

Perspectives

Teaching Legal Research and Writing

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Perspectives is for anyone who teaches legal research or legal writing—in law schools, libraries, courts, and law offices. Perspectives articles are short, readable, and explore a broad array of teaching theories, techniques, and tools. The idea can be large or small but if it provides a fresh and creative way to teach or learn about legal research or legal writing skills, Perspectives editors would like to publish it. Writing for Perspectives allows you to add to your resume and get published quickly while reaching the people who share your passion for this area of the law.

Perspectives appears twice yearly. Articles are typically between 1,500 to 7,000 words, lightly footnoted, and highly readable. They may focus on curricular design, goals, teaching methods, assessments, etc.

[Author Guidelines](#)

In this Volume . . .

We publish the second half of our winning entries from last summer's Micro Essay challenge that asked readers to address the following 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?"

A Special Note from James B. Levy, Editor-in-Chief



In Memoriam

September 22, 1945 – December 26, 2018

Professor Louis J. Sirico, Jr.

Villanova University Charles Widger School of Law

In December 2018, the legal research and writing community lost a leader, a respected scholar, and a good friend. Lou Sirico passed away suddenly on December 26, 2018. For me, Lou was more than a great friend and colleague but also a guiding presence in my life. It is in this spirit that I am dedicating this issue of *Perspectives* to his memory and legacy.

Among his many accomplishments and acts of public service as a law professor, scholar, and teacher, Lou was an important member of the *Perspectives* Editorial Board from 1995 to 2007. More significantly, though, Lou was a principled person who stood up for colleagues, particularly those being treated unfairly or who were vulnerable due to their lack of professional status within the academy. Lou's friendship was especially important to me during the tough times including my diagnosis and treatment for cancer. He was a dear person who is sorely missed and will continue to inspire many.

For those of you who didn't know Lou, he started his career as an attorney after graduating from law school by working for several public interest organizations, including the National Public Interest Research Group in Washington, D.C.; Fairfield County (Connecticut) Legal Services; and the Connecticut Citizens Action Group in Hartford. He joined the faculty at Villanova in 1984 and was still actively teaching Advanced Legal Writing, Property, Land Use Planning, and a legal history course on the drafting of the Constitution and the Bill of Rights

at the time of his death. He was founding Editor-in-Chief of the *American Journal of Criminal Law* and an Associate Editor of the *Texas Law Review*. In 2007, he received the Thomas Blackwell Award, given by the Legal Writing Institute and the Association of Legal Writing Directors for demonstrating an "outstanding contribution to improve the field of legal writing by demonstrating an ability to nurture and motivate students to excellence; a willingness to help other legal writing educators improve their teaching skills or their legal writing programs; and an ability to create and integrate new ideas for teaching and motivating legal writing educators and students." He also received the prestigious William Burton Award for outstanding contributions to legal writing education from the Burton Foundation.

Tom Brokaw called the generation that fought in World War II the "[Greatest Generation](#)" because of their dedication to service above self, being committed to a cause larger than oneself and their collective strength of character. Lou was born too late to be part of the "Greatest Generation" in terms of demographics. But in terms of ethos and the way he lived his life, that's exactly who he was and why we won't see the likes of Lou Sirico again.

Rest in peace, my friend,
James Levy, Editor-in-Chief
June 3, 2019

Cite as: Richard A. Bales & Stephen F. Befort, *Running the Race Together: Co-Authoring Legal Scholarship with Students*, 27 PERSP. 4 (2019).

Running the Race Together: Co-Authoring Legal Scholarship with Students

By Richard A. Bales and Stephen F. Befort

Richard A. Bales is a Professor of Law at Ohio Northern University, Claude W. Pettit College of Law and a Visiting Professor (2018–2020) at University of Akron Law School. Stephen F. Befort is the Gray, Plant, Mooty, Mooty, & Bennett Professor of Law at the University of Minnesota Law School.

Introduction

The two co-authors of this essay collectively have co-authored more than seventy law review articles or other scholarly publications with students.¹ The vast majority of these are published in law reviews other than those at our home institutions. We're not legal writing professors, but we are professors who work a lot with students to improve their writing. One of the ways we do that is by encouraging them to publish the papers they write for our courses and by working with them one-on-one to polish their drafts. We've learned some key lessons from that experience about improving student writing that we think might be helpful to any law school professors who work with students to improve their writing including LRW professors, law school writing specialists, and doctrinal professors.

This essay describes how we co-author with students; the myriad benefits such co-authoring offers to us, our students, the academy, and the bar generally; and a few speed bumps we have run into along the way.

How We Do It

Both of us teach a wide variety of labor, employment, and alternative dispute resolution courses. Some of these courses are seminars with writing components. Even in larger, non-seminar courses, we sometimes give students the option of writing a research paper for all or part of their final grade.

In any given academic year, we each supervise anywhere from 10–30 student research papers. Our expectations for student papers are high—we expect that an “A” paper will look a lot like a law review article. We provide extensive feedback to all students writing research papers, on everything from analysis and research to organization and grammar. As we review the students' draft papers, we notice which papers seem to have a unique legal thesis and are particularly well-researched and well-written.

At the end of each semester, when we are returning students' final papers with their grades and our comments, we flag those papers with special potential. If necessary, we might do some independent research to verify the uniqueness of the thesis or the accuracy of the analysis. We reach out to the student(s), tell them that we believe that their paper may have publication potential, and invite them to meet with us individually in our respective offices.

At that meeting, we discuss with the students the strengths and weaknesses of their papers. Usually, there is a significant amount of work to be done before the paper is publication-ready. This often involves looking at the legal issue from a different perspective—for example, considering how an analogous body of law has treated a similar issue. Students generally are receptive to these suggestions, because they already have received their (very good) grade and because they are thrilled at the possibility of publishing.

At this meeting, we also describe for the students the process of getting their paper published. First, we discuss any student writing competitions for which the paper might qualify. We discuss the advantages and disadvantages of submitting the paper to a student competition versus submitting it to law reviews for publication. The obvious advantage to student competitions is the possibility of earning a cash prize. On the down side, however, the odds of winning can be slim,

¹ Our scholarship, respectively, is listed at http://law.onu.edu/faculty_staff/profiles/richard_bales and <http://www.law.umn.edu/facultyprofiles/beforts.html>.

“We've learned some key lessons . . . about improving student writing that we think might be helpful to any law school professors who work with students to improve their writing.”

competitions often impose length restrictions, and not all winning papers are published.

Next, we discuss the process of getting a paper published in a law review. We discuss, for example, the best times to submit an article, the process of mass-submissions, the expedite process, and the goal of “trading up” to high-prestige journals.²

We also discuss the publication process from the perspective of a law review articles editor. We discuss, for example, why those editors want articles making a novel legal argument—an argument that does not merely restate what another article has already said.³ We discuss how student articles editors often prefer to publish articles from prestigious authors,⁴ and how law reviews often have express policies against considering articles submitted by law students from other law schools.⁵ We tell the students that the vast majority of student-edited journals do not blind-review articles, and that author prestige can play a role⁶ in determining which articles are reviewed immediately and which are put aside to await an expedite request.

This discussion transitions easily into a discussion about the pros and cons of faculty-student co-authorship. The major advantages to a student in co-authoring with a law professor is that co-authorship makes it more likely that the article will be published, and, if so, more likely that the article will be published in a high-prestige journal. The potential disadvantage is that the student will share authorship credit for an idea that might originally have been her own (frequently, however, the original idea came from a list of potential paper topics that we gave students at the beginning of a course), or the student will share authorship credit for an article on which the professor functioned more as an extremely active editor than as a primary writer.

We make it clear that we are willing to help the student get her article published regardless of whether we are listed as a co-author. One of us, for

example, has helped more than 20 students get articles published in external publications. If the student is in his or her final year of law school, we discuss the pros and cons of the student waiting until graduation and then shopping the article solo. Ultimately, we leave the decision of whether to co-author or not to the student.

If the student indicates an interest in working as a team in co-authoring the article, we then turn to a discussion of logistics. One issue, depending on the circumstances, may concern the possibility of the student being eligible for academic credit or research assistant pay for the extra work. A second topic of discussion is to establish a timetable for the exchange of future drafts. In this discussion, we make it clear that the faculty co-author will be an active participant in the writing process and not just an aloof editor. Finally, we also discuss an approximate target date by which we hope the article will be ready to send out to law reviews. From this point forward, most of our interaction takes the form of exchanging drafts via email, interspersed with a few strategizing sessions.

As the law review submission time approaches, and assuming the article is by then of publishable quality, we meet again with the student to discuss submission strategy. We find out from the student whether there are any journals that she particularly wants to target (e.g., an undergraduate alma mater, or a journal from her home state), and we make certain we have up-to-date contact information for her so we can communicate immediately any offer that might be forthcoming. We send the article out, and shop it, just as we would an article we were sending out in only our own name. The only difference is that we consult the student on any decisions that need to be made, just as we would if our co-author were a faculty colleague.

Benefits to the Professors

We have not used student co-authored legal scholarship as promotion or tenure articles for ourselves. Similarly, our student co-authored legal scholarship supplements, rather than supplants, the scholarship we do individually and as co-authors with faculty colleagues throughout the legal academy. Nonetheless, we benefit significantly, in at least six ways, from co-authoring legal scholarship with students.

“... we benefit significantly, in at least six ways from co-authoring legal scholarship with students.”

² EUGENE VOLOKH, ACADEMIC LEGAL WRITING 139–43 (2003).

³ *Id.* at 13.

⁴ See Jonathan Gingerich, *A Call for Blind Review: Student Edited Law Reviews and Bias*, 59 J. LEGAL EDUC. 269, 274–75 (2009).

⁵ Nancy Levit et al., *Submission of Law Student Articles for Publication*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1656395.

⁶ Gingerich, *supra* note 4, at 274–75.

“... the student receives an unparalleled opportunity to hone her writing skills.”

First, co-authoring legal scholarship with students adds significant breadth to our expertise. Although we teach generally in the area of labor/employment/ADR law, our scholarship tends to be much more narrowly focused than the overall scope of the material we teach. Co-authoring with students takes us a bit out of our scholarly comfort zones. However, because co-authoring supplements rather than supplants our regular scholarship, we retain our scholarly depth.

Second, this greater scholarly breadth also enhances our teaching. By expanding our areas of substantive expertise, we gain greater insight into the issues and policy concerns at work in these areas. This greater understanding, in turn, informs our teaching and is passed along to students in our courses.

Third, we have found that we tend to get better—and harder-working—students in our courses than otherwise would be the case. Great students (i.e., talented and enthusiastic) opt in because they value the opportunity to publish. Less dedicated students opt out because they know we have higher-than-average expectations for student performance in our paper courses.

Fourth, we get better student work-product than otherwise would be the case because students have something to strive for other than just a grade. This is good for us because high-quality student papers are much more enjoyable to read, critique, and grade than mediocre or poor ones.

Fifth, co-authoring legal scholarship with students allows us to take advantage of opportunities that lack of time otherwise would make us turn down. For example, we might identify a “hot” scholarly topic that we would like to write about but cannot because of existing scholarly commitments. If we know a student in one of our courses is particularly good at research and writing (perhaps because we have had the student in a previous course), we can suggest the topic to that student. Similarly, we often receive solicitations from law journals and law practice journals to write articles for them. Existing scholarly commitments normally would require us to decline most such solicitations. We can, however, accept many more of them if we co-author with students (we disclose the co-authoring arrangement before accepting any such solicitation).

Sixth, co-authoring with students gives us plenty of practice shopping articles to law reviews. As a result, our faculty colleagues often come to us for advice when they are shopping their own articles.

Benefits to the Students

Just as co-authoring with students benefits us as professors, it also benefits our student co-authors in a number of ways.

First, the student receives an unparalleled opportunity to hone her writing skills. We typically exchange two to four drafts with students when they write the paper in a law school course, and another three or more drafts as we prepare it for publication. This intensive, long-term instruction is invaluable to a student’s development of extraordinary writing skills.

Second, the student receives a huge boost in the job-search process. The student gets a great line on her resume, a conversation starter in an interview, and something that distinguishes her from nearly all of the other thousands of new lawyers minted annually. The student—and the student’s prospective employer—also receives an external validation of the student’s ability to research, analyze, and write about a legal issue. Handing a prospective employer a professionally printed reprint is much more impressive than handing out a student paper prepared for class.

In a related vein, and a third benefit for the student, co-authoring a law review article gives students a different way to distinguish themselves both in law school and on the job market. Many of the students with whom we have co-authored with were on our home law reviews, but many were not. First-year exam grades are a major determinant of entrance to law review, yet the skill set required to excel on a timed exam does not necessarily correlate with the skill set required to excel on a long-term research and writing project. Both types of skills are valuable in practice. In short, co-authoring a law review article provides students who may not have excelled at exams a different opportunity to shine.

Fourth, the student receives a terrific reference. When we write a recommendation letter for a student and say that the student is terrific at legal research, writing, and analysis, we have something to back up

our claim. Moreover, in working with the student on the co-authored article over nearly a calendar year, we get to know the student much better than we would if our only contact was in a classroom setting. When we say that the student is hard working, self-directed, and responds appropriately to feedback, we again have a factual basis for our claim.

Fifth, once the student has the new job, the co-authored article gives that student a calling card to give to new clients. Fresh-out-of-law-school graduates look very young to clients who may be in their 50s or 60s. A published article in the graduate's name, particularly on a subject related to the matter on which the graduate will be working, gives the new associate a level of credibility with the client that the graduate otherwise may not have had.

Sixth, the co-authorship experience introduces students to the long-term benefits of writing for publication. These benefits include enhanced credibility and client development. Several of our students, after writing co-authored articles with us, have gone on to write solo articles for law reviews and bar journals.⁷ Co-authoring gives the students not only experience in shopping an article, but also credibility with the journals to which they submit subsequent articles.

And finally, both faculty and students gain the experience of collaboration. The academic life can be a solitary existence and much of law school for students focuses on individual performance. But, success in both academia and in practice requires the skills of good communication and being able to work cooperatively with others. Our joint scholarship projects directly foster those skills.

Benefits to Academy and Bar

Practicing attorneys and judges often criticize law review articles as being disconnected from regular practice.⁸ The argument is that articles written by law professors are too abstract and theoretical to be of any use to real attorneys trying to solve real legal problems. Legal scholarship, so the argument goes, exists largely for its own sake, rather than for the advancement of the law.

Co-authoring law review articles with students bridges academic legal scholarship and practical legal scholarship. Both because law student time horizons are constrained to a year or so, and because most students have an eye on their future law practice, most co-authored student scholarship tends to be more practical than legal scholarship written solo by academics. For example, many of the articles we have co-authored with students have involved issues on which lower courts are divided—often, federal circuit court splits of authority—which by definition involve issues that practitioners and judges are likely to face on a regular basis.⁹ Thus, co-authoring articles with students thus helps make legal scholarship more relevant for the practicing bar.

