ LINDA H. EDWARDS, *LEGAL WRITING PROCESS, ANALYSIS, AND ORGANIZATION* 175 (Aspen 5th ed. 2010).

⁴ OATES & ENQUIST, *supra* n. 1 at 196.

⁵ CHARLES R. CALLEROS & KIMBERLY Y.W. HOLST, *LEGAL METHOD AND WRITING II: TRIAL AND APPELLATE ADVOCACY, CONTRACTS, AND CORRESPONDENCE* 143 (Wolters Kluwer 8th ed. 2018).

⁶ EDWARDS, *supra* n. 3 at 337.

⁷ *Id.* at 337-38.

⁸ MARY BETH BEAZLEY, *A PRACTICAL GUIDE TO APPELLATE ADVOCACY* 180 (Aspen 3d ed.2010).

⁹ OATES & ENQUIST, *supra* n. 1 at 349.

¹⁰ *Id.* at 350.

¹¹ See Steven Lubet, *Ethics and Theory Choice in Advocacy Education*, 44 J. LEGAL EDUC. 81, 82 (March 1994); Carrie Menkel-Meadow, *Can They Do That? Legal Ethics in Popular Culture: Of Characters and Acts*, 48 UCLA L. REV. 1305, 1311, 13 (2001).

students to understand that it is possible to present facts factually, but in a persuasive fashion.

A Method to the Madness

I have used a variety of techniques to help students understand this delicate balance between writing factually and persuasively. Inspired by colleagues, and tapping into my great love of television and movies, I believe I have finally struck on a method that seems to resonate with the students. I call it Framing Facts in Film.

Origins

It all began with a post to the Legal Writing Professors Listserv—a simple, factual synopsis of the classic movie, *The Wizard of Oz*:

*“Transported to a surreal landscape, a young girl kills the first person she meets and then teams up with three strangers to kill again.”*¹²

Then I discovered a synopsis of *Aliens II*, on Facebook:

*“Sigourney Weaver and a platoon of space marines land on a desolate planet where they display an alarming intolerance for the indigenous population.”*¹³

I immediately thought, “Framing!” I decided to create a new lesson plan that would integrate these synopses into an exercise that would begin the students’ shift in thinking about fact manipulation in a more positive light. What resulted was an activity that engaged the students, produced fun results, and created a lasting reference¹⁴ for students about the process of framing facts in a

persuasive fashion.¹⁵ Below, I briefly describe the lesson plan and provide examples that demonstrate the students’ results from the exercise.

From the Silver Screen

At the beginning of the class, I show the students the two synopses mentioned above to begin the transition from objective to persuasive. I follow that up with a video clip from *How I Met Your Mother* with Barney’s explanation of why he loves the film *The Karate Kid*.¹⁶

To the Classroom

Next, with the students working in small groups, I ask them to think of a well-known movie (one appropriate for classroom discussion) and write a short synopsis from a different perspective of the student’s choosing—either from a different character’s perspective or in some fashion that highlights the key events in the film in a new light. Once the alternate synopses have been written, I have each group read their different synopsis aloud and challenge the rest of the class to identify the film. What follows are a few of the actual alternative film synopses developed by my students in the past. Can you identify the films? (The answers are in the footnotes.)¹⁷

Film #1

A man’s wife and children are brutally murdered by a serial killer and the only son to survive is left physically disabled. A serial kidnapper then kidnaps his son and in a

¹² This synopsis has been credited to Philadelphia Inquirer writer Lee Winfrey, but is likely the work of writer Rick Polito circa 1998. See <http://jimromenesko.com/2012/10/26/wizard-of-oz-synopsis-is-going-to-follow-writer-to-the-grave/> (accessed Feb. 2, 2017).

¹³ *That T.V. Guy*, THE DENVER POST, www.denverpost.com/2005/08/17/that-tv-guy-98/ (accessed Feb. 2, 2017).

¹⁴ This creates a bridge between concepts and a shared reference for the rest of the course. Creating this type of shared language or shared understanding may help the students with bridging concepts throughout the course. See Douglas Fisher, Nancy Frey, and Carol Rothenberg, CONTENT-AREA CONVERSATIONS (2008) cited content available at www.ascd.org/publications/books/108035/chapters/Why-Talk-Is-Important-in-Classrooms.aspx (accessed Apr. 6, 2017); James Pelech & Richard Singer, *Making Connections: Expanding the Bridging Question Strategy*, JPACTe 1-2 (Spring 2009) available at www.learnercentered.org/jpact/Articles/Spring2009/Pelech.pdf (accessed Apr. 6, 2017).

¹⁵ See JEAN MATTER MANDLER, STORIES, SCRIPTS, AND SCENES: ASPECTS OF SCHEMA THEORY 2, 4 (1984). One theory states that the schematic structures that we use to understand new information parallel the presentation of stories. And, that atypical event presentations can be easier to remember than typical structures. See *id.* Also, the way a story is presented may cause us to access the schema differently—creating different interpretations of the information depending upon the presentation. See *id.* at 31-46.

¹⁶ In this clip, Barney explains why THE KARATE KID is his favorite movie. Through his description we learn that he sees the movie’s traditional antagonist, Johnny Lawrence, as the hero of the film while the traditional protagonist, Daniel LaRusso, as the villain. See *How I Met Your Mother*, Season 4, Episode 15: *The Stinsons* (20th Century Fox, CBS Broadcast on Mar. 2, 2009).

¹⁷ The student examples are presented as they were submitted to me. This exercise can be done with other familiar media—literature, fairytales, etc. For more information about alternative fact framing and examples of how this may be presented to students see Kimberly Y.W. Holst, *Non-Traditional Narrative Techniques and Effective Client Advocacy*, 48 THE LAW TEACHER: THE INTERNATIONAL SCHOLARLY JOURNAL OF THE ASSOCIATION OF LAW TEACHERS 166 (2014).

“Inspired by colleagues, and tapping into my great love of television and movies, I believe I have finally struck on a method that seems to resonate with the students.”

twisted turn of events, the father has to chase the kidnapper thousands of miles with the help of a mentally disabled companion. This poor companion has been wandering around for years, unsure of where or who she is. She is desperately trying to make friends with the father who is constantly attempting to leave her behind in his journey. Despite his numerous rejections, she “just keeps swimming.” In the end, her perseverance yielded an unforgettable friendship.¹⁸

Film #2

A grave robber turned archeologist breaks into ancient temple ignoring proper archeological techniques and safety procedures. He steals a religious artifact from the native population. Then, the U.S. government covers up supernatural events and hides evidence for monotheistic religion away in a warehouse.¹⁹

Film #3

A fragile old woman uses the only avenue available to her in order to preserve her life. Faced with imminent death, she is forced to find another alternative when the magical flower she regularly used to preserve her life was taken from her. When a princess is born with the flower’s magical ability (accessed through the princess’s hair), the old woman, victimized by her age, weighed the risks and was compelled to take and raise the child on her own. Still fearing for her life, the old woman protects the princess from worldly harm and gives her every luxury she can afford before the princess eventually abandons her, leaving the old woman powerless and alone. Worrying for the princess’s safety, she frantically searches for her. In the end, the princess’s decision to cut her hair and abandon the power, leads to the old woman’s demise.²⁰

Film #4

One of the greatest and most memorable golfers of all time has his dominance challenged by an unprofessional and degenerate newcomer with questionable ethics. The established and successful golfer is also skilled in both real estate and investing. The golfer lives an extravagant life and in a shrewd move purchases the unprofessional golfer’s grandmother’s house to use as bargaining power in the future. The golf veteran is also a fan favorite with his over the top signature pistol gesticulation. The longtime tour veteran is performing admirably and in position to win the season ending golf tournament when some of the newcomer’s unruly fans become disruptive. On the last hole, the veteran is thwarted by an extremely controversial play in which the newcomer was allowed to use materials other than his golf club to finish the hole and win by one. The improper and unprecedented play should have been deemed illegal and the veteran—the rightful champion—should have been crowned again. Despite being denied the victory in that tournament and viciously assaulted by the newcomer’s fans afterward, the veteran went on to make a full recovery and is the all-time highest money earner in PGA tour history.²¹

Film #5

The prince was a juvenile delinquent who, in his largest offense, orchestrated his father’s death. He imperiled himself, knowing that his father would come to his rescue and then fled the royal community without acknowledging his role in the king’s untimely demise. He abandoned all responsibility to his mother, girlfriend, and tribe, and left the kingdom to live with a couple of layabouts in a remote jungle. Then, when he was finished relaxing in a faraway land, he returned to the family he abandoned to seize their government (and shake up their lives) and to reclaim

¹⁸ FINDING NEMO (Pixar Animation Studios 2003).