Co-authoring articles with students also helps ensure that law reviews receive quality article submissions.¹⁰ Law reviews provide law students an opportunity to hone their legal writing, editing, and citation skills. However, the recent proliferation in the number of journals, combined with far more modest growth in the size of the legal academy, has left many journals scrambling for quality submissions. Co-authoring articles with students increases the number of articles available, while at

“Co-authoring law review articles with students bridges legal scholarship and practical legal scholarship.”

⁷ See, e.g., Joseph S. Burns, *Predispute Arbitration Agreements in Ohio: An Employer's Guide to Creating an Enforceable Agreement*, 28 U. DAYTON L. REV. 351 (2003); Joseph S. Burns & Carrie E. Fischesser, *A Survey of Kentucky Employment Law*, 31 N. KY. L. REV. 85 (2004); Jennifer Clemons, *FLSA Retaliation: A Continuum of Employee Protection*, 53 BAYLOR L. REV. 535 (2001); Tyler Lane, *Are You Ready for the Check? Employers Face Title VII Disparate Impact Liability for Discriminatory Tipping Practices*, 44 DAYTON L. REV. 53 (2018); Emily N. Litzinger, *Willfulness, Good Faith, and the Fair Labor Standards Act*, 12 NEVADA L.J. 112 (2011); Brian A. Riddell, *The Ability of Successor Employers to Enforce Covenant Not to Compete*, *Capital Law Review*, 33 CAP. U. L. REV. 499 (2004); Kelly A. Schoening & Kelli A. Kleisinger, *Off-Duty Privacy: How Far Can Employers Go?*, 37 N. KY. L. REV. (2010); Frank C. Woodside III & Margaret M. Maggio, *The Learned Intermediary Doctrine: Is it Eroding?*, 52-DEC FED. LAW. 28 (2005); James A. Comodeca et al., *Killing the Golden Goose by Evaluating Medical Care Through the Retroscope: Tort Reform from the Defense Perspective*, 31 U. DAYTON L. REV. 207 (2006);

⁸ See, e.g., Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

⁹ See, e.g., Richard A. Bales & Troy Daniels, *Plus at Pretext: Resolving the Split Regarding the Sufficiency of Temporal Proximity Evidence in Title VII Retaliation Cases*, 44 GONZ. L. REV. (2009); Stephen F. Befort & Alison Olig, *Within the Grasp of the Cat's Paw: Delineating the Scope of Subordinate Bias Liability Under Federal Anti-Discrimination Statutes*, 60 S. C. L. REV. 383 (2009).

¹⁰ See Tracey E. George & Chris Guthrie, *Joining Forces: The Role of Collaboration in the Development of Legal Thought*, 52 J. LEGAL EDUC. 559, 579 (2002) (asserting that collaborative legal scholarship, including faculty-student collaborations, “hold the promise of producing better scholarship”).

“Co-authoring law review articles with students offers individual benefits for both the student and the faculty members, and institutional benefits for the academy and the practicing bar.”

the same time giving law reviews assurance that the articles have been thoroughly vetted for quality.

Finally, and importantly, co-authored articles give credit where credit is due. Faculty members sometimes appropriate student written work or fail to acknowledge student contributions to faculty publications.¹¹ By candidly identifying student co-authors in appropriate circumstances, collaborating faculty serve the interests of both law schools and the legal profession in rewarding hard work and promoting professionalism.

Potential Speed Bumps

Before agreeing to co-author a law review article with a student, a law professor should consider strategies for avoiding a handful of potential minefields. First, the professor should realize that co-authored articles reflect upon the professor's reputation just as articles that are authored individually. A professor should not offer to co-author an article unless the professor is willing and able to ensure that the article is a high-quality product.

Second, and related, there is the problem that we will term “premature collaboration.” For example, one of the authors of this article once authorized a co-author arrangement with one of his students based upon excellent in-class performance, but without a draft of a paper in hand. We have also had the experience of realizing too late that a student paper needed substantial revisions before it was ready for prime time. In both situations, it ultimately fell to the professor to spend considerable time assuming the lead author role. A more thorough vetting of an actual draft may either have steered the professor away from offering to co-author either of these particular articles, or at least would have identified the problems early enough for the students to have been able to address them without involving so much of the professor's time.

Third, the professor must be prepared for students to approach him or her with requests to co-author articles. This is not necessarily a bad thing—most students interested in co-authoring know that writing a publishable article is much more work than writing a run-of-the-mill student paper, and these students are a pleasure to have in class and their papers are a joy to read. However, when the situation warrants, the professor must be willing to tell a student that her paper is not yet ready for prime time. Similarly, the professor should think ahead about how he will react when asked by a student to co-author a paper that is solid analytically but in which the professor disagrees with the thesis.

Fourth, the professor should be willing to communicate clearly with the student regarding their respective roles in the project, while at the same time giving an appropriate degree of deference to the student as a partner rather than a subordinate. Will the professor function primarily as an editor? Will the professor be responsible for writing one or more sections of the paper from scratch? How will the student and professor coordinate (a) editing the article prior to submitting it for publication, (b) submitting the article for publication, and (c) editing the article after it has been accepted for publication? Whose name will go first when the article is published? One of the authors of this essay always puts the student's name first, while the other varies the order depending upon the respective contributions of each to the finished product. There's no one-size-fits-all answer to these issues—but it is best to discuss them with the student ahead of time, ideally when the parties first discuss the possibility of joint authorship.

Conclusion

Co-authoring law review articles with students offers individual benefits for both the student and the faculty member, and institutional benefits for the academy and the practicing bar. Based on our experience, we strongly endorse this faculty-student collaboration. But, faculty participants must be proactive in structuring the collaboration to ensure the best outcome for all concerned.

¹¹ See, e.g., Bill L. Williamson, *(Ab)using Students: The Ethics of Faculty Use of a Student's Work Product*, 26 ARIZ. ST. L.J. 1029, 1048 (1994) (maintaining that “the misappropriation of student research is one of the dirty little secrets of American academic life”).

Cite as: Benjamin Halasz, *Bringing the Court into the Classroom: Suggestions for How to Craft Exercises for Upper-Level Courses Using Real Practitioners' Briefs*, 27 PERSP. 9 (2019).

Bringing the Court into the Classroom: Suggestions for How to Craft Exercises for Upper-Level Courses Using Real Practitioners' Briefs

By Benjamin Halasz

Benjamin S. Halasz is a Lecturer and the Faculty Clerkship Director at University of Washington School of Law in Seattle, Wash.

When I came to teach after practicing for over a decade, I wanted my students to learn to write by using materials from real clients and cases. I quickly found that's easier said than done. But through experimentation and discussions with experienced colleagues, I found several successful ways to put students into the role of writing parts of a "real" brief—one that uses a real case and real facts—for short, in-class exercises in upper-level courses.

Several articles tout the benefits of using briefs as examples,¹ an enthusiasm I join.² But this article focuses on using cases, and especially briefs, as part of in-class writing exercises. It starts with a section that describes some of the types of exercises an instructor might use and how they fit into a legal writing class. It then describes the benefits and challenges from using briefs in class; it discusses the logistical problems of how to time these exercises and how to find briefs; and it outlines in-class exercises I've found effective.

I. A Few Categories of Assignments Within a Legal Writing Course

Before planning in-class assignments using briefs, you might think about your goals and how you intend for students to practice them. This section

starts by describing some of my usual goals for my final graded assignments, as the final assignment often dictates what techniques you work on earlier in the semester. Then I'll describe some categories of assignments that practice some of these goals and are good fits for real briefs.

A. Out-of-class, graded final assignments

For the classes in which I use real briefs, my final projects tend to be two types: the predictive memo, akin to a research memo a new lawyer would give to a supervisor; and the persuasive brief, written for a court.

My overall goal for both types is for students to write as skilled practitioners would. That leads to some common sub-goals for each. I ask students to write using a strong structure, usually a CRAC format. I look for compelling legal analysis that appropriately utilizes deductive reasoning, reasoning by analogy, and arguing from policy. I urge students to research the law thoroughly, showing that they strived for the best possible cases and most nuanced arguments. I celebrate smooth writing that reflects careful use of citations.

Some of my goals differ between the two types of assignment. I ask my students to write predictive memos that are balanced in tone and analysis. Students should write compelling arguments about why their conclusions are correct, but they must also explain and analyze their arguments' weak points. When I ask students to write persuasive briefs, I emphasize they should write persuasively in every section and every line. They must do so while writing ethically and clearly, and they should work to express a theme that convinces a judge that the proper outcome is the one sought by their client.

Although this article focuses on in-class assignments, it's possible to use a real case for these

“... I found several successful ways to put students into the role of writing parts of a 'real' brief—one that uses a real case and real facts—for short, in-class exercises in upper-level courses.”

¹ See, e.g., Megan E. Boyd, *Legal Writing in the Real World—Using Practitioners' Briefs to Teach Advanced Legal Writing Strategies*, 23 PERSP.: TEACHING LEGAL RES. & WRITING 74 (2014); Anna P. Hemmingway, *Making Effective Use of Practitioners' Briefs in the Law School Curriculum*, 22 ST. THOMAS L. REV. 417 (2010).

² When I've taught an upper-level course on persuasive writing, I've used NOAH A. MESSING, *THE ART OF ADVOCACY* (2013). It contains many examples from real briefs.

“... I want students to work on writing quickly, a skilled demanded by many areas of practice.”

out-of-class assignments as well. One standard approach is to find a real case that has briefing on a fairly simple issue that hasn't been decided by a controlling authority. The instructor gives the students the record without the briefs (possibly changing the names of the parties and some facts) and asks them to write the briefs. This runs into the problem that students often can find the missing briefs on their own, especially for federal litigation.³ But many of the benefits and challenges of using real briefs for in-class assignments, discussed later, apply equally well to out-of-class assignments.

B. In-class assignments that set up those out-of-class assignments

To achieve my class goals, throughout the semester I have my students read theory and study examples. And then, whenever possible, I have my students practice the techniques in class, receive feedback, and try again. Here are four types of in-class exercises for which I've used real briefs.

1. Writing the law

One common type of in-class assignment is to ask students to write either a rule from an opinion or a parenthetical that discusses the facts of an opinion. The opinion usually is one that students are already familiar with, or one short and simple enough that students can grasp it quickly.

I have several goals in this kind of assignment. I want students to focus on which parts of the case matter and which don't (a skill they practice in doctrinal courses), and then commit to those conclusions by putting them on paper (a skill doctrinal courses may not cover). That forces students to confront whether they really grasped the doctrine. I want my students to get immediate feedback if possible, from both myself and their peers. I want students to discover how malleable rules and material facts are and how malleable

they aren't. And I want students to work on writing quickly, a skill demanded by many areas of practice.

2. Writing the application of law to facts

This type of assignment calls upon students to write an application of the law. Students have been given a deductive rule or the facts of a case, they have their own client's facts, and they are assigned to explain the result required by precedent based on their client's facts. That requires students to write about either how the rule applies to their client's facts to require a result (reasoning by deduction) or how similar or different their client's facts are to facts from precedent (reasoning by analogy).

My goals here are similar to those with the first exercise. But students may not practice this skill in pure doctrinal classes, as they may not have “client facts” in those courses until the final exam. The key skill here, I emphasize to my students, is in that intersection between the law and their client's facts: they must explain how the rules or how the facts from precedent apply to their client's case, compelling a result (or escaping a bad one).

3. Stylistic exercises

I sometimes ask students in class to work on aspects of their writing separate from legal doctrines—topic sentences or cohesion, commas or semicolons, citations or legalese. I can ask students to work on these techniques outside of class; but by spending the time in class, I know they've done so, and I signal these issues are important. I aim for my students to see themselves as professional writers, ones who care enough to ensure their writing is free from mistakes. And I want to be sure my students know where to go to find the answers on their own, just as professional writers do.

4. Section structure

A fourth type of exercise focuses on the proper way to structure part of a memo or brief. For instance, students often struggle with introductions to briefs. I've found simply reading and discussing numerous examples may not be enough for students to understand how to write them well. Instead, I provide guidelines for what should be in each introduction they write for me. For instance, I may explain that I look for the key legal rule at issue, the most important facts pertaining to that rule, and a little case background for a reader new to the case.

³ My more experienced colleagues have said they used to regularly pull hard-copy documents from court dockets to generate “real” problems, a practice sometimes facilitated by tips from practitioners. Those documents are now often available online, both through a paid service such as PACER and through services such as Bloomberg Law, which is licensed by many law school libraries.

When we use “real” federal cases for graded problems now, we attempt to find ones in which the record is developed on an issue but the briefing is not; we change the names and some of the facts; and we sometimes switch jurisdictions. Some of these issues can be avoided by using litigation that either doesn't appear on an electronic docket (such as in some state trial courts) or that hasn't reached the briefing stage. Those have the accompanying problem that just as they are difficult for students to find, they may be difficult for you to find.

We then practice writing introductions in class, and students receive feedback through peer review, models, or my comments on samples or submissions.

I have several goals for this type of assignment. I want students to recognize the aims of each section (for instance, I ask students to write an introduction that will be interesting and helpful for a new reader). I want to provide students with a basic structure that will work for them most of the time in practice. And I want to make students see that while each section by itself may be short, it also takes time to write them well—time that students will need to allocate when writing their final papers and, ultimately, briefs for clients.

II. Real-Brief Messiness: Its Benefits and Challenges

To use one of these types of in-class assignments, the instructor will need to decide whether to use a real brief or a “canned” problem. There are numerous benefits to using real briefs in writing exercises, ones that stem from the feeling that the case is “real.” But there are challenges, too—that realness carries with it a loss of control. I find the trade-off worth it, but I tread lightly around the challenges.

While this article treats “canned problems” and ones with “real briefs” as distinct, they are on opposite ends of a spectrum. A pure canned problem is one for which all the relevant materials—cases, statutes, facts, procedural status—are created by the professor or a textbook. For example, my colleagues and I sometimes start the first-year legal writing course by presenting a “no vehicles in the park” problem, complete with artificial statutes, cases, legislative history, and facts.⁴ First-year textbooks commonly use similar problems.⁵ A pure real-brief problem, on the other hand, is one in which students are given cases, facts, procedural status, and briefs from an actual case and are asked to step into the shoes of the

lawyer. In between are the variants in which some materials or tasks are “real,” and others are created.

The benefits of using problems that fall onto the “real” side of the spectrum are those stemming from the excitement—and messiness—of real life. For one thing, the problems aren’t perfectly geared for teaching, and those imperfections can stand out to your students. This may help them realize that they are soon going to be in those attorneys’ shoes, where the path forward is not always clear. This messiness also helps answer any complaints that the issue may not be perfect for a class. To the extent students discover unexpected twists in the problem, it’s particularly easy with a problem from real life to turn those issues back to the students: how would you find the answer? What databases or treatises would you use? What searches would you perform? Let’s research it! That process can both empower students to find their own answers and teach them to improvise quickly.