¹⁹ RAIDERS OF THE LOST ARK (Paramount Pictures 1981).

²⁰ TANGLED (Walt Disney Animation Studios 2010).

²¹ HAPPY GILMORE (Universal Pictures 1996).

*the responsibility he wasn't man enough to assume ages ago.*²²

Film #6

*After years of order, peace, and stability, a gang, including a criminal smuggler and his aggressive, unruly beast and a spoiled rich girl with a burning passion for her brother, wreak havoc in the galaxy forcing the government to respond. The rebels take advice from a senile and grammatically challenged sorcerer. The government responded proportionately and valiantly to crush the immoral rebellion, but in the end, the rebels won and many of the government's courageous, well-trained soldiers and leaders were killed in the bloody insurrection.*²³

To the Courtroom

After we have explored alternative ways to framing facts from movies, I share examples of alternatively framed facts from real cases beginning with oral arguments. A familiar example is Johnnie Cochran's closing argument in the O.J. Simpson case. In his closing argument, Mr. Cochran effectively shifts the jurors' focus from the defendant, a famous, professional athlete, to a symbol—the ill-fitting glove. His repeated use of the phrase, “*If it doesn't fit, you must acquit*,” brings the focus to the errors in the investigation rather than the evidence against defendant.²⁴

Students are shocked to discover that judges at all levels of the judicial system regularly use framing techniques to support their opinions. One popular exercise (used by many legal writing professors) considers the facts from *Walker v. City of Birmingham*, 388 U.S. 307 (1967) and *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969). Both

cases describe events leading up to and including the famous civil rights march through Birmingham, Alabama, on Easter Sunday, April 14, 1963.²⁵ In *Walker*, the Court's description frames the facts in a more violent fashion,²⁶ while the *Shuttlesworth* Court frames it in a more peaceful fashion.²⁷ I challenge students to tell identify the different framing techniques used by each Court to frame the reader's perception of the march. Ideally, students will highlight framing techniques such as fact selection, how facts are highlighted or de-emphasized, particular word choices, the manner in which names and numbers are handled, the presentation of the timeline of events, and other aspects of the facts that offer contrasting perspectives. At the end of the discussion, I reveal to the students that both opinions were written by Justice Stewart—further emphasizing that a single author is capable of using framing techniques to persuade the reader.²⁸

If time permits, we may also explore other examples of persuasive framing such as the Courts' use of non-traditional narrative techniques to present facts in a certain light as the illustrated in *Boykin v. Alabama*, 395 U.S. 238 (1969).²⁹ In *Boykin*, the court frames the facts to shift the focus from the defendant and the heinous crimes for which he was convicted to a story in which the focus is on the procedural defects in the case.³⁰ This approach paints a picture of the defendant in a passive role rather than an active role within the case. (Other examples of non-traditional framing include non-chronological presentations of events or challenging the good guy v. bad guy archetypes, etc.).

²² THE LION KING (Walt Disney Pictures 1994).

²³ STAR WARS: EPISODE IV—A NEW HOPE (Lucasfilm, 20th Century Fox Film Corp. 1977). I received another alternate synopsis for *Star Wars* that mashes up Episodes IV & V: An orphan, living with his step-family, is found by a family friend, who convinces him to embark on a quest to save the world, which ultimately culminates in a reunion with his father. See *id.* and STAR WARS: EPISODE V—THE EMPIRE STRIKES BACK (Lucasfilm, 20th Century Fox Film Corp. 1980).

²⁴ Cochran closing argument transcript available at <http://famous-trials.com/simpson/1868-cochranclosing> (accessed Apr. 6, 2017).

²⁵ *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 148-50 (1969); *Walker v. City of Birmingham*, 388 U.S. 307, 308-11 (1967).

²⁶ *Walker*, 388 U.S. at 308-11.

²⁷ *Shuttlesworth*, 394 U.S. at 148-50.

²⁸ Another option is to use only the *Walker* opinion. The majority opinion and the dissenting opinion give contrasting narratives of the facts surrounding the march. See *Walker*, 388 U.S. at 309-11, 324-26.

²⁹ *Boykin v. Alabama*, 395 U.S. 238, 239-40 (1969) (holding that guilty pleas must be intelligent and voluntary).

³⁰ *Id.* For a more in-depth discussion of this technique see Linda L. Berger, *The Lady or the Tiger? A Field Guide to Metaphor and Narrative*, 50 WASHBURN L.J. 275 (2011).

“Students are shocked to discover that judges at all levels of the judicial system regularly use framing techniques to support their opinions.”

To the Spring Writing Assignment

Ultimately, greater exposure to uses of alternative framing techniques for the purpose of persuasion helps the students feel comfortable with using these techniques to frame the facts of their case.³¹ After we've explored alternative framing in films, oral arguments and judicial opinions, we shift to discussions of how the facts from their spring writing assignment may be persuasively (alternatively) framed for each party. This brings the exercise full circle—from a familiar context (films), to a slightly newer context (cases), to their current assignment.³² This leads students to the last step in the exercise: application of these techniques to the facts in their hypothetical case. The theory driving this last step in the exercise is building the students' confidence in using narrative techniques to frame facts by starting

in a familiar context (movies) and moving to a less familiar context (facts in a litigation document).³³

During this final portion of the exercise, I ask the students to apply the techniques we used to frame movie synopses and identified in real cases to the facts of their spring writing assignment. Typically, I have the students continue to work in small groups to discuss whether a traditional framing of the facts (a chronological protagonist driven narrative) or an alternative framing of the facts best serves their client, and to identify the facts that should be highlighted or de-emphasized to achieve the best possible outcome for their client.

Conclusion

This non-traditional approach to teaching persuasive framing of facts has proven successful in my own experiences. Since I began implementing this approach to teaching persuasive framing of facts, I have found that students are more apt to try different narrative techniques and often create more compelling statements of facts in the first drafts of their briefs. As a result, my feedback on the first draft can focus on refining these statements of facts rather than on restructuring them—leading to a better final product in the final draft. And, it doesn't hurt that we have a little fun along the way.

“[G]reater exposure to uses of alternative framing techniques for the purpose of persuasion helps the students feel comfortable with using these techniques to frame the facts of their case.”

³¹ There are many examples of framing from cases and arguments that could be used. See *Falwell v. Flynt*, 797 F.2d 1270 (4th Cir. 1986), rev'd by *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988) (redirecting the focus from the lewd nature of the parody to the value of free speech—the transcript and argument before the Supreme Court of the United States is available at http://www.oyez.org/cases/1980-1989/1987/1987_86_1278); *Morse v. Frederick*, 551 U.S. 393, 397-399 (2007) (Justice Roberts set up of the scene suggests an unruly element during a school activity that caused disruption thereby making discipline seem necessary).

³² For some of the theory about why this technique is effective for law school learning. See Carrie Menkel-Meadow, *Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 *FORDHAM L. REV.* 787, 797-98 (2000). Also, theories of self-efficacy encourage developing students' confidence by starting with familiar content before moving to less familiar content. See e.g. Albert Bandura, "Self-efficacy," in 4 *ENCYCLOPEDIA OF HUMAN BEHAVIOR* 71, 71 (Acad. Press Inc. 1994). Ultimately, this relates to the schema theory of information acquisition. Using familiar contexts to introduce new concepts activate established schema and help students build new schema to understand the new concepts. See Patricia L. Carrell, *Schema Theory and ESL Reading: Classroom Implications and Applications*, 68 *THE MODERN LANGUAGE JOURNAL* 332 (Issue 4, Winter 1984).

³³ See Bandura, *supra* note 32, at 71.

Micro Essay

What is a government junkie to do if they are stranded on a desert island? Easy! Take Voxgov, a continuously updated database that tracks social media posts of elected representatives and governmental departments. Voxgov combines the needs of a social media addict, a government wonk, and a database guru in one handy resource. You can follow Tweets, Facebook posts, YouTube videos, and official press releases from thousands of sources. Users can compare Republican and Democrat postings, follow trending topics, and research what their own elected officials are talking about. With Voxgov, I'd feel connected, even on a desert island!

Kris Turner, Head of Reference, University of Wisconsin Law School Library, Madison, Wis.

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Reframing the Mundane: From Research to Relationships

By Anne E. Mullins¹

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Law students face a tough employment market.² As a result, students working as interns should use everything at their disposal to leave a favorable impression on their supervisors. Research assignments are among the most typical—and least glamorous—student intern assignments.³ Most of us know that employers value junior lawyers' ability to perform effective legal research and analysis, but they also value junior lawyers' ability to establish and maintain effective relationships with colleagues and clients.⁴ While law students may feel confident in their research skills, students feel they have limited autonomy and limited access to their supervisors and their law office's clients. As a result, most feel little agency in their ability to develop or showcase their relationship skills during summer jobs or academic year

¹ Parts of this article are based on Chapter 3 of NORTH DAKOTA LEGAL RESEARCH by Anne E. Mullins and Tammy R. Pettinato and used with permission here.

² See, e.g., Andrew Soergel, *Hiring Outlook Bleak for New Law Grads*, U.S. NEWS & WORLD REPORT, AUG. 18, 2016, available online at <https://www.usnews.com/news/articles/2016-08-18/hiring-outlook-bleak-for-new-law-grads>.

³ Bill Chamberlain, *What to Know About Your First Summer Internship*, ABA STUDENT LAWYER (Dec. 1, 2016).

⁴ See, e.g., Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 547, 552 (2014) (reporting that the legal employers the author surveyed considered the ability to initiate and maintain strong relationships very important to critically important in new attorney hiring decisions). Indeed, some suggest that building relationships is the best way for junior lawyers to mitigate the effects of supervisors' implicit biases. Erin Kelly, *Encouraging Diversity and Creating Community: Research and Reflections*, at the Association of Legal Writing Directors Biennial Conference at the University of Minnesota School of Law (July 21, 2017); see also Christopher L. Aberson, Michael K. Porter & Amber M. Gaffney, *Friendships Influence Hispanic Students' Implicit Attitudes Toward White Non-Hispanics Relative to African Americans*, 30 HISPANIC J. BEHAVIORAL SCI. 544 (2008); Christopher L. Aberson, Carl Shoemaker & Christina Tomolillo, *Implicit Bias and Contact: The Role of Interethnic Friendships*, 144 J. SOC. PSYCH. 335 (2004); Kristin Davies et al., *Cross-Group Friendships and Intergroup Attitudes: A Meta-Analytic Review*, 15 PERSONALITY & SOC. PSYCH. REV. 332 (2011).

externships. This article offers practical advice that professors and supervising attorneys can share with law student interns to turn the standard research assignment into a relationship building opportunity.

I. Assignments from Supervisors

Most law student interns get their research assignments from a senior attorney who is supervising their work. The senior attorney has communicated with the client, reviewed relevant papers, and reflected on those items to spot potential legal issues. Once the senior attorney has distilled the most likely legal issues, she will turn to the student intern to perform the legal research. Initially, students need to appreciate this context so that they realize their research project is likely fitting into a much larger legal matter.

Step One. Learning About the Assignment

When a student meets with a supervising attorney to receive a research assignment, active listening alone is not enough. Tell students to bring a legal pad to every meeting and take notes! Some students have the mistaken impression that taking notes signals weakness. Their reasoning goes something like this: *If I have to take notes, that shows my supervisor that I can't listen carefully enough to recall the conversation, or that I don't have perfect recall.* Students need reassurance that few things make a supervising attorney worry more than a student who fails to take notes.

In addition to reassurance, students need to learn the benefits of having notes on the conversation. As legal research projects are fairly new to them, the benefits of notes will not be readily apparent. But as veterans know, notes from the initial conversation are very helpful resources as lawyers work through the research process and their understanding of the law and the client's problem deepens. Notes can

“While law students may feel confident in their research skills, students feel they have limited autonomy and limited access to their supervisors and their law office’s clients. As a result, most feel little agency in their ability to develop or showcase their relationship skills . . .”

sometimes answer questions that develop a few days later and save the student from returning to the supervisor to repeat information she already gave him. Moreover, the scope of research projects frequently changes as time goes on. The supervisor could receive additional information from the client or discover a new case that impacts the initial determination of the likely legal issues. Always taking notes will help students stay on top of the research project as it grows and changes. Significantly, the best advice is to take notes on a legal pad, not on a laptop, which can feel like a barrier between the student and supervisor. Moreover, laptops can be distracting. The supervisor will be able to tell if a student is distracted by technology, even if only by a momentary email alert. (And, yes, this is true even when the supervisor is sometimes distracted by technology herself.)

In addition to taking notes, students receiving a research assignment should be thoughtful about project management from the beginning. They should ask questions about which documents to review and the logistics of the assignment. For example, are there any documents or notes that the student should review before beginning research? This could include the supervisor's email correspondence with the client, notes on telephone calls with the client, documents that the client has sent to the supervisor to review, and if the client is a repeat client, or items from the office's client file. Note that some legal writing instructors advise students to read the entire client file before beginning a project; explain to students that at some law offices—particularly those with cash-strapped clients or those who are working on contingency fee arrangements—taking the time to read the client file may be considered an inefficient use of resources.

Students should also ask the supervisor logistical questions about the project. For example, by when would the supervisor like the results? If the supervisor suggests a timeframe that is going to be difficult to meet, the student should know to speak up right away and offer a realistic alternative target date. The student should also ask how the supervisor would like the student to convey the

results of the research. The supervisor might want an oral report, a traditional written memo, or an email memo. Finally, the student should ask whether there are cost considerations that the student should know about. A client who wants to limit expenses might prefer print or free online resources over expensive online commercial legal research providers like Lexis and Westlaw. These questions not only convey important information to the student, but also show the supervisor that the student is taking an active and thoughtful approach to project management.

Step Two. Following Up

After the initial meeting, the student should carefully review his notes. Then, he should consider drafting a follow up email to the supervisor to confirm the substance and the logistics of the assignment. The follow up email provides a natural opportunity to ask any questions that the student has developed since the meeting. Finally, the student should close by asking the supervisor to let the student know if he has missed anything. A follow up email might look something like this:

Hi Lucinda,

I am looking forward to getting started on my research for the Jeff Marlin case. To confirm, we are investigating whether Marlin has a theft of trade secrets case against his former employee, Theresa Denton. I am researching whether Marlin took steps to preserve the secrecy of his winemaking process under our state's law. I'll have my memo to you by next Wednesday.

Finally, do we have a copy of Marlin's winemaking manual? It might help for me to review it as I conduct my research.

Please let me know if I am missing anything.

Best,
Jamar

Note that Jamar first confirmed the substance of the assignment by summarizing the issue, whether Marlin took steps to preserve the secrecy of his winemaking process under the applicable state's law. This allows Jamar's

“Always taking notes will help students stay on top of the research project as it grows and changes.”

“Reassure students that it’s not a sin to miss a deadline; it is a sin not to tell the supervisor the moment the student starts to doubt his ability to meet it.”

supervisor to intervene if she wants Jamar to focus on a different issue or another jurisdiction. Jamar then confirmed the logistics (a memo is due to his supervisor on Wednesday) and asked a question that he didn’t think of during the meeting (whether there is additional material that might help the research). Finally, note that Jamar closed by asking his supervisor to respond only if Jamar was missing something. This takes the burden off of the supervisor. “Let me know if I am missing anything” appears more confident and less needy than “Do I have everything right?” When building professional relationships, inspiring the confidence of colleagues can make just as much of an impact as the underlying work.

One downside to writing a follow up email confirming the assignment is that some supervisors may find it annoying. Unless the assignment is very basic, however, the benefits of following up outweigh the risks, especially for new student interns. The reason? All too frequently, students come back from internships and groan that they embarked on a major project, only to discover upon submitting it that the supervisor actually wanted something different. Answering the call of the question is a learned skill, and it is one that many students—particularly those early in their law school careers—have yet to master. And the student is not always the problem. Lawyers can be unclear in communicating what they want (gasp!), or they may have simply forgotten what they asked the student to do. Ultimately, following up is likely worthwhile for many student interns. Phrasing the follow up email in the manner suggested above, requiring the supervisor to reply only if the student is getting something wrong, will minimize any annoyance the supervisor might feel.

Step Three. Conducting Research

The student should follow a tried and true process while conducting the research. That process should include secondary sources,

primary sources, and updating.⁵ Writing out that process before beginning can ensure that the student approaches the research with intentionality and doesn’t overlook an important resource.

As the student conducts research, he will learn more about the law. And, as he learns more about the law, he will be better able to identify what additional facts he might need from the supervisor to conduct a complete analysis. Remind students to make note of all of the additional facts they might need and the additional questions that develop. Last, students should check in with their supervisors periodically for multi-week projects.