The real-life problems are also often more complicated: a well-chosen sample will convey a sense of the procedural and factual history of the case, in the same way the backstory in a well-written novel conveys an unspoken depth of history. Sometimes a small factual detail can catch students’ attention and pique their interest. For instance, in the Woods case I’ll discuss later, a suspected drug trafficker had on his seat what appeared to be an iPhone but was actually a disguised scale.⁶ Sure, I could add that to my canned problems, and explain that I was incorporating real-life details into the problem; but even then, that it was me picking and choosing facts would make the problem more artificial—they wouldn’t have that same feeling of realism and history.

And finally, real-life briefs have the advantage that students may be better engaged when critiquing written product from a practicing attorney. It’s more exciting to criticize an attorney’s writing when you’ve grappled with the same issues yourselves.⁷

“The benefits of using problems that fall onto the ‘real’ side of the spectrum are those stemming from the excitement—and messiness—of real life.”

⁴ The problem originates with Professor H.L.A. Hart. See H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593, 607 (1958). It continues to be debated today. See, e.g., Richard A. Posner, *The Incoherence of Antonin Scalia*, NEW REPUBLIC (Aug. 23, 2012), <https://newrepublic.com/article/106441/scalia-garner-reading-the-law-textual-originalism>; Pierre Schlag, *No Vehicles in the Park*, 23 SEATTLE U. L. REV. 381 (1999).

⁵ The textbook I’ve used in the first-year course contains dozens of canned problems, many of which I’ve used and found helpful. See, e.g., HELENE S. SHAPOT ET AL., *WRITING & ANALYSIS IN THE LAW* 23–25, 31–32, 66–69 (6th ed. 2013) (examples of some of the canned problems).

⁶ *United States v. Woods*, 829 F.3d 675, 679–80 (8th Cir. 2016).

⁷ Others have made the same observation. See, e.g., Hemingway, *supra* note 1, at 427 (“The students were energized at the chance to criticize actual lawyers’ work.”). Whether using briefs as examples or as part of writing exercises, one should keep in mind that a class critique can easily spread outside the classroom. For this reason, an instructor may consider finding briefs from

“Stepping into that role also forces students to defend their approaches against a professional's.”

Stepping into role also forces students to defend their approaches against a professional's.

That messiness also carries with it numerous inherent challenges to be aware of. These challenges can often be mitigated, though, by selecting and curating the briefs carefully.

One challenge is that it can be easier with a canned problem to present materials that focus on just one aspect of legal writing. If I want my students to work on distinguishing cases, I can create law and facts that make it easy to see how to do so. Or I can make it hard, or somewhere in between. Real briefs almost never lend themselves to such clearly focused lessons.

Sometimes the attorneys' writing may also be too complicated or nuanced to use for a short classroom exercise. Relatedly, students may just copy practitioners' writing later, in their graded assignments, either not realizing its flaws or not appreciating that some of what the attorney did was for reasons specific to that case.⁸

Another challenge is that briefs may refer to concepts that lawyers in a practice area are familiar with but that students aren't; and if the teacher is a practitioner from that same area, it is sometimes difficult to remember which concepts these are. For instance, when I use problems involving UCC Article 2, an area I've taught doctrinally, I'm wary of assuming that 3L students remember concepts such as offer and acceptance from a contracts class they took in their first semester of law school.

Finally, as noted earlier, with enough time, students may be able to find the actual briefs online before I'm ready to discuss them.

These challenges can be mitigated, though, by carefully selecting the problem. I'm upfront with my students about the challenges that real problems present, and I warn them ahead of time that I may need to cabin their research. I explain why I've chosen particular briefs, and I emphasize they are

not paragons of persuasive writing. And I leave more time than normal for questions, encouraging students to speak up if there's a concept they don't understand.

It's because of these benefits and challenges that I've used real-world problems primarily in upper-level classes. Upper-level students are more familiar with the law and its terms, and those who have had a summer or externship experience involving legal work often have a better feel for how both the substantive law works and the procedural history fits together.

III. Solving Two Logistical Problems: Allocating the Right Amount of Class Time and Finding the Briefs

An instructor who wants to use briefs in classroom exercises will need to overcome two logistical difficulties: how to time the exercises and how to find briefs for them.

A. Give students plenty of time to write

One of the major logistical challenges I've found when using real briefs in class is timing. All these exercises take a longer time than I originally think. It's not that the briefs or passages are long. It's that as a practitioner, I had lost touch with how much more difficult it is to read and discuss any piece of legal writing as a student. Students cannot draw upon the same background knowledge as practitioners, especially with respect to terminology, doctrines, and that innate sense of how courts decide cases.

This problem is especially acute because one of the worst outcomes for in-class activities is to have students frustrated. Not only may students feel upset that they lacked time to understand the piece they were given, they may feel doubly upset as they also “failed” to practice the legal-writing technique.

Canned problems address this issue in several ways. The law is both simplified and described to a greater degree than is common in briefs.⁹ The facts are short and described in well-written prose, and their application to the law is often fairly clear, permitting the professor time to focus on other issues (such as persuasive techniques, structure, parentheticals, etc.).

either a distant jurisdiction or a particularly good-humored practitioner.

⁸ See *id.* at 422 (“In using these briefs, professors need to be careful that students are not relying on them as templates.”). This is especially the case when the instructor uses a brief in an exercise that covers the same subject matter as a graded assignment.

⁹ See, e.g., SHAPO ET AL., *supra* note 5, at 66–67 (presenting deductive rule of false imprisonment in three sentences, client's facts in four sentences, and facts of precedent in three sentences).

To address the timing problem, I've used three techniques, ones that appear in the examples later. The essence is, "less is more." First, keep the pieces short. All else being equal, it will be easier for students to get through less text, and even just the appearance of a shorter text will help students avoid panic. While I'm always tempted to incorporate the fun nuances from a real case, that is almost always too much detail for students to take in.

Second, set up an in-class activity by having students do some of the reading outside of class. While students may read more carefully in class, that out-of-class reading will both provide background and reduce students' stress level. You often can piggy-back off readings from their other courses, or at least use an area of law you know students are familiar with.

Third, think carefully about how much time your activity will take; then double it. There are limits to increasing time, of course; if an activity goes too long, students may lose interest. But to avoid frustration, it's better to have an activity that is too long than one too short. If you do find yourself with unneeded time, spend a few minutes discussing as a class the challenges of this type of assignment—a good way for students to both de-stress and feel like they're not the only ones who may have struggled.

B. Know where you're going to find good briefs
Finding good briefs can take time. Finding good briefs that work well for legal-writing exercises can take even more time. But by planning your subject area, jurisdiction, and court type, you can reduce the time you spend unproductively thrashing around in Westlaw, Bloomberg, or Lexis.¹⁰

My first step is to plan the subject matter in which I'll find a good brief. I tend towards areas in which I've practiced, and I think about doctrines that both are relatively simple and implicate factual scenarios that my students can easily understand and relate to. For criminal law, I tend towards Fourth and Fifth Amendment problems, ones involving police officers pulling over a car or talking

to someone who later becomes a defendant.¹¹ For contract law, I tend towards sales problems set in the context of Craigslist ads, ones that involve an item sold "as-is" and that therefore implicate the waiver of warranties. I avoid more complicated areas, such as patent, health care, bankruptcy, and antitrust law; while those areas are interesting, simply grappling with the facts takes too much time for an in-class exercise.¹²

The other way I've found interesting and usable briefs is by watching for them in more casual reading. Online newsletters such as Law360 have helpful short summaries of cases. At times, I've read journal articles about interesting simple cases, or I've heard about them from colleagues. Other times I've scanned through briefs from famous cases to see if there are usable sections in them.¹³ Oftentimes briefs found in these ways are both timely and interesting.

Once I've decided on an area of law, I choose whether I'm going to search for appellate or trial court briefs. Trial briefs have the benefit of being generally shorter, but they also often assume the reader already knows the procedural background of the case. Appellate briefs almost always strive to introduce the law and facts for a new reader, but they also tend to drag on.

I then plan whether I'm going to look for fact-intensive or law-intensive briefs. Honestly, for in-class exercises, my main goal is to find briefs that aren't intensive at all. But even within that category, it's helpful to think about whether I'm looking for the discussion to be primarily about the law or the facts.

My final step is to start skimming through briefs. I decide on my jurisdiction, and I look for the lead appellate case in that jurisdiction.

“... think carefully about how much time your activity will take; then double it.”

¹¹ See *infra* note 22 for a couple of examples.

¹² Instead, I've used canned problems to present students with challenging areas of the law as part of final assignments. See, e.g., A.G. HARMON, *THE COMPLETE ADVOCATE II: EMPLOYMENT OFFENSES IN HEALTH CARE CONTEXTS* (2013) (providing materials involving, among other issues, the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b (2006)); DAVID W. MILLER ET AL., *PRACTICING PERSUASIVE WRITTEN AND ORAL ADVOCACY* (2003) (presenting problem involving, among other issues, specific personal jurisdiction in the internet context).

¹³ For instance, I've found the brief for Appellants in *Brown v. Board of Education* to provide a helpful example of writing rules in a CRAC form. Brief for Appellant, *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (Nos. 1, 2, 4, 10), 1952 WL 47265. The brief is also remarkably concise.

¹⁰ Two great ways to find problems are to work with a practitioner, who often may have access to cases not available in electronic databases, or get help from your librarians; but I'm writing this section assuming you've struck out with those options.

“The vast number of briefs available through online databases provides opportunities for interesting in-class exercises that are as varied as the instructor's imagination.”

I then use a citator to pull up all briefs that cite to that opinion, and I use headnotes or search terms to further limit the search results to those briefs discussing the specific issue I'm interested in. I generally sort briefs by date, to ensure that the law they rely on isn't outdated; and I start reading quickly through them, looking for sections that would be suitable for my exercises.

III. Some Ideas for Using Briefs for In-Class Writing Exercises

The vast number of briefs available through online databases provides opportunities for interesting in-class exercises that are as varied as the instructor's imagination. Four suggestions for writing exercises follow, first listed in a chart and then described in greater detail. Most of these involve both in-class and out-of-class work.

Exercise	Goals	Timing	Materials
A. Deductive application	Draw connection between deductive law and facts	Fairly involved; out-of-class reading and in-class reading and writing	Brief with facts section and simple deductive rule
B. Framing the law	Write rule and parenthetical persuasively	Fairly involved; reading and writing in class	Opinion with short section describing rule; short canned facts
C. Sentence-level work	Simplify language	Short to medium; editing in class	Difficult language from an actual brief or opinion
D. Introductions	Write an introduction that is accessible to a reader unfamiliar with the case	Medium; out-of-class writing and either in-class editing or out-of-class writing	Complete brief on fairly simple issue

A. Applying deductive rules

This exercise requires students to write the start of an application section after I've given them the facts and the rules from the brief. It relies on a fairly rigid CRAC structure to help students organize their thoughts, a structure I provide to students in an earlier class.

Students sometimes struggle to decide how to start the application section of their argument, the section that turns from a description of the law to an argument about why, under these facts, the students' client should prevail. To solve this problem, I encourage students to start their application section with a topic sentence that restates the deductive rule and adds the key facts from their case. For example, a brief involving the application of the *Terry* standard to a car stop might start with: “Here, the police had **reasonable suspicion sufficient to justify the stop** [the deductive rule] because the car was weaving erratically between lanes [the key reason].” While my students discuss the theory and review examples, they often find putting that theory into practice challenging.

To craft a writing exercise to address this, I've assigned students to read the introduction and facts section of the petitioner's brief from *Sandifer v. U.S. Steel* prior to class.¹⁴ It's a fun case, and it involves the easily understood issue, “what are clothes?” The relevant portions of the facts section of petitioner's brief are about five pages long.¹⁵ In class, we first discuss how to draw the ties between facts and law, and we review some examples. I then distribute to the students the deductive rule section of the brief (not including the application). It is about two pages long, and it ultimately defines “clothing” as “whatever covering is worn for decency or comfort.”¹⁶

¹⁴ Brief for Petitioner, *Sandifer v. U.S. Steel Corp.*, 678 F.3d 590 (7th Cir. 2012) (Nos. 10–1821, 10–1866), *aff'd*, 571 U.S. 220 (2014), 2013 WL 2136504. The issue in *Sandifer* was whether union members were dressing for their shifts in protective “clothes”—in which case the time spent dressing was properly uncompensated—or in protective gear that was not “clothes,” in which case the time was properly on the clock. *Sandifer*, 678 F.3d at 591–92 (Posner, J.).

¹⁵ Brief for Petitioner, *supra* note 14, at 9–18 (five pages after unrelated facts are redacted).

¹⁶ *Id.* at 27. Finding that definition takes some work by the students, though, as it appears roughly in the middle of the rule section.

Without discussing the rule section, I then ask the students in class to write the first line or two of the application section of the brief. I give them about 20 minutes, and I ask them to submit their writing online when they are finished. We then perform a “pair and share” exercise in which students compare their versions with the person next to them, discuss the differences, and share with the class what they’ve noticed.

As a class, we then discuss how students may have approached this task. Many students will properly focus on the “decency and comfort” language, and how particular pieces of protective gear—such as facemasks, goggles, and helmets—don’t meet that definition. We then compare the students’ versions with the version from the actual briefs, and we discuss which they like better, and why.

That comparison seems to always result in a fun discussion. Not only do students get to critique the writing of actual practitioners,¹⁷ they get to compare practitioners’ versions with their own. And by inserting their own lines into the briefs, they can see how the remainder of the application section may or may not flow as well.

Following up on this, we then, as a class, view on the screen the application Judge Posner wrote in his opinion in the case.¹⁸ That opinion includes a photograph,¹⁹ the merits of which have been subject to discussion and debate.²⁰ That in turn leads into the class discussion on the proper use of visual aids in a brief and how practitioners may frame the aids in a way that most favors their clients.

This exercise has many moving parts, and so I’ve found it best both to write out my plans fairly explicitly for my own reference and to put clear instructions to students on an overhead. That

way if half-way through the deductive rule section, students forget what they are writing about, they can look up to see a reminder.

One of the main benefits of this exercise is that it integrates students’ own writing with a practitioner’s writing on the same topic to allow students to decide what works and what doesn’t. A disadvantage is the time it takes, both in class and outside of it. It also requires students to be able to grasp deductive rules quickly, a requirement making it more suitable for upper-level courses.

B. Framing the law

This exercise has students practice writing persuasive versions of both deductive rules and analogies. It is a hybrid between a “real” problem and a canned one, and it can be run entirely as an in-class exercise.

When students write about a deductive rule, they are tempted to simply copy and paste the version used in an opinion that seems relevant. While that approach ensures that the brief is accurate, it misses the opportunity to present the law in a way that most favors the client. I ask students to write a description that both is accurate and emphasizes how easily their client can meet its burden, or how difficult it will be for the opposing side to prevail.

To set this exercise up, I first ask students to review several examples from practice to see how the same law is described in different ways by opposing parties.²¹ Then I give students a snippet from an opinion that contains both the deductive rule of the case and the way it was applied. Ideally, the snippet is under a page, is well written, and is factually and legally simple. *Terry-stop* cases often meet these criteria.²²

“One of the main benefits of this exercise is that it integrates students' own writing with a practitioner's writing on the same topic, to allow students to decide what works and what doesn't.”