It’s possible that the research may become more complicated than either the supervisor or the student anticipated. If that happens, the student must alert his supervisor to any new concerns about meeting the initial deadline. Reassure students that it’s not a sin to miss a deadline; it is a sin not to tell the supervisor the moment the student starts to doubt his ability to meet it. If the student must raise the issue, he should be sure to suggest a realistic, revised date by which he can complete the project.

Step Four. Reporting the Results

The student will need to convey the results of the project to the supervisor. How the student does that will depend on the medium that the student was told to use. Here are some tips for each:

Oral report. After confirming that the supervisor is available, the student should be sure to have all notes on research and analysis at his fingertips. Then, the student should remind the supervisor what she asked the student to research and give the bottom line answer with a very clear “yes” or “no.” Starting with a clear answer up front will immediately focus the supervisor and allow her to thoughtfully listen to the reasons that made the student reach it.

During the course of the conversation, the student should identify the key rules and tell

⁵ See, e.g., MARY GARVEY ALGERO ET AL., FEDERAL LEGAL RESEARCH 3-20 (2d ed. 2015); BARBARA J. BUSHARIS ET AL., FLORIDA LEGAL RESEARCH 3-10 (4th ed. 2014); ANNE E. MULLINS & TAMMY R. PETTINATO, NORTH DAKOTA LEGAL RESEARCH 3-12 (2016).

the supervisor how they apply to the client's situation. The student might think of this as telling the supervisor the rule and application sections of a written memo; the student won't provide the detailed explanation of the law or rule proof unless the supervisor asks for more information.

Next, if there is information that the student doesn't yet have that would impact the analysis, he should tell the supervisor what that information is. If the list is long, the student should provide it in written form. The student should be prepared to let the supervisor know how that information would impact the analysis.

Finally, the student should be ready to field questions and take on follow up assignments during the course of the meeting. To do so, he will want to have handy all research notes, key authorities, and notes on the analysis. The student will, of course, also want a legal pad and a pen to take notes on the conversation.

Traditional memo. If the student is reporting results in a traditional memo, he will either email it to his supervisor or bring a hard copy to the supervisor's office. If the student is sending it via email, he should include a brief summary in the body of the email. The student should always start by reminding the supervisor what she asked him to research and then give the bottom line answer while providing a very short (one email screen) summary of the reasons for the answer. The student might also consider attaching the key authorities with the critical passages highlighted.

If the student is bringing the memo to the supervisor in hard copy, he should be prepared to also give an oral report and answer questions. The student might consider providing his supervisor with copies of the key authorities, tabbing the pages with the most critical passages, and highlighting those passages.

Email memo. If the student is reporting results in an email memo (usually more abbreviated than a traditional memo and sent in the body of an email), he should start by reminding the

supervisor what she asked the student to research and provide the bottom line answer. He should follow that with a short summary of reasons for the answer. In the summary, he should identify the key rules and how they apply to the client's facts. The student should try to limit the answer to one screen. Again, the student might consider attaching the key authorities with the critical passages highlighted.⁶

II. Assignments from a Client

Some student interns will have the opportunity to work directly with clients, particularly in offices that handle a high volume of cases and operate on a lean budget. In these jobs, the student will sometimes meet with clients and identify the legal issues at the outset. While the basic steps are the same whether the assignment comes from a supervisor or a client, the following steps highlight some important differences.

Step One. Preparing for the Client Meeting

If the client contacts a law office with a problem over the telephone, the student will likely set up an in-person meeting to discuss the problem and gather information. Under these circumstances, the student's first job is to start putting a chronology together to learn the story and to understand how each part relates to the others.

The chronology of a client's case has two parts: the written chronology and the document chronology. The written chronology has each fact, the date on which it occurred, and the source of the fact. The student should keep updating the chronology throughout the case. A written chronology is particularly important if the client's problem develops into litigation. Not only does it provide a timeline of events; it also gives a quick reference guide to the source of each fact. This will be very helpful when the time comes to write motions and briefs. An example of a written chronology appears in Table 3-1.

⁶ For more on email as a professional means of communication in the law office setting, see CHRISTINE COUGHLIN ET AL., A LAWYER WRITES 295-304 (2d ed. 2013); Kirsten Davis, "The Reports of My Death Are Greatly Exaggerated": Reading and Writing Objective Legal Memoranda in a Mobile Computing Age, 92 OR. L. REV. 472 (2014); Kristen Conrad Robbins-Tiscione, *From Snail Mail to Email: The Traditional Legal Memorandum in the Twenty-First Century*, 58 J. LEGAL EDUC. 32 (2008).

Table 3-1. Example Excerpted Written Chronology

Date	Event	Source
9/5/2006	Marlin discovers process for making Reserve Chardonnay	Marlin depo 1:11-17
10/4/2007	Denton hired as Williamsport Winery's head winemaker	Marlin depo 3:5-9, MARLIN00246
10/4/2007-6/18/2014	Denton participates in winemaking leadership and training academies	WW00345-456
7/11/2015	Denton quits to start her own winery	WW0022, Marlin depo 22:3-12
8/26/2016	Denton introduces her copycat wine; sells 50,000 cases	WW00486, DEN00014

If the client's problem has not yet evolved into litigation, the most likely supporting sources will be conversations with the client and the client's documents (including emails). If the problem evolves into litigation, some of the sources will likely be depositions and documents that the other side discloses during the discovery process. The supervisor might need to explain new terms to the student, including *deposition* (where a lawyer questions a witness in front of a court reporter to elicit testimony) and the *Bates number* (page numbers that have a prefix identifying who disclosed the documents along with a page number).

In addition to the written chronology shown in Table 3-1, the student will also want to start a document chronology. A document chronology is a collection of relevant documents—correspondence between the parties, relevant contracts, and any other relevant papers—all in chronological order. Like the written chronology, the student should start the document chronology the moment the office receives documents from the client, and the student should keep it updated as the case progresses.

Unlike the assignment meeting with a supervisor, the student who gets an assignment from a client should conduct legal research in advance of the meeting. That early research

will provide a refresher on the basics of the applicable law, which will in turn help the student prepare more effective questions for the client in anticipation of the meeting and develop a better sense of what documents and other materials that the student should ask to review.

On the day of the meeting, the student should select clothing thoughtfully. If the client is someone who is likely comfortable talking with a lawyer, like a local business owner, a suit might be appropriate. If the client is less likely to be comfortable talking with a lawyer, the student might consider business casual.

The next decision is where to have the client meeting. If the student is deeply involved in other cases and has documents spread around his work area, the student should try to meet in a conference room if the office has one. If the student meets the client in his work area, that area must be tidy in order to gain the client's confidence. Additionally, the student should consider coming out from behind the desk to sit next to the client during the meeting to help the client feel more at ease.

Steps Two and Three. Conducting the Meeting and Following Up

Immediately before the client arrives, the student should minimize any potential distractions by turning off his cell phone, disabling his email alert, and holding all office telephone calls. When the client arrives, the student should greet her and make some small talk. If small talk doesn't come naturally to the student, encourage him to prepare some questions in advance. "How was your drive?" "Can you believe all of this snow?"

Once the client is settled, the student should turn the conversation to the client's problem. While it can be tempting to start firing off a series of questions, it's best for the student to ask the client to tell the entire story in her own words first. As the client is talking, the student should listen actively by nodding, interjecting short responses, and asking questions when something is not clear. And of course, the student should always take notes on a legal pad. After the client finishes the story, the student

“While it can be tempting to start firing off a series of questions, it's best for the student to ask the client to tell the entire story in her own words first.”

should go back through it to confirm the details, asking questions and requesting documents.

You should warn your student that sometimes clients are afraid to share the “bad facts.” The client might be embarrassed and hope that the student won’t find out about whatever it is. The student should gently encourage the client to share everything, good and bad. The student should explain that he can only provide his best help when he knows all the facts including the “bad” ones; the student can’t help as effectively when some facts come as a surprise, especially at an inopportune moment in the case, like during settlement negotiations or trial. A less direct, and often helpful, way to elicit bad facts is to ask what the other side might say. The student should then advise the client not to dispose of anything having to do with the dispute—and this includes her electronic materials, like emails.

Next, the student should lay out an initial plan of action, either stating the relevant issue or issues or telling the client what he plans to research. The student should close the meeting by letting the client know when he will be back in touch and finding out whether the client prefers to communicate in the interim by email, letter, or telephone. After the meeting, the student should usually send a brief written follow up, providing the same information as in a follow up with a supervisor but also confirming the documents the client has agreed to provide.