¹⁷ I agree with Professor Hemingway, who observed that when doing so, her class “came alive.” Hemingway, *supra* note 1, at 427.

¹⁸ *Sandifer*, 678 F.3d at 591–93.

¹⁹ *Id.* at 592.

²⁰ See Richard A. Posner, *DIVERGENT PATHS: THE ACADEMY AND THE JUDICIARY* 279–80 (2016) (responding to Professor Porter’s critique); Elizabeth G. Porter, *Taking Images Seriously*, 114 COLUM. L. REV. 1687, 1688–90 (2014) (critiquing Judge Posner’s use of photograph of law clerk who donned workers’ garb but who appeared in the calm of chambers, not the clamor of a steel mill); see generally MESSING, *supra* note 2, at 106–07 (discussing use of photographs).

²¹ For this, I’ve sometimes used both sides of the trial court briefs in *Bauman v. DaimlerChrysler AG*. See *Bauman v. DaimlerChrysler AG*, No. C-04-00194, 2007 WL 486389 (Feb. 12, 2007), *rev’d*, 644 F.3d 909 (9th Cir. 2011), *rev’d sub nom.* *Daimler AG v. Bauman*, 571 U.S. 117 (2014). I’ve also used those from *Morse v. Frederick*, 551 U.S. 393 (2007) (deciding whether student banner reading “BONG HiTS 4 JESUS” was protected speech). Other contrasts are found in MESSING, *supra* note 2.

²² I’ve used *United States v. Woods*, 829 F.3d 675, 679–80 (8th Cir. 2016) (detaining car to wait for drug-sniffing canine). I’ve also used the Government’s brief in *Fowlkes*, Government’s Answering Brief, *United States v. Fowlkes*, 804 F.3d 954 (9th Cir. 2015) (No. 11-50273), 2012 WL 5947263, at *43–44 (plain-view seizure of narcotics following observed drug transaction), which has a fairly neutral description of the law and otherwise meets the criteria.

“This exercise has been helpful in transitioning students from noticing persuasive techniques to using them.”

I then provide each side with a simple set of canned facts that are similar to those in the opinion. I assign half of the class to be prosecutors, half to be defense attorneys. Students are given about 20 minutes to write two things: a persuasive version of the deductive rule from the case and a parenthetical that provides the key facts from the opinion supporting that rule in a way that favors the student's side. For instance, a neutral version might be: “[Rule] There must be reasonable justification to support a stop. See Smith ([Key Facts] holding there was reasonable suspicion when the car was missing a bumper and weaving erratically through lanes).” Students write something similar but subtly emphasize the aspects of the rule and facts that favor their side of the case.

Students then pair and share, and I show on the board versions I've drafted for either side of the argument.

This exercise has been helpful in transitioning students from noticing persuasive techniques to using them. Well-written briefs make it seem easy to write persuasive accounts of the law; and the theory is not hard. But students often struggle when trying to do so as part of a long, end-of-course assignment. This quick exercise, performed in the middle of the semester, allows students to focus on just that technique.

This exercise also allows for further development, now that students have some facts and law with which they are familiar. For example, after my students study samples of response briefs, they sometimes then draft responses to a canned “bad” prosecutor's brief I've drafted on the same topic—an exercise that allows students to explore the proper tone for a response brief.

C. Simplifying sentences

This in-class exercise puts students in the fun role of complaining about and then fixing language they can't understand in a brief or opinion. It helps them understand that often the fault lies with the writer, not the reader, a lesson I hope they carry into their own writing.

One aspect of dense writing I ask my students to focus on is nominalizations—nouns that are created

from verbs or adjectives, often by adding -ion or -ing to them.²³ We discuss when nominalizations are helpful and when they aren't, and we practice fixing them by replacing a nominalization with a character and an action. So, the sentence “The propriety of the argument caused disagreement” becomes “The defendants disagreed about what to argue.” We similarly critique writing that inappropriately uses the passive voice, that is wordy, and that relies on legalese; and we work to shorten and simplify.

For this exercise, I show students a short passage of difficult language from a brief or judicial opinion, describe generally what the case is about, ask them to guess at what the language means, and then ask them to fix it. To find sample passages, I search online databases for opinions containing multiple nominalizations close together.²⁴

Students often open the exercise by objecting that they don't know what the passage means. That's part of the point of the exercise—the poor language leaves it to the readers to try to figure out the meaning, rather than giving it to them.

I've sometimes run this exercise in two different game formats, depending on the technique I'm focusing on. The first version focuses on concision. I distribute a challenging passage of about 200 words to the students. Then I ask them to cut 50 words from it without changing the meaning.²⁵ After working on this individually, students compare notes in groups. I then challenge the groups to cut 100 words, and then 150 words. The winner is the one cutting the most words without loss of meaning.

The second version is a nominalization auction. I show a piece on the overhead for 30

²³ There is a terrific discussion of how to identify nominalizations and when and how to fix them in JOSEPH M. WILLIAMS & JOSEPH BIZUP, *STYLE: LESSONS IN CLARITY AND GRACE* 28–52 (11th ed. 2014). See also Helen Sword, *Zombie Nouns*, N.Y. TIMES, July 23, 2012, <https://opinionator.blogs.nytimes.com/2012/07/23/zombie-nouns/> (discussing how to identify nominalizations, those zombie nouns that “cannibalize active verbs, suck the lifeblood from adjectives and substitute abstract entities for human beings”).

²⁴ I've found it helpful to search for briefs and opinions containing words such as the following in close proximity: discussion, application, analysis, exception, accommodation, representation, and distinction. The more frequent and closer together they are, the more likely the passage is suitable for this exercise.

²⁵ I've adapted this exercise from one contained in WILLIAMS & BIZUP, *supra* note 23, at 140.

seconds and ask students, in groups, to bid on how many nominalizations they believe they can change. But groups get that many points only if they are able to successfully change that number in the time provided. If their bid exceeds their ability, they receive no points.

With both games, I live edit the passages after students have worked on each one, to show what students might have done. Depending on how I've structured the class, I sometimes skip the game formats, to save time.

These exercises emphasize to students how much a writing style can sometimes obfuscate meaning. Additionally, the exercises put students into the roles of editors of real briefs, a position they may find themselves in soon after graduation.

D. Fixing the introduction

This exercise aims to help students figure out the right amount of detail to include in an introduction. It's a modification of one introduced to me by my colleague Professor Helen Anderson. It involves a reading assignment outside of class and either writing in-class, with a substantial investment of class time, or writing outside of class.

While students are often able to recognize what makes an introduction problematic, they sometimes struggle to fix it. That's especially true when it comes to information needed by a reader unfamiliar with

the case: what's going on in this case; what's the specific issue in this motion, and why should you win? This exercise aims to help students figure out the answers. In my upper-level class, I've run it using student briefs from prior years, giving my new students a glimpse of their final products. But it's easily adaptable to the use of real briefs.²⁶

For the first class, students read four short briefs. The briefs are all fairly well written, but they vary in how much background information is presented in the introduction. Some briefs are written as if the readers were already familiar with the law and facts; others take the time to describe what happened and to introduce the law before referencing it. Still other introductions are excessively long. That first class, we discuss what students liked about the briefs both as a whole and section-by-section.

A few classes later, my students turn to writing introductions. I mention that one of the components I like to see in an introduction is

²⁶ I've used the introductions from real briefs in support of and opposed to the Government's Motion to Dismiss for Lack of Subject Matter Jurisdiction in *Hoffman v. United States*, No. 707CV10714, 2009 WL 3232883 (S.D.N.Y. March 30, 2010), for a related exercise in my first-year class in which we critique (but do not rewrite) introductions from briefs involving the "Discretionary Function Exemption" to the Federal Torts Claims Act. The *Hoffman* briefs would work well for the exercise the article suggests, especially if presented to students alongside sections of briefs from similar cases, such as the Introduction to Defendant's Trial Brief in *Souchet v. United States*, No. 01 C 2115, 2004 WL 419905 (N.D. Ill. Feb. 25, 2004), and the Preliminary Statement in Plaintiff-Appellant's Brief in *Reichhart v. United States*, No. 10-1108, 2011 WL 286190 (2d Cir. Jan. 31, 2011).

“These exercises emphasize to students how much a writing style can sometimes obfuscate meaning.”

Micro Essay

“Hello, Sonia. How can I help you today?” This is what I envision from my AI TA (“Aita”). Aita will be able to help me grade, because she will come equipped with natural language processing. As I instruct her to look for key words in my students’ papers, she will search for those words. Through semantic parsing, she will be able to find appropriate synonyms. And, with the advent of neural networks, Aita will be able to teach herself to be smarter after every paper. Will we still grade? Yes, course. But AI might just help ease the load.

By Sonia Bychkov Green, Associate Professor of Law, The John Marshall Law School.

“It's challenging but fun to create exercises that use real briefs.”

that it briefly describes the law and facts for a reader who may be unfamiliar with the case. We then revisit the introductions from the first class and discuss how well they met this goal, and we mull over how that may have impacted students' views of the briefs as a whole.

The students are then given a copy of one of the briefs with the introduction removed, and they are assigned to write a new introduction, either in class or outside of it. The goal is to make the introduction friendly for a reader unfamiliar with the case. Since the students aren't overly familiar with the law, their legal descriptions are necessarily general, avoiding the trap of turning the introduction into another argument section. And since the class had just discussed the reasons the original introduction wasn't helpful for a new reader, they are better able to provide the needed level of background.

Part of the reason I like this exercise is that it permits immediate practice in writing introductions. Without it, students may study introductions in week two but not write one until the end of the course. And by running the exercise in class, I have the opportunity to provide immediate feedback.

IV. Conclusion

It's challenging but fun to create exercises that use real briefs. While briefs can be messy, they also bring a depth of legal and factual detail that canned problems cannot match. Students also won't wonder how much is “made up” and how much is “real”; and that can help impress upon them what it means to write as a practitioner.

Micro Essay

How Artificial Intelligence Has Changed My Classroom

We can show our students how AI can be a helpful but imperfect assistant, one whose output they should treat the way a supervising attorney treats a new associate's work—as something to review carefully and to probe for errors and omissions, while hoping for something worthwhile on which to build. We can also use AI to reinforce the fundamentals of strong legal writing: brief-checking software such as “Brief Catch” or “WordRake” can help students revise more quickly but they must check the program's choices against those fundamentals. Used well, AI can free up the lawyer's brain to ponder, create, and persuade.

By Elizabeth De Armond, Professor, Legal Research and Writing and Director of Legal Writing, Chicago-Kent College of Law.

Cite as: Patrick Barry, *Faculty Briefs*, 27 PERSP. 19 (2019).

Faculty Briefs

By Patrick Barry

Patrick Barry is a Clinical Associate Professor of Law at University of Michigan School of Law.

The written advocacy of faculty members is an underused resource. That is one of the takeaways from “[Faculty Briefs](#),”¹ a lunchtime workshop at the University of Michigan Law School that students have described in glowing terms. “This was great!” one student wrote in the anonymous feedback form following the pilot session back in September 2016. Others added that it was “excellent,” “very compelling,” and “one of the best hours I [have] spent.”

Subsequent sessions produced similar reviews. In fact, the consensus from students was so strong and immediate that Faculty Briefs soon became a regular series. Here are three of its key components.

(1) A brief written by someone students might have had in class

Given that casebooks mostly contain judicial opinions, students report not seeing a lot of briefs in law school, particularly in their first year. So it can be refreshing and helpful to see what a good one looks like. “Great to see a successful brief and dissect it a bit,” is how one student put it on the feedback form. Another student shared that they “loved reading sentences of a real brief.” That the briefs are the work of faculty members students currently have or may have in the future seems to add an extra bit of meaning to the experience—and even help promote the faculty members’ work. As one student explained after a Faculty Briefs session featuring Professor Vivek Sankaran, “These presentations are beneficial not just for us, but for Professor Sankaran (and other presenters). I want to take his clinic now.”

(2) A writing lesson designed with the brief in mind

The first twenty or so minutes of Faculty Briefs is devoted to teaching students a discrete writing technique the brief employs particularly well. For a brief that bankruptcy expert John Pottow wrote in *Executive Benefits Insurance Agency v. Arkison*, a 2014 Supreme Court case Pottow won 9-0 for his client, we focused on how to vary the sentence structure of a paragraph.² For a brief constitutional law scholar Evan Caminker filed while a Special Assistant U.S. Attorney in Detroit, we focused on how to frame a narrative.³ And for a complaint—we’ve branched out from just briefs—civil procedure specialist Maureen Carroll worked on during her years doing impact litigation in Los Angeles, we focused on investigate advocacy and what lawyers can learn from journalists.⁴ The writing tips are valuable on their own—I’ve now used them with audiences outside the Faculty Briefs context. But they again added force because of their source: a winning brief from a faculty member students know and admire.

(3) Time for Q and A

Perhaps the best part of Faculty Briefs is the question and answer portion. Below is a list of topics that have been raised:

- **Drafting:** How many versions did this brief go through before you filed it?
- **Advice:** What’s the best piece of writing advice you have heard? What’s the worst?

² Brief for Respondent, *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. 25 (2014) (No. 12-1200), 2013 WL 6019314.

³ Brief for the United States, *United States v. Hixson*, 636 F. App’x 300 (6th Cir. 2016) (No. 15-1131), 2015 WL 4597925.

⁴ Complaint, *Bautista v. State of California Div. of Occupational Safety and Health*, No. BC494056 (Cal. Super. Oct. 18, 2012), 2012 WL 5305185.

¹ *Faculty Briefs*, UNIV. MICH. L. SCH., <https://www.law.umich.edu/currentstudents/writingbettersentences/Pages/Faculty-Briefs.aspx> (last visited Mar. 26, 2019).

“... it was 'excellent,' 'very compelling,' and 'one of the best hours I [have] spent.'”

“The varying viewpoints—even on something like semi-colons—significantly enriched the conversation.”

- Habits and Habitats: When and where do you do your best writing? In the morning? In the evening? At home? In your office?
- Development: How have you changed as a writer since you began to practice? What good habits have you developed? What bad ones would you like to shake?
- Models: Who are the writers you most often turn to when you want to be reminded of how to put together clear, effective sentences?

Students have a chance to send along these types of questions ahead of the event as part of their RSVP form. They can also ask new ones during the session. Things get especially lively when you pick briefs written by two or more co-authors. We did that with an amicus brief written by Professors Ted Becker and Margaret Hannon on behalf of the ACLU,⁵ and then again when the guests were Professor Matt Andres and Clinical Fellow Yulanda Curtis, both of the Veterans Clinic. The varying viewpoints—even on something like semi-colons—significantly enriched the conversation.