Steps Four and Five. Conducting the Research and Reporting Results

As with a project for a supervisor, the student should develop a plan, take notes, and check in on schedule. How the student reports his conclusions depends on the supervisor and client. Sometimes, the supervisor will assume responsibility for client contact at that point. When the student is allowed to contact the client directly, the student will do so in either a letter, email, telephone call, or an in-person meeting. In essence, the information conveyed in a letter or email will be similar to that given to a supervisor, but adjusted to suit the client’s level of legal expertise. Generally, this means reminding the client of what the student

researched, giving a bottom line answer, and sharing the big picture rules governing the question and how those rules apply to the client’s facts. The student should typically not go into an in depth explanation of the law, though he should be prepared to answer client questions—particularly given that some clients will have availed themselves of Google and other free online sources that may have caused confusion or provided conflicting information.

III. A Little Psychology Goes a Long Way

Much of this article has focused on receiving and executing research assignments in a way that builds credibility and garners good will. But, of course, there’s more to relationship building than that. While an extensive review of the cognitive theory behind relationship building is beyond the scope of this article, a few tips may be helpful.

First, the common sense: People build relationships with those they like.⁷ While the criteria for who we “like” may initially appear subjective, cognitive psychologists have identified several predictors of who people are likely to like. Those predictors include the belief the person is cooperative, similar, familiar, and willing to admit weakness.⁸ Most of this article has essentially focused on cooperation by highlighting the things student interns can do to fulfill their duties in a way that establishes credibility and ensures that their supervisors can count on them to do thorough work in a manner appropriate to their environment.

In addition to cooperation, people like those who are similar to them.⁹ Indeed, emphasizing similarities has been called the “single most effective strategy” to get people to like each other.¹⁰ Notably, these similarities need not be meaningful; even similarity based on insignificant criteria can still be compelling. For example, people are much more likely to fill out a survey

“You should warn your student that sometimes clients are afraid to share the ‘bad facts.’”

⁷ ROBERT B. CIALDINI, *INFLUENCE: SCIENCE AND PRACTICE*, xi-xii (5th ed. 2009).

⁸ *Id.* at 142. In addition to the listed predictors, we are also likely to like those we find physically attractive. *See id.* at 146; Ingrid R. Olson & Christy Marshuetz, *Facial Attractiveness Is Appraised in a Glance*, 5 *EMOTION* 498, 498 (2005).

⁹ CIALDINI, *supra* note 6 at 142.

¹⁰ NICK KOLENDA, *METHODS OF PERSUASION: HOW TO USE PSYCHOLOGY TO INFLUENCE HUMAN BEHAVIOR* 91 (2013).

“Employers want to hire lawyers with not only strong research skills but also strong relationship skills.”

they receive in the mail if the sender’s name is similar to their own.¹¹ Students should try to find things they have in common with their supervisors and clients. Not only does knowing that a student and his supervisor are, for example, avid runners give the student a way to make small talk, but also it emphasizes similarity in a way that redounds to the student’s professional benefit.

In addition to liking those who are similar to ourselves, people tend to like the familiar. One reason people tend to like the familiar is that it has high processing fluency; in other words, the familiar is easier for our brains to process, and as a result, we have a natural affinity for those we perceive as familiar.¹² Submitting written work in the format expected by supervisors capitalizes on familiarity. Being present and seen in the office is another way for students to capitalize on familiarity to their professional benefit.¹³

People like others who acknowledge their own weaknesses and take responsibility for failure rather

than blaming external factors.¹⁴ As noted above, students might not always be able to meet their original deadlines. They make mistakes. Students need reassurance that supervisors are not expecting perfection; they are expecting professionalism. And, as it turns out, the student who gracefully fumbles can actually improve his standing with his supervisor.¹⁵ Coach students to admit to mistakes immediately and offer solutions to fix them. Excuses or excuses-dressed-as-apologies will not help students save face or earn their supervisors’ good will. In fact, it will have the opposite effect.

IV. Conclusion

Employers want to hire lawyers with not only strong research skills but also strong relationship skills. Student interns have great opportunities to both develop and showcase their relationship skills when they take on research assignments for supervisors and clients. With guidance from their professors or supervisors, students can take advantage of those opportunities in ways that significantly enhance their practice-ready skill set and marketability at the same time.

¹¹ NOAH J. GOLDSTEIN, STEVE J. MARTIN, & ROBERT B. CIALDINI, YES! 50 SCIENTIFICALLY PROVEN WAYS TO BE PERSUASIVE, 125 (2008); Randy Garner, *What’s in a Name? Persuasion Perhaps*, 15 J. CONSUMER PSYCH. 108 (2005) (finding that changing the survey sender’s name to be similar to recipient’s name doubled survey compliance).

¹² KOLENDA, *supra* note 8 at 111-13.

¹³ Robert F. Bornstein et al., *The Generalizability of Subliminal Mere Exposure Effects: Influence of Stimuli Perceived Without Awareness on Social Behavior*, 53 J. PERSONALITY & SOC. PSYCHOL. 1070, 1073 (1987) (finding that study subjects liked people whose faces had been flashed across a screen for a miniscule amount of time—too quickly for the subjects to actively know they had seen the faces—before meeting them in person better than people they had never seen before).

¹⁴ D.E. Carlston & N. Shovar, *Effects of Performance Attributions on Others’ Perceptions of the Attributor*, 44 J. PERSONALITY & SOC. PSYCH. 515, 515-25 (1983); Michael D. Robinson et al., *On the Advantages of Modesty: The Benefits of a Balanced Self-Presentation*, 22 COMM’N RES. 575-91 (1995).

¹⁵ CHIP HEATH & DAN HEATH, *THE POWER OF MOMENTS* 29 (2017) (noting that effective responses to service failures can frequently transform negative moments into ones that customers recall as positive encounters).

Micro Essay

Researching Foreign Law in a Bunch of Common Law Jurisdictions Just Got WAY Easier!

JustisOne is an expertly designed, easy to use database with never-before-seen navigation tools that make researching foreign law fun. It houses cases from numerous common law jurisdictions such as the UK, Ireland, Australia, Canada, 18 Caribbean jurisdictions, and Singapore. Their developers created a unique legal taxonomy with more than 1.5 million terms to categorize every case across all of the included jurisdictions. Moreover, JustisOne provides an index of cases and legislation on more than 120 other services so that users can seamlessly link to relevant documents on other services.

Mind-blowing!

Ronald Wheeler, Director of the Fineman & Pappas Law Libraries, Associate Professor of Law and Legal Research, Boston University School of Law, Boston, Mass.

Cite as: Dyane O'Leary, *A-I is a G-O*, 26 Perspectives: Teaching Legal Res. & Writing 33 (2017).

A-I is a G-O

By Dyane O'Leary

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Meet ROSS, a new junior associate. He can read over one million pages of law in a second.¹ He knows every court in every federal circuit. He understands with ease legal research questions posed to him in plain language, and answers within seconds. He thrives on feedback from his supervisor to improve his accuracy and performance. He gets smarter with each completion of a task. And, I almost forgot: he doesn't take vacations, doesn't get tired, doesn't get frustrated, doesn't require health insurance, doesn't waste time reviewing irrelevant authority, doesn't care about work/life balance, and doesn't bill at an exorbitant hourly rate—only, ROSS isn't human.

Welcome to the latest phase in the evolution of legal research processes: artificial intelligence. Artificial intelligence (AI) has almost as many definitions as it does applications in modern society. In the broadest sense, AI, also often referred to as cognitive computing, is an aspect of computer science that models software on human thought processes generally regarded as intelligent.² This category encompasses, for example, expert systems, machine learning, natural language processing, robotics, and computer agents that perform tests to evaluate data and offer results. AI made its first major news splash in the late 1990s when IBM's "Deep Blue" computer won several chess matches against a world champion. Not to be outdone, in 2011, IBM's Watson computer (on which the ROSS legal research system is based) successfully competed in the game show *Jeopardy!* Indeed, AI's headway into daily life in 2017

is remarkable: just ask your virtual assistant Siri or the Amazon Echo on your kitchen countertop.

AI has already shaken up many facets of lawyering. From contract analysis to e-discovery to predictive modeling (foreseeing case outcomes based on data and analytics), it would be difficult—not to mention foolish—to ignore the inroads into law practice this technology has made. For example, in 2013, a company called NexLP was created to use artificial intelligence to analyze significant quantities of data and use pattern recognition to assist clients in navigating legal issues.³ Recognizing this trend, in April of 2016 Vanderbilt University Law School hosted the first conference ("Watson, Esq.: Will Your Next Lawyer Be a Machine?") dedicated to the future of AI in the legal profession. And students are catching on with increasing fervor by creating computer systems that, although not purely intelligent machines, can replace tasks lawyers once performed, such as the tool "DoNotPay" that handles basic legal aid questions related to everything from parking tickets to immigration matters through a free, online Q&A chat now available in all 50 states.⁴

Back to ROSS. According to one of its creators, it is "an artificially intelligent attorney designed to help with legal research . . . using machine learning and natural language processing."⁵ Gone are the days of typing in awkward Boolean terms and connectors, say proponents, not to mention flipping through hundreds of pages in a treatise to find a relevant chapter. Simply pose a question out loud as you would speaking to an actual lawyer ("Are oil and

“AI has already shaken up many facets of lawyering. From contract analysis to e-discovery to predictive modeling . . . it would be difficult—not to mention foolish—to ignore the inroads into law practice this technology has made.”

¹ <https://www.youtube.com/watch?v=wwbr0fombFs> (last visited February 2, 2018) (TED Talk by ROSS CEO and co-founder Andrew Arruda).

² Kevin D. Ashley, *Teaching Law & Digital Age Legal Practice with an AI & Law Seminar*, 88 CH.-KENT L. REV. 783, 785-86 (2013); see also Andrew Arruda, *Artificial Intelligence Systems and the Law*, PEER TO PEER: THE QUARTERLY MAGAZINE OF ILTA (Summer 2016) available at <http://www.rossintelligence.com/> ("Artificial intelligence (AI) is a computer that learns to perform intelligent tasks we usually think only humans can do.").

³ <http://www.nexlp.com/> (last visited February 2, 2018) (highlighting legal services relating to e-discovery, fraud investigation, information governance, and defensible deletion).

⁴ <https://donotpay-search-master.herokuapp.com/> (last visited February 2, 2018). I am fortunate to enjoy a front row seat to this new type of student work at Suffolk University Law School, all first year students in the fall of 2016 were introduced to automated legal tools and taught basic coding using the program QnAMarkup. <http://www.qnamarkup.org/> (last visited May 26, 2017). For more information on Suffolk Law's Institute on Law Practice Technology & Innovation, see <http://legaltech.suffolk.edu/> (last visited February 2, 2018).

⁵ Arruda, *supra* note 2.

“[B]ut does it deserve a place in the law school curriculum? Do legal research and writing professors and librarians need to pay attention to ROSS? Do we starting teaching it? What would that look like?”

gas leases executory contracts?”), and let ROSS give a basic answer in seconds, provide supporting sources, and offer suggested readings.⁶ ROSS was first introduced in the Bankruptcy practice area in 2015 (meaning that the system’s knowledge was limited to that subject matter), but is expanding into Intellectual Property and Labor & Employment. In 2016, several large law firms (Baker Hostetler and Latham & Watkins, among the most notable) “hired” ROSS and, in the now all-too-familiar era of law firms seeking to cut costs and offer more efficient representation,⁷ sang its praises.⁸

So what?

ROSS is making some headway in the legal profession, but does it deserve a place in the law school curriculum? Do legal research and writing professors and librarians need to pay attention to ROSS? Do we starting teaching it? What would that look like? Should we be lecturing about AI after we introduce Westlaw and Lexis? Can we stop telling students to craft appropriate questions presented, given that ROSS understands research inquiries in everyday, plain language?

No. At least, not yet. And probably not anytime soon. For starters, this tool is far from ubiquitous. As mentioned, ROSS is primarily in the larger, private law firm sector, for now. It is limited to discrete practice areas. Use in law schools is scant, and more so in the legal technology context as opposed to the research curriculum. Duke, Northwestern, and Vanderbilt are featured as partners on the ROSS Intelligence website, which notes that law schools “use ROSS free of

charge.”⁹ According to the Manager of Strategic Partnerships at ROSS Intelligence, the company is open to exploring narrow and purposeful partnerships with law schools based on: (a) ROSS’s current subject matter capabilities; (b) its social mission of “democratizing” access to justice; and (c) a school’s particular need and niche (for example, a legal technology or clinical setting).¹⁰

On the flip side, however, professors may not want to turn a blind eye to AI. It is not difficult to imagine a scenario where the ROSS system (or a similar tool) grows in popularity and spreads to smaller firms and perhaps even government offices very soon. Indeed, I agree with ROSS’s Head of Legal Research that clients are “increasingly unwilling to pay for”¹¹ expensive research, and pressure to explore alternative options will mount. What is more, a tool such as ROSS is well-positioned to benefit in the next several years from the bright spotlight shining on the need to expand and improve delivery of legal services through more efficient, less expensive, and non-traditional tools.

The bottom line for the legal research and writing community at this early stage of artificial intelligence legal research is to be aware. Ignorance about this innovation in the field would mimic early disregard of Westlaw and Lexis years ago, when some among us held firm to teaching students to check the pocket part or peruse a descriptive word index to find the needle in the library haystacks. In many ways, ROSS and other emerging tools such as Casetext’s CARA (Case Analysis Research Assistant)¹² and

⁹ *Supra*, note 8; see also <https://blog.rossintelligence.com/duke-law-partners-with-ross-intelligence-923b919a4ad9> (last visited February 2, 2018) (announcing use of ROSS in Duke’s Law Tech Lab).

¹⁰ Telephone Interview with Lindsey Frischer, Head of Strategic Partnerships, ROSS Intelligence (June 2, 2017) (notes on file with author). Readers interested in learning more about ROSS and potential partnerships in legal education may contact Ms. Frischer at lindsey@rossintelligence.com or Thomas Hamilton, Vice President, Strategy & Operations at ROSS Intelligence, at thomas@rossintelligence.com.

¹¹ <https://blog.rossintelligence.com/a-i-is-hype-what-can-it-really-do-in-law-1b45204c7c22> (last visited February 2, 2018).

¹² <https://casetext.com/> (last visited February 2, 2018) (describing how users upload a brief or memo and receive an immediate list of additional “suggested” cases not initially cited). More recently, in January, 2018 ROSS Intelligence announced its own case analysis “drag-and-drop” tool named EVA. EVA is currently available for free, and allows users to upload a brief and (as advertised) receive relevant cases, citations, and fact summaries. See <https://rossintelligence.com/ross-new-coworker-eva/> (last visited February 2, 2018).

⁶ This example was included in a presentation by one of ROSS’s co-founders at the AI and the Law Conference in the spring of 2016 at Vanderbilt University Law School, and is available at https://www.youtube.com/watch?v=LF08X5_T3Oc (last visited February 2, 2018).

⁷ Countless sources in recent years have reported business clients’ reduced spending on legal services, increased competition in the legal market, and pressure on law firms to invest in innovation and cost-saving measures. See, e.g., 2016 REPORT ON THE STATE OF THE LEGAL MARKET (Thomson Reuters Peer Monitor & Center for the Study of the Legal Profession, Georgetown University 2016), https://peermonitor.thomsonreuters.com/wp-content/uploads/2016/01/2016_PM_GT_Final-Report.pdf

⁸ www.rossintelligence.com (last visited February 2, 2018) (“ROSS is a tool to help improve our work processes, reduce costs, and ultimately generate better results for our clients.”).

CARA Brief Finder¹³ are to Westlaw and Lexis what those databases were to case reporters and hard copy statutory compilations years ago. Sure, instructors lament how Google and natural language searching (itself a form of AI) in databases such as Lexis Advance¹⁴ can turn students into passive receivers of information who jump at the first bone thrown their way, instead of the proactive, analytical go-getters of old who dive deep into the murkiness of the law. But those Googling-coding-start-up-developing-Generation Y students are tomorrow's lawyers. It remains our job to craft their skills as best we can, cognizant that we may not know the precise research platform they will eventually use.

My recommendation, then, is this: briefly introduce the existence of artificially intelligent legal research systems, but tie them to the more relevant "Google" natural language searching context for students to reinforce universal principles about good research practices. Do not rush to "teach" AI. In fact, I have never used the full ROSS research system, as is likely the case with most readers. An Advanced Writing or Research elective course could offer more syllabus space to explore a system such as ROSS or CARA, but I suspect most agree the first-year research and writing curriculum is already jam-packed with little room to add more material. First year professors could, however, show students the ROSS website (or assign an introductory video such as the founder's TED Talk¹⁵) as a contemporary twist for today's students on some good-ol' lessons:

- **Planning and organizing:** even before posing a question to ROSS, a lawyer would need to

interview, fact-gather, strategize, and understand the nature of a client's legal problem.