I. Missteps

As successful as Faculty Briefs has been, complications sometimes arise. Most, so far, have involved timing. Putting on Faculty Briefs sessions in the fall means talking about persuasive writing at a time when the 1L class (at least at Michigan) is still learning about objective writing. I didn't do a good job of acknowledging that disconnect originally. As a result, some 1Ls approached their first memo assignment with the wrong mindset, the equivalent of a new hire at a newspaper mistakenly thinking her job was to write an editorial when what her boss really wanted was a neutral piece of reporting.

Beginning the session with a disclaimer can help address this issue. Although upper-level students are the prime target, the audience Faculty Briefs draws is a mix of 1Ls, 2Ls, 3Ls, and LLMs. But 1Ls can still benefit so long as it is clear to them that the tips they are hearing

should be tucked away for a future date. A sentence or two of explanation usually does the trick.

A second issue involves not the macro-level timing of Faculty Briefs within a semester but the micro-level timing of how to structure each session. If the opening writing lesson goes too long, the Q and A suffers. That happened when the guest was Professor Richard Friedman. The brief was from his winning argument in *Davis v. Washington*, a case that marked the second time the Supreme Court adopted his approach to the Confrontation Clause.⁶ (The first was in *Crawford v. Washington*.⁷) Because I went beyond the time we allotted for the writing lesson, Rich had to rush through both the interesting story of how he got involved in the case and the major doctrinal shift the Court's decision represented. Better planning would have created a better experience.

II. Spinoffs

Even with the scheduling missteps, Faculty Briefs has had a large educational payoff—so much so that we'll soon be launching a spinoff called “Alumni Briefs.” The format will be the same, but the featured writer will now be drawn, not from Michigan's faculty, but from the ranks of our alumni. The hope is that this larger pool of people will bring a more diverse set of cases and writing styles to our students and perhaps also create some networking opportunities. A good way for students to learn about and connect with potential employers is for them to read an excellent brief and meet the lawyer who wrote it.

Law firms and public interest organizations could do a similar program, though perhaps focus their networking efforts more internally. Something like “Partner Briefs” might be a helpful way to teach young associates about the mechanics and strategy of advocacy while at the same time introducing them to the firm's best writers. The investment wouldn't have to be major—maybe a lunch meeting every month or two—for a regular series to develop. And by recording and livestreaming the sessions,

⁶ Reply Brief of Petitioner Hershel Hammon, *Davis v. Washington*, 547 U.S. 813 (2006) (No. 05-5705), 2006 WL 615151.

⁷ Motion for Leave to File & Brief Amicus Curiae of Law Professors Sherman J. Clark, James J. Duane, Richard D. Friedman, Norman Garland, Gary M. Maveal, Bridget McCormack, David A. Moran, Christopher B. Mueller, and Roger C. Park, in Support of Petitioner, *Crawford v. Washington*, 541 U.S. 36 (2004) (No. 02-9410), 2003 WL 21754958.

⁵ Amicus Curiae Brief of the ACLU of Michigan, *Johnson v. VanderKooi*, 903 N.W.2d 843 (Mich. Ct. App. 2017) (No. 330536); Appellants' Supplemental Brief, *Johnson v. VanderKooi*, 918 N.W.2d 785 (Mich. 2018) (Nos. 156057, 156058), 2018 WL 1115545.

the reach of the lessons and insights could extend well beyond just the people in the room, as well as be stored for future training opportunities.

For example, we tape the majority of the workshops I do at Michigan. Some we post online; others we place on a server reserved for students and alums. The benefits of being able to edit and distribute content have been immense—especially given that it is often more helpful to get the instruction that Faculty Briefs provides, not on the days when it is originally offered, but on the days when you are actually writing a brief. In-time education and training is now a viable option.

III. Predecessors

Faculty Briefs has had a couple of predecessors that are well suited for even a small group of law students or judicial clerks to host. When I was in law school at the University of Chicago, I teamed up with some folks to create “How I Write,” a lunchtime series modeled on a series of the same name at Stanford University.⁸ The Stanford series features writers from the entire campus—historians, biologists, engineers, computer scientists, the whole academic gamut. We, in contrast, focused on law professors and were definitely rewarded by the care and candor they put into their remarks. The guest at one, constitutional law scholar Geoffrey Stone, even took the time to

prepare a “Dos and Don’ts List” for all the attendees. The only thing we law students had to do was sit back, ask some questions, and listen as Professor Stone and others offered advice on everything from how to draft and how to edit, to how to make sure we hit deadlines. It was the best kind of education: practical tips from experienced professionals capable of articulating their writing process through helpful concepts and examples. Any law student with an interest in writing and a little bit of initiative could get something like this going.

The same is true of judicial clerks and interns. One of the best things a co-clerk and I did when we worked at the federal courthouse in downtown Las Vegas was set up coffee dates with the various judges in the building and then ask them about the nuts and bolts of writing opinions. Once, with Judge Jay Bybee of the Ninth Circuit Court of Appeals, we did this with a group of law students from UNLV in a formal setting. But most of the time we did it over coffee in the judge’s chambers. We called it “Wisdom Wednesday,” the deal being that we would provide the coffee if they provided the wisdom.

And that’s essentially what Faculty Briefs is: a chance to get some wisdom from top advocates about perhaps the most important skill any lawyer can develop—the ability to effectively communicate ideas in writing. You don’t need to be a professor to start a version of it. Nor do you even need to be in a law school setting. All that is required is an interest in becoming a better writer and a little entrepreneurial initiative.

“And that’s essentially what Faculty Briefs is: a chance to get some wisdom from top advocates about perhaps the most important skill any lawyer can develop—the ability to effectively communicate ideas in writing.”

⁸ *How I Write Series*, Stan. U.: Hume Ctr. for Writing & Speaking, <https://undergrad.stanford.edu/tutoring-support/hume-center/about-hume-center/annual-events/how-i-write-series> (last visited Mar. 26, 2019).

Micro Essay

AI products do not belong in law schools until their efficacy is established through independent, qualitative, peer-reviewed study. Education and technology conglomerates herald the potential of AI in education but have offered no proof of concept. (See also, MOOCs, the last big ed-tech trend. Ten years in, efficacy still unproven.)

Law schools provide the means for students to develop analytical and critical thinking skills. Supplanting instructional time or resources with unproven AI is folly. Turning law schools into laboratories and students into guinea pigs, for the benefit of corporations intent on creating both a product and a need, is unethical.

By Jeanne Lamar, Writing Advisor, Writing Resource Center, The John Marshall Law School.

Cite as: Patricia Grande Montana, *Live and Learn: Live Critiquing and Student Learning*, 27 PERSP. 22 (2019).

Live and Learn: Live Critiquing and Student Learning*

By Patricia Grande Montana^{a1}

Patricia Grande Montana is a Professor of Legal Writing and the Director of Street Law: Legal Education in the Community Program at St. John's University School of Law.

After nearly fifteen years of teaching first-year and upper-level legal writing courses and commenting on thousands of student papers, I decided to experiment with a new way of giving feedback. In a break from the traditional written feedback I had become accustomed to in the form of margin comments and a combination of line edits and end notes, I opted to live a little and learn a new practice: live critiquing. Live critiquing is essentially the process of giving students feedback on their work “live” or in-person, rather than in writing. In the most liberal approach to live critiquing, the professor will provide her critique while she is reading the student’s paper for the very first time. Though live critiquing is certainly not a new teaching idea,¹ it was to me. Because I imagine that there are other legal writing professors who are looking for innovative approaches to giving feedback, I thought it would be valuable to share how I live critiqued and what I learned from the experience. As my experience was largely positive, my hope is to inspire others to liven up their feedback practices with live critiquing too.

* This Article is based on my presentation by the same title at the Southeastern Regional Legal Writing Conference in Atlanta, Georgia on April 21, 2018.

a1 It is important to acknowledge that it was at the suggestion and encouragement of my legal writing colleagues, including Robin Boyle, Rosa Castello, and Rachel H. Smith, that I ventured on this new journey. In fact, as a legal writing faculty, we decided that we would each live critique our students’ first ungraded assignment in our Legal Writing II course.

1 For example, Stetson University hosted a virtual legal writing conference webinar entitled, *The Pedagogical Method of Live Commenting and Grading*, back in February 2012. It explained how at that time giving oral feedback instead of written comments on student papers already had been gaining traction in the legal writing community. The approximately one-hour webinar can be found at <http://www.stetson.edu/law/academics/lrw/webinars.php>.

A. The Feedback Challenge

To fully appreciate the benefits of live critiquing, it is essential to understand the challenges the method is intended to overcome. They include challenges as to the timing of feedback, the depth and breadth of feedback, and the appropriate balance of positive and critical feedback. These issues are what I collectively refer to as “the feedback challenge.”

Of these issues, probably the most practical one is giving students timely feedback on their written work. The goal is to provide meaningful feedback quickly so that students can apply that feedback to their next assignment.² This goal is obviously harder to meet the more students the legal writing professor has in her class. Some of us, including myself, have large sections of forty or more students. Therefore, promptly turning around written feedback is a daunting and often tiring task.

Another challenge is to write comments that have enough depth that the student can make meaningful improvements on future assignments. The comments often need to span a variety of areas too, from issues with analysis and organization, to errors in citation and basic grammar. Yet, best practices dictate limiting the number of comments on a given paper as to not “overwhelm[], frustrate[], or ang[er] students.”³ Therefore, the professor must be careful in crafting

2 Professor Mark Wojcik refers to the time spent on grading and commenting on student papers using the traditional method as the “grading crush.” Mark Wojcik, *The Pedagogical Method of Live Commenting and Grading* (Stetson University Virtual Legal Writing Conference Feb. 2012), <http://www.stetson.edu/law/academics/lrw/webinars.php>. As he explains, because legal writing professors can have anywhere from twenty-five to seventy-five students and can spend an upward of two hours on each student paper, the professors’ time is inevitably crushed. *Id.* Likewise, when conferencing with students, legal writing professors experience a “conference crush,” as meeting with so many students individually takes a tremendous amount of time. *Id.* As such, Professor Wojcik proposes “live grading” as a solution to both problems. *Id.*

3 Anne Enquist, *Critiquing and Evaluating Law Students’ Writing: Advice from Thirty-Five Experts*, 22 SEATTLE U. L. REV. 1119, 1130 (1999) (explaining the results from a poll of thirty-five legal writing experts about their experience in critiquing and evaluating law students’ writing). Indeed, experienced legal writing professors agree that “it is effective to limit the number of comments on student papers and that a comprehensive, comment-about-everything approach to critiquing is often counterproductive.” *Id.* at 1132.

“Live critiquing is essentially the process of giving students feedback on their work ‘live’ or in-person, rather than in writing.”

comments that not only provide the appropriate guidance on a diverse set of issues but also motivate and encourage the student to revise and improve her work. In other words, the professor's comments must be more than critical and constructive, but positive and supportive too.⁴ This involves careful attention to phrasing and tone. Obviously, letting "frustration and fatigue show in . . . comments" is "counter-productive" to student learning.⁵

Finally, the comments must clearly set out how the student should be prioritizing her efforts going forward. In fact, some experienced legal writing professors suggest ordering the paper's weaknesses for the student so that the student understands which weaknesses should take priority.⁶ For example, it's important for a student to know she should be bolstering her analysis and resolving any organizational problems before overhauling citation or working on basic grammar and punctuation issues. The comments might suggest improvements on all, but they also must unambiguously convey the professor's "hierarchy of concerns" so that the student can organize her revisions appropriately and efficiently.⁷ In sum, a legal writing professor must weigh many factors when giving written comments, making timely and effective feedback a real challenge.

B. The Live Critiquing Solution

Live critiquing is an excellent way to conquer the feedback challenge with less stress on the legal writing professor, improved communication between the professor and student, and overall enhanced student learning.

1. The Assignment

By way of background, in St. John's University School of Law's first-year legal writing curriculum, students learn predictive writing through several practical closed-universe assignments in the fall semester and then practice persuasive writing with several open-

research projects in the spring semester. It was in the second semester that I tried live critiquing for the first time. The timing was ideal, as the students were no longer new to legal writing and had received traditional written feedback from me on several prior assignments. Thus, the students had developed some confidence in their abilities and familiarity with the feedback process generally. In addition, they already had established a rapport with me. I chose the first assignment—an 1,800-word argument section to a memorandum of law in support of a motion for a preliminary injunction—as the one to live critique because it was a relatively short and simple argument, making live feedback more manageable. Additionally, the assignment was ungraded. Though the students had to complete and pass the assignment as part of the 10% allotted to their class performance, the assignment was not otherwise calculated into their final grade. With these conditions, live critiquing seemed achievable.

2. The Method

I met with each student for approximately thirty minutes.⁸ Because I had assigned a similar motion in the past, I did not read any of the submissions before meeting with students.⁹ Instead, I had them bring two hard copies to the conference and read the briefs "live" and largely out loud for the first time in their presence. What happened next depended on the brief as well as the student. For example, some students interrupted to clarify what I had just read or to ask a question whereas other students waited for me to make a comment or ask a question. The feedback I provided was largely verbal, although there were times when I would edit the text or write a comment; but any written feedback usually followed a discussion and input from the student. Most importantly, the students followed along on their copies and took notes throughout. Toward the end of the conference, I completed a simple rubric, identifying the student's competency as either "beginning,"

“Live critiquing is an excellent way to conquer the feedback challenge with less stress on the legal writing professor. . . .”

⁴ *Id.* at 1132 (discussing how one of the “most common piece[s] of advice” experienced legal writing professors have about critiquing is to “write positive comments when they are deserved”).

⁵ *Id.* at 1146.

⁶ *Id.* at 1133.

⁷ *Id.*

⁸ Though I had originally scheduled twenty-minute conferences, it quickly became clear that more time was needed. In the end, I met with students closer to thirty minutes each.

⁹ I could see the benefit of skimming the submissions or reading a random sample of them beforehand if the professor is new to teaching or the assignment is an unfamiliar one. *Supra* sec. D (discussing drawbacks).

“Rather than working in ‘isolation,’ live critiquing is by its nature very social.”

“developing,” “proficient,” or “highly proficient” in several core areas, such as organization, statement of the law, argument of facts, writing, and citation. The goal of the rubric was to help the students prioritize their efforts for the next assignment. In fact, a brief discussion about how the student should apply the feedback going forward was typically how the conference ended.

C. The Benefits

Live critiquing not only addresses “the feedback challenge,” but also offers numerous other benefits. First, it is faster to live critique than provide written feedback, especially when reading and commenting on a single submission sometimes can take upward of an hour to complete. More important than the time itself is how that time is spent. Rather than working in “isolation,” live critiquing is by its nature very social.¹⁰ Thus, giving feedback in-person is more stimulating and, in turn, less taxing. Importantly, students receive the feedback closer in time to their writing experience.¹¹ Unlike with written comments, when there is “dead time” between submitting the assignment and receiving feedback, making the written comments less relevant the more time that passes, live critiquing is almost immediate and thus very relatable.¹²

Second, it is simpler to discuss the student’s writing in greater depth and with more examples when the student is available to clarify her writing decisions and answer questions about them. These discussions are invaluable to the student’s improvement and obviously are not possible with written feedback

alone. Third, it is easier, and certainly more natural, to give positive feedback in-person too. A comment like “good statement of the law” simply does not have the same impact on the student as when the professor makes that same comment while reading the student’s explanation of the law out loud in the student’s presence. The professor’s tone and expression, not just the words, are what communicate the support and encouragement the student needs.

Finally, and probably most remarkable, live critiquing allows the professor to help the student prioritize her efforts when revising. The conference gives the professor the opportunity to talk more globally about the issues presented in the student’s writing, quickly point to some examples of each as support, and then triage with the student their order of importance. In contrast, it is nearly impossible to communicate this same information with traditional written feedback. Though lengthy margin and end comments, or a numbering or special coding system that highlights, asterisks, or otherwise underscores the most pressing issues are possible, they are very time intensive and still require that the student internalize the suggested prioritization. Thus, the live critique offers a much simpler and effective way to communicate the “hierarchy of concerns” with the student’s writing.

In addition to confronting the issues presented by “the feedback challenge,” there are other benefits to live critiquing too. During a live critique, students are very candid about their writing decisions and surprisingly receptive to discussing their writing process, not just the final written product. This allows the feedback to have a more enduring effect. Moreover, students are better able to spot problems in their own writing when given the opportunity to re-read it or hear it read out loud to them. Likewise, students also “develop a better understanding of their audience and the problems their paper presents to that audience.”¹³ These types of student-driven fixes sometimes result in little to no conversation, whereas had the professor used traditional written feedback, they would need to be flagged and then

¹⁰ Anne Hemingway & Amanda Smith, *Best Practices in Legal Education: How Live Critiquing and Cooperative Work Lead to Happy Students and Happy Professors*, 29 SECOND DRAFT 7, 8 (Fall 2016) (explaining how the legal writing faculty at Widener Law Commonwealth use live critiquing to provide feedback on assignments, which has led to happier students and faculty).

¹¹ *Id.* at 8 (“Students receive feedback more quickly after submitting assignments, allowing them to move to the next step of the writing process faster.”); Mark E. Wojcik, *Results of an Informal Student Survey on the “Live Grading” Experience* (LWI Biennial Conf. July 15, 2008), <http://ssrn.com/abstract=1161176> (surveying nine students about their experiences with “live grading” and finding that students appreciated the instant feedback).

¹² Alison E. Julien, *Brutal Choices in Curricular Design . . . Going Live: The Pros and Cons of Live Critiques*, 20 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 20, 22 (2011) (characterizing the time—two weeks in the example provided—between when a student submits a paper and then receives traditional written feedback as “dead time” because the student is usually not working on the assignment during that time interval).

¹³ *Id.* at 20.

thoroughly explained.¹⁴ Furthermore, because the live critiquing is student-driven, the feedback is more likely to have a lasting effect on the student's writing.

During the live critique discussions, it also is easier to diagnose a student's strengths and weaknesses. Importantly, because these discussions happen without any "dead time," the student continues to be engaged with the assignment and thus more inclined to make revisions. For the professor, the student is no longer anonymous or a simple name on the paper; therefore, the feedback itself is more personalized and tailored to the student and her uniqueness as a writer. Further, the professor no longer needs to guess what a student was trying to communicate in her writing either. The professor can ask that student and then "tailor [] [her feedback] to the precise point that the student intended to make."¹⁵ In this way, the professor can "avoid making wrong assumptions" about the student's choices and "tailor [the] feedback accordingly," while also saving considerable time.¹⁶

Finally, when the feedback is customized, there is improved collaboration between the professor and student too. The "tone" of the professor's "voice" allows the professor to convey more nuances than a written comment would permit, thereby making it easier for the professor to "convey compassion."¹⁷ Because writing is such a personal experience, it is crucial that the student is not only supported by the professor, but also that the student *feels* supported by that professor. Live critiquing, in addition to its many other benefits, achieves just that.

¹⁴ Alison E. Julien, *The Pedagogical Method of Live Commenting and Grading* (Stetson University Virtual Legal Writing Conference Feb. 2012), <http://www.stetson.edu/law/academics/lrw/webinars.php> (discussing the benefits of live critiquing, including how reading out loud often results in students hearing the problems on their own, eliminating the need for a detailed explanation by the professor).

¹⁵ *Id.* at 24.

¹⁶ Suzanne Valdez, Presenter, *Live Grading—A Meaningful and Effective Way to Assess Student Performance* (AALS Workshop for New Law Teachers June 2018), <https://www.aals.org/wp-content/uploads/2018/06/18NLTLiveGradingPresentation.pdf> (exploring the benefits of live grading to the professor and student alike); Julien, *supra* note 14, at 21 (explaining how with traditional written feedback professors might spend a lot of time "trying to ascertain what a student was trying to accomplish" before writing a comment and in the end the professor's "premise" might be incorrect and the comment unhelpful, thereby making written critiques a far less "effective" and "efficient" approach than live critiques).

¹⁷ Valdez, *supra* note 16.

D. The Drawbacks

Though largely positive, there are several downsides to the practice of live critiquing, all of which could be tackled, however, with some careful planning or tweaks to the method itself. First, the format of a live critique demands that the professor respond quickly and thoughtfully to the student's writing. Depending on the experience of the professor, complexity of the assignment, and quality of the student's writing, it might be difficult to read, process, and formulate helpful and responsive feedback in the moment. Likewise, it might be challenging to address the writing's more pressing issues before the smaller ones, particularly when the smaller ones, like misspellings, citation errors, and grammar mistakes, are pervasive and extremely distracting. The temptation to run through them first is high but doing so could easily misdirect the student as to the "hierarchy of concerns."

Additionally, there is an obvious limit to the number of pages and issues a professor can cover in a single live critique.¹⁸ This is especially true with weaker writing. Therefore, there are times when the critique might not feel as comprehensive as the written comments might have been. In these instances, the goal is to identify the most pressing and recurring problems and then explore and model potential solutions so that the student can apply that feedback to other parts of the writing, even if there is not ample time to review everything.

Completing the rubric at the end of the live critique is not an easy exercise either. It was surprisingly difficult for me to assign a level of proficiency, as I often felt hurried and uncertain about the precision of my assessment. Relatedly, I was uneasy about evaluating a student's competencies without having had the advantage of reading all the student papers first or the benefit of time to reflect on the entire paper. With traditional written feedback, such an assessment is not rushed and is usually more systematic, giving the professor greater confidence in the accuracy of the process.

¹⁸ Julien, *supra* note 14, at 25.

“Finally, when the feedback is customized, there is improved collaboration between the professor and student too.”

“... all the drawbacks to live critiquing are easily surmountable ...”

Yet, probably the greatest challenge for me was being able to comfortably give comments that were critical of a student's work. It can be difficult to explain to a student in-person that the writing has serious shortcomings, for example, particularly when there are only moments to reflect on how best to convey those shortcomings. On these occasions, the professor must pay careful attention to her tone and message, making sure she considers not only the student's writing, but also the student's temperament and openness to a constructive critique.

A live critique could be overwhelming for certain students too. The feedback, though more tailored to the students' writing concerns, is delivered fast. “[S]ome students process information more slowly” and therefore might not be able to keep up with the professor's pace during the live critique.¹⁹ Accordingly, those students “might benefit from a written critique” before conferencing with the professor.²⁰ Likewise, students are naturally anxious about the live critique, especially the first one.²¹ This anxiety can impede a student's receptivity to and understanding of the professor's feedback during the live critique.

Finally, live critiquing makes it very difficult to detect plagiarism, impermissible collaboration, or a similar infraction. Without the benefit of an earlier read or the assistance of a computer (and plagiarism software), subtle similarities in organization, writing, and word choice will be less obvious to the professor during a live critique.²² The fact that the professor is reading so many submissions in such a short period of time, usually fast and

sometimes even cursorily, makes detection near impossible. Therefore, a scan of the papers before or after the live critique is recommended and can certainly help with the detection problem. In summary, all the drawbacks to live critiquing are easily surmountable and thus should not be a deterrent to experimenting with the many live critiquing possibilities.

E. Live Critiquing Possibilities

Given that the benefits of live critiquing outweigh the drawbacks, legal writing professors should consider testing it out. There are countless ways to modify the practice to more directly meet the needs and experience of both professors and students. Several simple modifications include reading or skimming the students' writing ahead of time, allotting more time for the conference itself, or limiting the live critique to certain sections of the assignment or even certain issues, such as analytical, organizational, or basic writing ones. Any type of pre-conference read could help the professor organize her feedback before giving it live, including how best to convey any unfavorable feedback. Additionally, the professor could live critique shorter practice (rather than graded) assignments and write a summary comment at the end instead of completing a rubric. The summary comment could emphasize the strengths and weaknesses of the student's writing and suggest how the student might prioritize her efforts on the next assignment.

The professor could decide to give a mix of written and verbal feedback too, by, for example, reviewing the students' work in advance and making light margin comments that the professor would then explain and elaborate on during the live critique. Likewise, the professor could write on the students' paper more, adding probing questions or margin comments intended to summarize the live discussion. Furthermore, the professor could encourage students to take more detailed notes by providing a blank rubric that matches the feedback the professor intends to give. The rubric categories could help the student internalize the “hierarchy of concerns”

¹⁹ Julien, *supra* note 14.

²⁰ *Id.*

²¹ Wojcik, *supra* note 11, at 2 (even though the students' impressions were largely favorable, many students explained how they were “anxious” or “nervous” to have a professor give feedback in-person, especially the first time).

²² In fact, during my first live critique experience, I failed to uncover that two students had submitted substantially similar briefs in violation of my no-collaboration policy. It was only after I graded the next assignment using traditional written feedback and discovered impermissible collaboration there that I became aware of the problem. I went back to the two students' submissions for the live critique, read them again (more slowly), and quickly realized that they had improperly collaborated on that assignment as well. Though the students were disciplined for violating my course rules, I obviously would have preferred to have discovered it the first time the students cheated.

the student will need to address when rewriting. For students who need more time to process the feedback or who would benefit from further clarification, the professor could offer a follow-up critique or, if time did not permit, additional drop-in hours.

To address student anxiety, the professor should explain clearly the goals and expectations for any live critique upfront. The professor also could demonstrate a live critique with student volunteers (i.e., teaching assistants) or by recording one and making it available for students to watch in advance. Though I first live critiqued with first-year legal writing students, the live critique would be easier and perhaps even more successful with upper-level students, as they have more experience with legal writing and in receiving feedback. As a result, they might be less anxious about

the live critique than first-year legal writing students. As the possibilities for modification are numerous, live critiquing is an innovative way of giving feedback on students' legal writing.

F. Conclusion

Even though live critiquing is not a new practice, it is still one that many legal writing professors have yet to try. Though my first experience had some drawbacks, the valuable benefits clearly make it worth repeating. It is rewarding to live through a new teaching experience and learn a different way to improve on student learning. In the end, live critiquing is a useful methodology for giving feedback—one that legal writing professors should be able to comfortably and easily add to their repertoire of teaching tools.

“... the live critique would be easier and perhaps even more successful with upper-level students, as they have more experience with legal writing and in receiving feedback.”

Micro Essay

Put AI Under Hume's Guillotine

AI knows what is, not what ought to be. Consider a 2017 Science article, in which Caliskan, Bryson, and Narayanan—technology researchers at Princeton—trained AI to associate words with each other based on a massive corpus of text from the web. The AI reproduced biases from the Implicit Association Test, which tests humans' unconscious biases against minorities and women. Those biases in humans could be “a simple outcome of unthinking reproduction of statistical regularities absorbed with language,” according to which, for example, one might conclude “all doctors are men” because in writing, doctors are typically associated with masculine pronouns. Similarly, AI that is given lawyers' writing as an input for training and instructed to compose legal prose would likely reproduce statistical regularities that would fail to meet our normative standards for good legal argumentation, just as much of the writing from which the AI would learn fails. AI would fail to do what lawyers ought to do, and instead would just repeat what they do now.

By Brian N. Larson, Associate Professor, Legal Rhetoric and Argumentation, Texas A&M University School of Law.

Cite as: Jamie R. Abrams, *Legislative History on Trial*, 27 PERSP. 28 (2019).

Legislative History on Trial

By Jamie R. Abrams

Jamie Abrams is a Professor at University of Louisville Brandeis School of Law

This article highlights a “Legislative History on Trial” simulation and its pedagogical value to a legislation course, administrative law course, or legal research and writing course. Teaching legislative history to students at any stage in law school in any course is notoriously challenging for faculty. It is a difficult topic to engage students. They do not yet have the context to understand the importance or relevance of the material they are learning. It can also be challenging to strike the proper level of coverage in classes containing a range of experiences from former Congressional staffers to international students.

Professors often construct assignments with “bumpers” (i.e. assignments that are guaranteed to lead students to successful results) in which they design a “scavenger hunt” to find various nuggets of legislative interpretive material. I spent nearly a decade designing, vetting, and executing such pre-canned assignments as an instructor of Legal Writing and as a Director of Legal Research Curriculum. These assignments are contained and manageable for students to stay on course, but their lasting educational effects are limited.¹ The students become myopically focused on finding the answers, losing sight of the big picture of how and why a lawyer might use legislative history, what the sources are, the limitations and benefits of each source, and the critiques in using each source as a statutory interpretation tool.

After years of watching students stumble through these assignments with minimal enthusiasm, I designed this “Legislative History on Trial” simulation to get students engaged more collaboratively.

This simulation involves a trial in which groups of students interrogate and then rehabilitate various sources of legislative history on the stand with students testifying as the source itself. Admittedly, the exercise is a bit of a fictional conflation between a criminal and civil trial. Another more concrete way to frame the exercise is to conduct a hearing on whether the United States should adopt the “exclusionary rule” that the United Kingdom uses to exclude legislative history as an interpretive tool in courts.² Regardless of the set-up, the context is a debate between those who support the expansive use of legislative history as an interpretive tool and those who oppose its use.

The Learning Objectives

This assignment refocused my legislative history assessment goals entirely. The goals of the exercise are to (1) learn what the major sources of legislative history are; (2) understand the relative hierarchical values of different sources of legislative history; (3) identify the limitations and benefits of using legislative history as a tool of statutory interpretation; and (4) practice preliminary trial preparation skills. The simulation usually falls during a point in the semester in which I am heavily engaged in grading and the students are awaiting feedback. This gives students a much-needed break from drafting and writing exercises. It is a well-received shift in class preparation for the professor as well, requiring facilitation and guidance, but little podium teaching.

In preparation for this exercise, students are divided into groups by source of legislative history. These sources might include sponsor statements, legislative deliberations, committee reports, and amendments and related bills. The students complete source-specific assigned readings prior to class to prepare for their first block of

¹ See generally CHRISTOPHER G. WREN & JILL ROBINSON WREN, USING COMPUTERS IN LEGAL RESEARCH: A GUIDE TO LEXIS AND WESTLAW 7 (1994) (critiquing the effectiveness of “treasure hunt” research assignments).