- **Context:** a lawyer who takes ROSS's first "answer" at face value without even a moment's pause risks making the same errors that have plagued law students for decades: what jurisdiction? How recent? Is it a primary source? Is it dicta? Are the facts from a particular case easily distinguishable? Is a new policy concern applicable? Would an administrative regulation be more appropriate?
- **Careful reading, processing and understanding:** What good is a quick answer from an AI system (or the top result from a Google search or Westlaw query, for that matter) if a lawyer cannot comprehend its significance, confidently ignore irrelevant aspects, place it in the "big picture" of a particular area of law, discuss it with a client, argue it to a judge, or explain it in a brief?
- **Competence:** Students cannot be reminded enough in the research context that the first professional obligation of a lawyer (literally, Rule 1.1 of the ABA Model Rules of Professional Conduct) is to provide competent representation, which specifically includes thoroughness. Perhaps it is coming in the not-so-distant future, but I cannot imagine a scenario today where sole reliance on one spoken "answer" from a machine obtained in seconds qualifies as such.

In sum, it is not the development of new AI tools that unnerves me as much as it is lawyers' use (misuse?) of them. ROSS would be a helpful associate to have on board, as long as his colleagues exercised the necessary caution, professionalism, and perspective in using him on a client's behalf. In other words, if an intelligent machine can someday "transform"¹⁶ our students' more mundane tasks to make room for more important and stimulating legal work, then I'm all for it. Welcome to the team, ROSS.

“[T]hose Googling-coding-start-up-developing-Generation Y students are tomorrow's lawyers. It remains our job to craft their skills as best we can . . .”

¹³ <http://www.businesswire.com/news/home/20170517005306/en/Casetext-Unveils-CARA-Finder> (last visited February 2, 2018) (noting that CARA was named new product of the year in 2017 by the American Association of Law Libraries (AALL) and describing the Brief Finder tool as applying artificial intelligence and data science technologies that allow users to access "highly relevant legal briefs").

¹⁴ Indeed, this past summer Lexis itself announced its acquisition of Ravel Law and touted Ravel's judicial analytics, data visualization technology and unique case law PDF content. See <https://www.lexisnexis.com/en-us/about-us/media/press-release.page?id=1496247082681222> (last visited February 2, 2018). Lexis also announced a new "Lexis Answers" tool that purports to "[i]nfuse[e] New Artificial Intelligence Capabilities into the Company's Flagship Legal Research Platform." <https://www.lexisnexis.com/en-us/about-us/media/press-release.page?id=1498484103628687> (last visited February 2, 2018).

¹⁵ *Supra*, note 1.

¹⁶ Julie Sobowale, *Beyond Imagination: How Artificial Intelligence is Transforming the Legal Profession*, ABA Journal (Apr. 2016) available at http://www.abajournal.com/magazine/article/how_artificial_intelligence_is_transforming_the_legal_profession (quoting a former big firm lawyer) ("Technology that automates tedious tasks, while not a panacea, can free up lawyers' time to perform higher-level, more intellectually satisfying work which clients would be willing to pay for. It would help to make lawyers happier and more productive.")

Cite as: James B. Levy, *Reading in the Digital Age: A Review of Words on Screen*, 26 Perspectives: Teaching Legal Res. & Writing 36 (2017).

Reading in the Digital Age: A Review of *Words on Screen*

By James B. Levy

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All legal educators recognize that critical reading is one of the most important skills we teach our students. For that reason, one of the primary goals of the law school curriculum, particularly in the first year, is to help students develop this vital skill. But the act of reading itself has changed in recent years due to the increased use of digital technologies and the variety of new reading behaviors they have spawned. Indeed, the very definition of what it means to read is changing such that teachers and their students may now understand this very fundamental skill quite differently. Consequently, teachers are now facing new challenges when they are already under great pressure to make students practice ready at a time when many students arrive at law school less prepared than ever in basic competencies like reading and writing.

Fortunately, Professor Naomi Baron, a linguistics scholar and Director of the Center for Teaching, Research and Learning at American University, has published a new book called *Words on Screen: The Fate of Reading in a Digital World* that discusses these trends and their implications for the classroom.¹ Her book is an informative guide for any LRW professor interested in better understanding the reading habits of today's students in order to address the classroom challenges they present. Though there are other books that discuss reading from a cognitive science perspective by focusing on the mental processes involved, Professor Baron's book may be unique in its focus on how reading behaviors, the medium, and the

chosen platform all converge to influence the overall reading experience.² The picture she describes of reading in the digital age turns out to be much more nuanced and idiosyncratic than one might expect.

Baron's book discusses numerous studies, both her own and those of others, that examine the reading practices of college-aged students in particular. Since entering law students generally fall into the same demographic as the groups Baron studied, her book offers valuable insight to LRW professors about how today's law students read. Perhaps more significantly, Baron observes that reading and writing are "joined at the hip," by which she means that a student's approach to reading is often reflected in how the student approaches writing as well.³ Thus, by training students to be more proficient readers, we might also be able to help them become better writers too.

For legal educators, one of the big takeaways from Baron's book is that we cannot easily generalize about the reading habits of so-called "digital natives" or their preferred reading platforms. For instance, while college-age students are among the most obsessive users of mobile devices who always seem to be glued to their screens, poll after poll has shown that when it comes to doing schoolwork, most prefer conventional textbooks over digital ones. Far from being a dead format, print is still very much alive and kicking among the wired generation, at least for certain tasks. And though sales figures for e-books are a closely guarded industry secret, Baron reports that the demand for them among the general public has leveled off in recent years and may have even flattened.⁴ In terms of overall sales, traditional hard copy books are still vastly more

¹ NAOMI S. BARON, *WORDS ON SCREEN: THE FATE OF READING IN A DIGITAL WORLD* (Oxford Press 2015).

² See STANISLAS DEHAENE, *READING IN THE BRAIN: THE SCIENCE AND EVOLUTION OF A HUMAN INVENTION* (Viking 2009); MARY ANNE WOLF, *PROUST AND THE SQUID: THE STORY AND SCIENCE OF THE READING BRAIN* (Harper 2007).

³ BARON, *supra* note 1, at 25, 45.

⁴ *Id.*, at 191.

“[T]eachers are now facing new challenges when they are already under great pressure to make students practice ready at a time when many students arrive at law school less prepared than ever . . .”

popular than their electronic counterparts and outsell them by a large margin.⁵ To paraphrase the famous words of Mark Twain, the reports of print's imminent death have been greatly exaggerated.

But before getting into the specifics of how today's college-aged students read, Baron makes the broader point that technology is transforming the act of reading itself.⁶ On the one hand, anecdotal evidence suggests that, in general, young people are reading more today than at any other time in history because of the ubiquity of social media and digital devices like smartphones. On the other hand, the notion of what it means to read is evolving. For some, merely sharing a post with friends via social media means they've "read" it, while for others just skimming an article on a mobile device qualifies as having "read" it.

That's not to say students come to law school not understanding or lacking the ability to engage in deep reading, just that their teachers may have to be more explicit in describing their expectations when it comes to reading assignments. It may no longer be sufficient to simply tell students to read the material carefully without providing further direction or instruction. Instead, teachers should consider spending class time explaining to students what deep reading is about by showing them, for example, how experts attack the page with highlighter and pen in hand. They may also need to spend class time showing students the other habits and behaviors expert readers, like their teachers, have so internalized that they forget students don't share the same assumptions about what to do.

Baron observes that reading now covers a broader range of activities that includes scanning, skimming, prowling, and power-reading, in addition to deep reading.⁷ She further notes that an individual's reading strategy is often related to the content, the medium, and the device on which it is read. Thus, a reader might skim social media posts

viewed on a smartphone, yet adopt an entirely different reading style when viewing documents on a desktop computer, or reading a traditional hard copy book for work or pleasure. Of course, students' chosen reading strategies affect the extent to which they engage in the material which, in turn, determines how much they comprehend and retain. Interestingly, Baron suggests that both the medium and device affects the reader's expectations about the importance, difficulty, and gravity of the material. In a form of "guilt by association," students may perceive electronic content viewed on a smartphone as less worthy—and consequently take it less seriously—than if the same material was made available to them in hard copy.