² See generally Holger Fleischer, *Comparative Approaches to the Use of Legislative History in Statutory Interpretation*, 60 AM. J. COMPAR. L. 401 (2012) (comparing English, American, and German approaches to the admissibility of legislative history).

“Teaching legislative history to students at any stage in law school is notoriously challenging for faculty.”

in-class work. These readings might include excerpts from the following three sources:

- Annotation, *Resort to Constitutional or Legislative Debates, Committee Reports, Journals, etc., as Aid in Construction of Constitution or Statute*, 70 A.L.R. 5 (1931).
- Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 STAN. L. REV. 901 (2013).
- Reed Dickerson, *Statutory Interpretation: Dipping into Legislative History*, 11 HOFSTRA L. REV. 1125 (1983).

The “Legislative History on Trial” Simulation

In class, students divide into defense and prosecution teams with a witness to prepare. For ease of preparation, both the defense team and the prosecution team have their own witness. A single witness per team allows the witness to be better prepared on the strands of questions that will likely be asked. The witness should remain objective, honest, and restrained in answering only the questions asked.

I invite a member of the law library faculty to serve as the judge. This leverages the experience of an expert who can refine or redirect the questions if any inaccurate content is introduced. It also frees the professor up to interject with additional questions and to take notes on themes and key points to reinforce the exercise’s pedagogical purposes.

The witnesses and advocates then brainstorm together the key points they want to come out of their questioning. The student-advocates are instructed to focus on building a record. They need to clarify what the source of legislative history is that they are interrogating and what the critiques are of that source. They cannot just jump in and start asking critical questions without establishing a foundation for the source, its content, its location, and its method of publication. Students quickly learn then that it could take several questions to make a single point during the exercise. For example, to make the larger point that the committee report might not reflect the conclusions of the legislature as a whole, students might need

to ask who sits on a committee, whether the committee is bicameral, when the committee report is published, who reads the committee report, and who writes the committee report.

The next class involves approximately one hour conducting the trial simulation itself. Each team has approximately five minutes to conduct its questioning. No evidentiary objections are allowed. The trial goes in order of the legislative process beginning with sponsor statements, then committee hearings, then legislative deliberations, then related bills or amendments.

The defense is effectively the rehabilitating party. The defense seeks to rehabilitate the source and remind the court how and when the particular source of legislative authority can be a useful interpretive tool.³ This can include some specific examples of when legislative history has been used helpfully (there are ample examples in the short reading excerpts). It can also include critiquing the alternatives. If legislative history is not used for statutory interpretation, then what tools will the court rely on instead to answer the interpretive question before it?

Summary of Substantive Themes to Develop

Some general themes emerge from the exercise as a whole. Plaintiffs will emphasize how legislative history can be a “grab bag” of content selectively chosen for persuasive purposes in ways that can distort the realities of the legislative process (e.g., who is involved and when). Plaintiffs might emphasize how legislative history drives up the costs of litigation disproportionate to its efficacy. Its use also promotes the “smuggling in” of useful legislative history in ways that might manipulate the legislative process.

The defense will emphasize how legislative history allows for judicial understanding of the context and circumstances in which a bill was passed. The text, its objectives, and its purposes are all helpful context to address ambiguities in the statute. Looking to legislative history can also

“If legislative history is not used for statutory interpretation, then what tools will the court rely on instead to answer the interpretive question before it?”

³ See generally Michael H. Koby, *The Supreme Court’s Declining Reliance on Legislative History: The Impact of Justice Scalia’s Critique*, 36 HARV. J. LEG. 369, 374–76 (1999) (providing a survey of the scholarly literature in support of legislative history).

“Real questions can be raised about just how informed that speaker was on . . . the substance of the bill rather than reflecting on her political posturing.”

avoid absurd results. The defense might emphasize how these sources are a better alternative than judicial consideration without these materials.

Sponsor Statements

Plaintiffs arguing in opposition to sponsor statements will explain how these are just the remarks of one person (or group) and cannot necessarily reflect the legislative body as a whole. To empower sponsor statements as an interpretative tool invites members of Congress to legislate from the floor with targeted statements in the Congressional Record. Relying on sponsor statements can distort the political process and obscure the compromises and coalitions that emerged to support the bill's enactment. Its timing at the beginning of the legislative process is a powerful reason for plaintiffs to critique its use because it fails to reflect the deliberations that follow the bill's initial introduction.

The defense might emphasize how the legislators who sponsor legislation are often the most knowledgeable about the subject matter and the objectives of the legislation. Thus, the sponsor statements can shape how the bill progresses through to enactment.

Legislative Deliberations

Legislative deliberations can include debates and explanatory remarks made on the floor of either chamber. Plaintiffs opposing its use as an interpretative tool may highlight how legislative deliberations only reflect the views of one member. Real questions can be raised about just how informed that speaker was on the floor regarding the substance of the bill rather than reflecting her political posturing. Some legislators may not have even read the legislation. Notably, many of these remarks also occur too early in the process to carry much weight before the vote by either chamber.

In support of its use as an interpretive tool, Defendants can highlight the particular value that remarks made by informed supporters and authors of the bill might offer to statutory interpretation. Floor debates at the end of the process might also be particularly relevant. They can show the social conditions and context in which a piece of legislation is passed. Often times these are spirited

and direct exchanges on the floor that can help shed light on the negotiations and decisions that lead to the final legislation. Considerable costs and efforts are made to record and publish these remarks, so it might seem unusual to not admit this evidence if it is relevant and publicly available. It might do more to suppress political participation to not allow the use of legislative history.

Committee Reports

Committee reports are a particularly strong source for students to consider when it comes to legislative history. Students can go online and review actual committee reports for specific examples of useful source content. Students should differentiate between committee reports from one chamber and from the conference committee, if applicable, because the latter reflects the participation of both chambers making it more persuasive.

Plaintiffs opposing committee reports' use as a tool of statutory interpretation might highlight how committee reports are not systemically or regularly created.⁴ The report might not highlight negotiations or events that are relevant, possibly reflecting instead a victor's version of history "smuggling in" language as part of legislative history.⁵ At best, it only represents a single committee of a single house of Congress offered as evidence of the intent of the full body. Further, legislators do not write committee reports generally, instead staffers often write the reports. Committee reports are not subject to amendment or put to a vote. Finally, the committee report itself can also be just as ambiguous as the statute itself when it comes to discerning legislative intent.

There are also pragmatic points to highlight regarding the use of committee reports. They are only actually read by a small proportion

⁴ This can also be an opportunity to discuss differences in the resources and infrastructure available for producing searchable legislative history. There may be notable differences between the legislative history infrastructure of the federal government and large states, like California or New York, compared to smaller state legislatures, like Kentucky or Montana, which may produce fewer sources of legislative history in print or searchable formats.

⁵ See e.g., James J. Brudney & Corey Ditslear, *Liberal Justices' Reliance on Legislative History: Principle, Strategy, and the Scalia Effect*, 29 BERKELEY J. EMP. & LAB. L. 117, 124 (2008) (quoting judicial concerns that "legislators are in effect 'encouraged to salt the legislative record with unilateral interpretations of statutory provisions they were unable to persuade their colleagues to accept'").

of legislators. Sometimes the report is not even published at the time of the legislative vote. These points undermine the notion that the report reflects congressional intent.

Defendants can highlight how some judges who ordinarily object to the use of legislative history will allow committee reports as evidence in a statutory interpretation dispute.⁶ Most legislation is written in committee or subcommittee, so these are likely the most informed accounts of legislative events.⁷ These documents are also highly accessible for researchers. They notably come at the end of the process in one or both chambers following a state of consensus.

Amendments and Related Bills

Amendments and related bills show the progression of enacted legislation through the legislative process. It might include legislative inaction, related bills that were introduced, and proposed amendments not enacted. Here, plaintiffs can highlight how these legislative events were explicitly or implicitly rejected,

or critique the role of inaction on the part of legislators as evidence of their intent. Plaintiffs can emphasize the importance of relying on the plain meaning of a text from its words and structure.⁸ On the other hand, the defense can highlight how amendments and bills show the evolution of the final text and points of negotiation along the way.

Conclusion

This “Legislative History on Trial” simulation offers an experiential and dynamic way to engage students in studying legislative history. After conducting this simulation at multiple law schools in both first year and upper-level courses, I have found it to be a real highlight of the semester. Students engage in a relevant, political, and provocative discussion about statutory interpretation while mastering the fundamentals of key sources of legislative history. For readers interested in using this exercise in their own classes, additional teaching materials are available from the author by email at jamie.abrams@louisville.edu.

⁶ See e.g., Koby, *supra* note 3, at 388 (stating that forty-eight percent of all legislative history citations from 1939-1978 were to House and Senate committee reports).

⁷ Bradley C. Karkkainen, “Plain Meaning”: Justice Scalia’s Jurisprudence of *Strict Statutory Construction*, 17 HARV. J.L. & PUB. POL’Y 401 (1994) (summarizing how Justice Antonin Scalia “harshly criticized the Court’s reliance on legislative history as an aid in interpreting statutes”).

⁸ See e.g., *id.* at 421 (quoting Judge Patricia Wald arguing that to disregard committee reports “is to second-guess Congress’ chosen form of organization and delegation of authority, and to doubt its ability to oversee its own constitutional functions effectively”) (citations omitted).

“This ‘Legislative History on Trial’ simulation offers an experiential and dynamic way to engage students in studying legislative history.”

Micro Essay

In 2011, IBM’s Watson was showcased on Jeopardy. Despite decimating the humans in preliminary rounds, IBM was famously embarrassed when Watson incorrectly answered the question in the Final Jeopardy category of “U.S. Cities.” The question was: “Its largest airport is named for a World War II hero; its second largest airport is named for a World War II battle.” Watson answered, “What is Toronto?????” The two humans answered correctly: Chicago. Programmers later explained that Watson could only process “data,” but had no judgment concerning ambiguity. According to the programmers, Watson associated the U.S. with “America,” and thus, to Watson, all of the Americas (North and South) provided the data pool for possible answers. The Watson episode underscores a major flaw with increased reliance on AI research. Although use of AI research is inevitable and is essential as a tool for data compilation, we must take even more time than ever to teach our students the importance of human judgment in sorting through data and evaluating multiple suggestions for the correct “law” while conducting legal research.

By Karin Mika, Professor of Legal Writing, Cleveland-Marshall College of Law.

Cite as: Amy R. Stein, *The Need for Peer Mentoring Programs Linked to the Legal Writing Class: An Analysis and Proposed Model*, 27 PERS. 32 (2019).

The Need for Peer Mentoring Programs Linked to the Legal Writing Class: An Analysis and Proposed Model

By Amy R. Stein¹

Amy R. Stein is a Professor of Legal Writing and the Assistant Dean for Legal Writing and Adjunct Instruction at the Maurice A. Deane School of Law at Hofstra University.

Legal writing professors serve as faculty advisors to their students in either an official or unofficial capacity. Yet this type of advising often takes up a significant portion of our time. Many of us also have the good fortune to be aided in this task by teaching assistants (“TAs”). According to the 2017–2018 ALWD/LWI Survey, 69% of legal writing programs use TAs at 182 schools.² This means that for many of us, we can leverage the use of our TAs to supplement the time consuming work we do advising and supporting first-year students. This article will discuss the importance of expanding the role of legal writing TAs to create a robust, school-supported peer mentoring program (“PMP”) and suggest a model for such a program.

Legal writing is the right place for this program because we—along with our TAs—are already doing much of this work. The legal writing classroom is the portal to so many other aspects of advising and professionalism through the efforts of both the professor and the TAs. I am not suggesting that the PMP be tied to the legal writing curriculum exclusively or be administered by the legal writing faculty; rather, I am suggesting that legal writing be used as the “anchor” to demonstrate to students that

the PMP is important and should be valued as part of their overall educational experience. Legal writing faculty could be involved with the program to the extent that they choose, since much of the instruction that we currently give about professionalism, writing samples, and job searching, for instance, could be easily incorporated into the PMP program.

Traditionally, the literature on peer mentoring in law school has examined the impact of either informal, student-driven, peer-to-peer relationships, or relationships between law students and practicing attorneys. There has been little or no discussion of more formal, law school-created programs. This article seeks to fill that gap by examining the strong need for such programs and suggests how such a program might be structured. The article begins by discussing, in part A, the characteristics of a mentor; in part B the characteristics of an effective mentor relationship; and in part C, the benefits of mentoring to both the mentor and mentee. This discussion will analyze literature from higher education generally, not just limited to law schools, since much excellent work has been done in this area throughout the higher education landscape. Next, part D will discuss high stress levels among law students and the need for mentoring, especially in the first year of law school; this has been well documented in the Law School Survey of Student Engagement. Finally, while one size does not fit all and each school will need to structure its program in a way that suits its population, part E suggests best practices for a law-school sponsored, peer-to-peer mentoring program run by the Legal Writing TAs who are already doing much of this work.

A. What is a Mentor?

The original mentor was described by Homer as the “wise and trusted counselor” whom Odysseus left

¹ Professor Stein wishes to express her gratitude to Sean A. Fanelli, PhD, Special Professor, Specialized Programs in Education and Director of the Higher Education Leadership Policy Studies Program at Hofstra University. Dr. Fanelli served as the faculty advisor for the capstone project for her M.S.Ed. which provided the foundation for this essay.

² The ALWD/LWI Survey, 2017–2018, is available at: <https://www.lwionline.org/resources/surveys>.

“This article will discuss the importance of expanding the role of legal writing TAs to create a robust, school-supported peer mentoring program . . .”

in charge of his household during his travels.³ The “[k]ey to the mentoring process is collaboration between individuals ‘who share mutual responsibility and accountability for helping the mentee work toward achievement of clear and mutually defined learning goals.’ Learning is the fundamental process, purpose, and product of mentoring.”⁴ While the definition of a peer mentor also focuses on the learning component, “[p]eer mentors are role models who often have valuable wisdom, which they gained from experience. The primary role of peer mentors is to aid others in their successful transition to college by providing academic and emotional support.”⁵ Peer mentors are “seasoned peer[s] who interact with targeted students, sharing his or her knowledge and experience, and thereby improving students’ understanding and learning. . . . The more the target student can identify with the mentor, the more receptive they will be to the mentor’s efforts to support and challenge them.”⁶

B. What Makes a Good Peer Mentor?

While it is difficult to quantify what makes a good peer mentor because programs have different needs, the literature suggests a number of characteristics are universal. Leadership skills, strong interpersonal communication skills, and relevant knowledge are all important.⁷ Moreover, in a higher education setting, the mentor should be academically strong. Many programs have GPA requirements. This may push students who desire to be mentors to work hard to achieve the requisite GPA.⁸ A letter of recommendation from a faculty member is also often required and serves as an indicator of academic integrity.⁹ One should also consider pairing

mentees from underrepresented groups (minority students, international students, first generation students), with a role model who is similar to them, so that the success of the mentor will lead them to believe that they, too, can be successful.¹⁰

C. What Are the Benefits of Peer Mentoring for the Mentee and the Mentor?

The academic and social support peer mentors can provide is impactful. This type of support can have a noticeable impact on the mentee’s level of achievement and connection to the institution.¹¹ This results in improved student performance (both inside and outside the classroom), as well as retention. Mentees often become inspired to become mentors.¹²

The benefits to the mentors are also huge and seem to revolve around three main themes:

- Being able to support, help, or uplift other students;
- Reapplying the concepts of mentoring in their own lives and becoming better students as a result; and
- The connections and friendships that they develop with other mentors through their participation in the program.¹³

Peer mentors are often the top students at an institution, so they represent the “model” to younger students. Many students who serve as mentors term the experience “life-changing,” and find this leadership experience to be one of their most significant educational experiences. Thus, a robust mentorship program can be a powerful tool to recruit and retain top students.¹⁴

³ NAT’L ACAD. OF SCI. ET AL., ADVISER, TEACHER, ROLE MODEL, FRIEND: ON BEING A MENTOR TO STUDENTS IN SCIENCE AND ENGINEERING ch.1 (1997) (ebook).