If students perceive the material as being less important, it follows that they will likely put less effort into understanding it. For instance, Baron's research suggests that students are less likely to re-read electronic text regardless of the device used to view it compared to the same material presented to them in hard copy.⁸ Obviously, this has serious implications for legal educators since students should be re-reading nearly all of their assignments in law school to better understand the deeper, underlying meaning of that material. Indeed, the very purpose of most of these assignments is to show students that they haven't read the material carefully enough. And with longer texts in particular, Baron found that students may be less likely to even finish an electronic document compared to a hard copy version of the same material.⁹

Keep in mind that digital devices like smartphones and e-readers, which are now so ubiquitous, didn't exist ten years ago.¹⁰ Consequently, only a short time ago none of this was an issue for LRW professors to grapple with when designing reading assignments for class. But today, there are a variety of reading devices and platforms that include

“If students perceive the material as being less important, it follows that they will likely put less effort into understanding it.”

⁵ See *id.*, at 7, 191 (although the sales of e-books which didn't even exist just a few years ago has grown exponentially since their introduction, they still only account for about 20% of total book sales in the U.S., where sales are by far the strongest, and have sold only a fraction of that in Europe and Japan).

⁶ *Id.*, at 39.

⁷ See *id.*, at 43.

⁸ *Id.*, at 84, 165.

⁹ *Id.*, at 108.

¹⁰ See Timothy Egan, Opinion, *The Phone is Smart but Where's the Big Idea?* N.Y. TIMES, at A19 (July 7, 2017), https://www.nytimes.com/2017/07/07/opinion/iphone-apple-printing-press.html?_r=0&auth=login-email.

“Teachers must now think about how both the medium and device affect the student’s perception of, and interaction with, the material . . .”

smartphones, tablets, and dedicated e-readers, in addition to laptops, desktops, books, and hard copy documents, which vary in functionality and the reading experience they each provide. Teachers must now think about how both the medium and device affect the student’s perception of, and interaction with, the material which, in turn, affects their engagement with the underlying ideas.¹¹

Further complicating matters, Baron finds that readers often have very idiosyncratic tastes when it comes to their choice of medium and reading platform. So, while most readers nowadays may prefer to get their news electronically by smartphone or desktop device, for pleasure reading many still prefer traditional books. And within that broad category of pleasure reading, the same person who likes to read a hard copy version of a best-selling biography at home or at the beach might opt instead to read a romance novel on a dedicated e-reading device while traveling.¹² And while surveys show that college-age students prefer the lower cost and convenience of e-textbooks, when it comes to reading and understanding challenging material for class, print is still king.¹³

As alluded to previously, teachers also need to recognize that not all digital devices are created equal when it comes to the type of reading experience they provide. Generally speaking, digital devices that have an internet connection like smartphones and tablets are much more likely to create reader distractions that interfere with comprehension than those devices that lack such a connection. Among dedicated e-reading devices, those that permit readers to take notes and highlight text may increase reader engagement compared to devices without those features.

Baron further notes there are several reasons why print has advantages over its electronic counterpart in terms of reader comprehension and retention, in addition to the lack of distraction-causing interconnectivity. Chief among them, conventional

books require the reader to physically engage with the printed page in ways that seem to enhance understanding even compared to dedicated e-reading devices that readers must hold to use. Research suggests that when it comes to the kind of serious cognitive engagement needed to tackle difficult material, a reading strategy that engages both the mind and the body is better than one that doesn’t.¹⁴ Thus, studies suggest that the physical properties of books help orient the reader within the material—for example, how far in the story she has travelled and how much farther she has to go—which puts the smaller pieces into a larger context that helps the reader understand the big picture.¹⁵ Related to that, the overall feel and haptics of a book help to engage the reader in ways that electronic devices do not.¹⁶ Finally, the reader who is able to write margin notes and highlight the printed page may be more engaged in the material both cognitively and physically than the reader using an electronic device. Research suggests that these advantages hold true even when comparing print to e-reading devices that incorporate note-taking and highlighting features.¹⁷

None of this is to say that electronic devices are per se inferior to books. To the contrary, digital devices have advantages that may encourage reader engagement even more so than traditional books. The same internet connectivity that causes reader distraction, for example, can be leveraged to better engage students with hyperlinks that allow them to explore the material in more depth at their own pace. An internet-enabled device can also turn reading into a social activity with the potential to engage students in ways that traditional books could never match.¹⁸ Electronic devices can also make reading a multimedia experience by incorporating features like video and sound. Learning theory tells us that,

¹⁴ See James B. Levy, *Teaching the Digital Caveman: Rethinking the Use of Classroom Technology in Law School*, 19 CHAP. L. REV. 241, 276, 278, 295-96 (2016).

¹⁵ *Id.*, at 296.

¹⁶ Haptics refers to the sense of touch and tactile experience of interacting with physical objects. Interestingly, some smartphones now include an adjustable haptics function intended to enhance the user experience.

¹⁷ See BARON, *supra* note 1, at 29-30.

¹⁸ *Id.*, at 40.

¹¹ See BARON, *supra* note 1, at 211.

¹² *Id.*, at 63.

¹³ *Id.*, at 78, 80.

generally speaking, lessons that target multiple senses like sight, sound, and touch are pedagogically more effective than those strategies that don't. Finally, some commentators observe that, if they don't already, e-textbooks will soon be able to gather analytical data about reader use which educators can use to improve course content and design.

All LRW professors are familiar with the saying that "there's no such thing as good writing, only good re-writing." That is, to teach students to be better writers, we have to train them to work through multiple drafts as a way to refine their ideas. Baron says the same is true about training students to be better readers; it's all about showing them the importance of being good re-readers.¹⁹ Re-reading is a bona fide skill that can require learning new habits like focus, attention, and good note-taking, all of which can be taught. To take one example, researchers studying the practice of highlighting have found better, as well as less effective, techniques that may either enhance or detract from the reader's deeper engagement with the text.²⁰ All of the foregoing underscores the point that reading is not a passive activity, rather it is a contact sport that students can learn to do better through practice.

In sum, *Words on Screen* reveals that reading is a more complex activity than meets the eye. Individual reading strategies, the chosen platform, and the

medium all play a role in how much students engage with the underlying ideas reflected in the text. Changing any of these variables can affect the reader's relationship with the text and ultimately impact how much they understand and retain the content. For LRW professors, the value of Baron's book is that it can help us become more aware of the need to train students in a range of reading styles and platforms that they can learn to toggle between, depending on the task at hand.²¹ For us and our students, being an effective reader in the digital age is about knowing how to pick the right tool for each job.

“Re-reading is a bona fide skill that can require learning new habits like focus, attention, and good note-taking, all of which can be taught.”

¹⁹ *Id.*, at 110-11.

²⁰ See Carole L. Yue et al., *Highlighting and Its Relation to Distributed Study and Students' Metacognitive Beliefs*, 27 *EDUC. PSYCHOL. REV.* 69 (2015).

²¹ See BARON, *supra* note 1, at 222.

Micro Essay

Ideally, you would want a database that contains everything possible. But life is not perfect, especially when you are already stranded on a deserted island. I would take a magic citator service, which provides the subsequent history of every single primary source of law: not just cases, statutes, or regulations, but all agency decisions, trial court orders, municipal codes, and ethics opinions, etc. The one that is not only a citation index of legal resources but a "citation index" w/2 (legal-rule! or legal-standard!). May my wish come true (citator % "deserted island!").

Alex Zhang, Head of Public Services, Robert Crown Law Library, Stanford Law School, Stanford, Cal.



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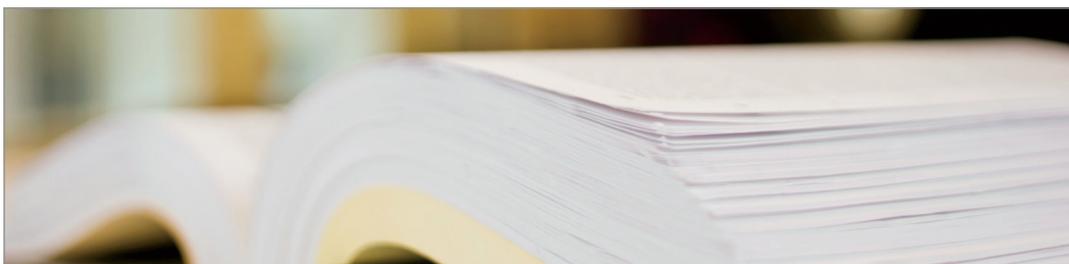
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