⁴ LOIS J. ZACHARY, CREATING A MENTORING CULTURE: THE ORGANIZATION’S GUIDE 3 (2005).

⁵ Laura Jo Rieske & Mimi Benjamin, *Utilizing Peer Mentor Roles in Learning Communities*, NEW DIRECTIONS FOR STUDENT SERVICES, Spring 2015, at 68, 67–77.

⁶ Frankie D. Minor, *Building Effective Peer Mentor Programs*, LEARNING COMMUNITIES & EDUC. REFORM, Summer 2007, at 2, 1–13.

⁷ Rieske & Benjamin, *supra* note 5, at 74.

⁸ *Id.* at 75.

⁹ *Id.*

¹⁰ Minor, *supra* note 6, at 3–4.

¹¹ Janet W. Colvin & Marinda Ashman, *Roles, Risks, and Benefits of Peer Mentoring Relationships in Higher Education*, 18 *Mentoring & Tutoring: Partnership Learning* 127–28, 131–34 (2010); Rieske & Benjamin, *supra* note 5, at 70.

¹² Minor, *supra* note 6, at 8.

¹³ Colvin & Ashman, *supra* note 11, at 127–28.

¹⁴ Minor, *supra* note 6, at 8.

“Leadership skills, strong interpersonal communication skills, and relevant knowledge are all important”

“Thus, a robust mentorship program can be a powerful tool to recruit and retain top students.”

D. Why Do Law Students Need Peer Mentors?

Law students report that law school is extremely stressful. The Law School Survey of Student Engagement (“LSSSE”) is part of the Indiana University Center for Postsecondary Research. The LSSSE studies every aspect of the law student experience.¹⁵ In response to these reports about stress, LSSSE created a nine-question Law Student Stress Module appended to the core survey and administered to a subset of students at thirteen law schools.¹⁶ A summary of the very telling results follows:

- Half of respondents reported high stress or anxiety during the school year, 46% reported medium levels, and 4% reported low levels. This

means that virtually every respondent reported appreciable law school related stress or anxiety.¹⁷

- While nearly half of all law students indicated high levels of law school related stress, 3L students reported statistically significant lower levels of law school related stress than 1Ls or 2Ls.¹⁸
- The Law Student Stress Module identified six elements of the law school experience that are believed to be common stressors for students. Respondents were asked to indicate the extent to which each element indeed caused them stress or anxiety. The elements are listed on the following chart, in order of the proportion of respondents who indicated high levels of stress or anxiety relating to each:¹⁹
- Stress related to *academic performance* was more prevalent for 1L and 2L students than

¹⁵ LSSSE, *Who We Are*, LSSSE, <http://lsse.indiana.edu/who-we-are/> (last visited May 31, 2019).

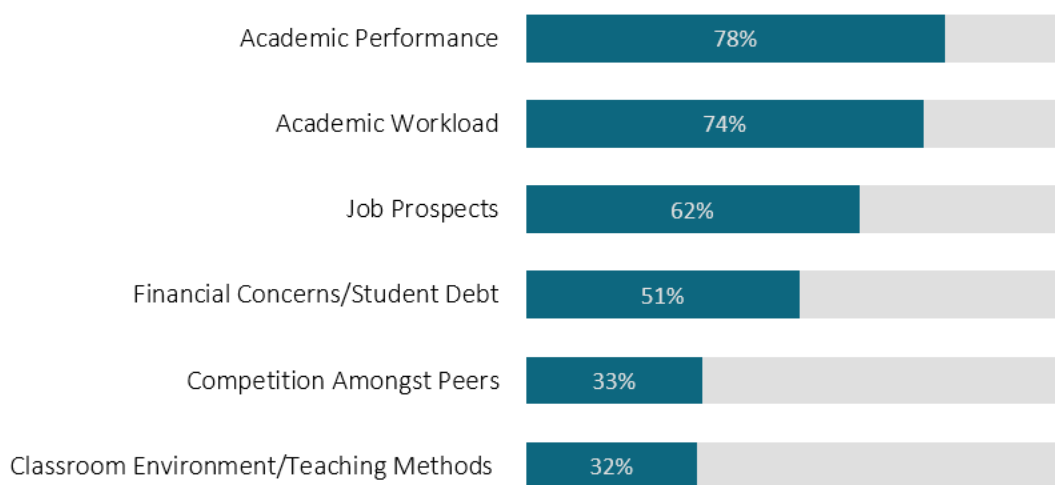
¹⁶ LSSSE, *Law Student Stress*, LSSSE, <http://lsse.indiana.edu/blog/law-student-stress> (Aug. 8, 2016).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

HIGH STRESS BY INDIVIDUAL ELEMENT

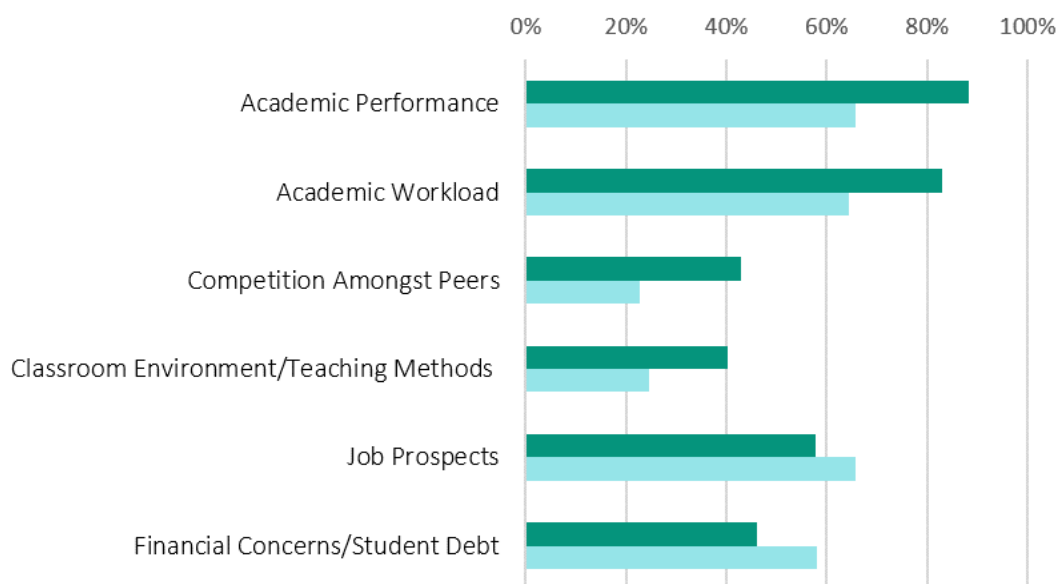


Source: The Indiana University Center for Postsecondary Research

3L students. A similar pattern was shown for stress related to *academic workload*, *competition amongst peers*, and *classroom environment/teaching methods*, where 1Ls reported the most stress, followed by 2L and 3L students. Conversely, 3L students reported being more stressed about

financial concerns/student debt and *job prospects* than either 1L or 2L students.²⁰ A representation of stress loads by class is on the following chart:²¹

HIGH STRESS BY CLASS



Source: The Indiana University Center for Postsecondary Research

Note: The dark green relates to the 1Ls, and the light blue relates to the 2Ls and 3Ls.

- Stress in law school affects student performance, especially in the first year. About half (46.9%) of the respondents indicated that stress or anxiety impacted their law school performance, with only 19.5% indicating either “not at all” or “very little.” Only 8.2% of the respondents indicated that their law school “very much” emphasized ways to effectively manage stress or anxiety with the vast majority (69.7%) indicating either “very little” or “some.”²²

So what is the takeaway from this data? The survey provides empirical evidence demonstrating that while law school overall is quite stressful, it is especially so for 1Ls. This data seems to suggest that a PMP that has the support of the school might have a significant impact on reducing 1L stress and improving academic performance. This, in turn, could lead to more academically successful, satisfied students and a higher retention rate.

E. How Would an Effective Law School PMP be Structured?

There is no “one size fits all” for a program of this type. Ideally an institution should be flexible

“This, in turn, could lead to more academically successful, satisfied students and a higher retention rate.”

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

“Law school admissions are highly competitive; a student is far more likely to attend a school where they believe they will be nurtured and cared for.”

because in any given year the program may need to be adjusted to be maximally effective for a particular group of students. However some best practices should be employed. To send students the message that this program is an important part of their first-year experience, all 1Ls could be scheduled for an extra hour of legal writing every week or every other week. This time could be used for PMP-related activities and students might receive an extra pass/fail credit.

The process for choosing mentors should be highly selective. One way to accomplish this would be for each 1L professor to nominate two to three students towards the end of the spring semester of their first year. These students would then be invited to apply for positions in the PMP, and perhaps be interviewed by a committee composed of faculty, students, and administrators. It is also important that there be a robust training program. This training program should include both student affairs professionals and other relevant administrators, faculty members, and students who have previously served as mentors. Including members of all of the relevant constituencies in the selection and training process demonstrates that the school supports this program and views it as important.

Mentors and mentees should have both group and individual contact. Mentoring groups should be small, ideally fewer than ten students. This allows for both “vertical mentoring” between the mentor and the mentees, and “horizontal mentoring” between first-year colleague students. I coined these terms because in my experience as a teacher, students value learning from other students in their class (horizontal), not just from me or upper-class mentors (vertical).

Expectations on both sides must be clear—a written manual distributed to both mentors and mentees is an ideal way to communicate information. This manual could include such things as information about the type and frequency of meetings that the stakeholders are expected to have, suggestions as to the frequency of contact, as well as the best means of communication between the parties. It should also include the chain of command: who should either party contact if there are questions or problems regarding the relationship?

Ideally the mentoring relationship should extend throughout the entire first year of law school, with an emphasis on academics and study skills in the fall and on the summer job search in the spring. Throughout the year mindfulness activities might be included as a way to lower student stress levels (yoga, anybody?). The initial contact by the mentor should occur over the summer prior to the start of the 1L year. This will not only help ease the mentee’s concerns about the transition to law school, it also might help with enrollment. Law school admissions are highly competitive; a student is far more likely to attend a school where they believe they will be nurtured and cared for.

Administrative offices (such as Student Affairs and Career Services) should run much of their programming during the hour reserved for the PMP and seek the input of the peer mentors when planning such programs. There is a real value to new students hearing this information from successful upper-class students who have so recently had similar experiences. Programs might be done at key times throughout the semester, many of which are tied specifically to events that are occurring in legal writing. This will make students particularly receptive to advice given by peer mentors who are tied to their legal writing class. For example,

- A “getting to know you” program during Orientation will help establish the mentor-mentee relationship right from the beginning, when the mentees need it most. This could include discussion about the importance of legal writing both in the curriculum and in terms of obtaining a job.
- Consistent with the fall focus on academics, a program two to three weeks into the semester on law school study skills and time management might be well timed, after the “honeymoon phase” is over and students are settling into the reality of the workload. This is something that I routinely do in legal writing after the first closed memo assignment is handed in because students so frequently misjudge the amount of time it takes to produce quality legal writing. Peer mentors could help reinforce the message. For example, mentors could discuss their own

first-year successes and struggles with time management in legal writing as well as in their doctrinal classes. They can also discuss how improving their time management skills translated to improved performance in their summer jobs.

- A mid-semester program that introduces exam writing skills prior to the students' first set of midterms might be useful. A program on law school stress might also be effective around this time because about seven to eight weeks in, students are often feeling the pressure. They are starting to receive grades on legal writing assignments and midterms and realizing their expectations as to how they will perform in law school might need to be readjusted.
- Programs towards the end of the first semester might include an exam-preparation workshop, as well as something fun. For example, Hofstra Law School does a pancake "breakfast" one evening at the end of the semester, with faculty serving the food. This could be expanded to include the student mentors.
- In the spring semester, a "welcome back" event shortly prior to the start of the semester could be valuable. Students might need some help in recalibrating their expectations and approach to school if they are dissatisfied with their academic performance in the first semester. This is particularly relevant to legal writing because many students keep the same legal writing professor for the entire year and might appreciate some guidance as to how to approach their professor about ways to improve their research and writing skills.
- My TAs do research and citation review at the start of the spring semester, which helps reinforce these important skills. The TAs use this session as an opportunity to remind the students that these are the very skills they will utilize in their first summer jobs.
- As the semester progresses, TA-led sessions relating to looking for summer internships and jobs would be valuable. Peer mentors can be an invaluable source of help in revising writing samples and cover sheets for writing samples, as well as cover letters. For the past few years, my TAs have conducted mock interview sessions with students. Recent graduates, especially those who are former peer mentors, could be brought in to help facilitate these discussions. Professionalism and networking might also be discussed in these sessions.
- As the semester progresses, mentors might assist their mentees with course planning throughout the rest of their law school career. This can be done in small groups or individually.
- Mentors should meet with each student individually at least once during each semester to ensure that *all* students benefit from the program, not just those who are more assertive about asking for help. Individual meetings might be geared to specific concerns students are having. Mentors should be aware of who they should contact if they believe a student is experiencing a significant mental health issue that requires immediate attention.
- Mentors must make it easy for students to reach out to them. For example, my TAs have specific hours that the students know they will be available in the library every week. Students can either stop by or schedule a specific appointment through a Google Docs spreadsheet.
- Finally, both the mentor and the mentee should engage in self-reflection about the experience through journaling. The legal writing professor can gain valuable insight into their teaching and their students' performance by reading these journals. They could be handed in as a homework assignment at several points throughout the semester. As a teacher, I would want to read them periodically rather than just at the end of the semester so that I could change course to correct misconceptions or misunderstandings.

A robust, well-planned peer mentoring program has the potential to yield huge benefits to law schools and their students at a modest financial cost. Such programs are a win-win for all stakeholders.

“Such programs are a win-win for stakeholders.”

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So You Haven't Taught Legal Writing in a While . . .

By Judith M. Stinson

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It seems that each academic year brings a host of new administrative appointments for legal writing faculty. Many of these appointments require reduced teaching loads, and sometimes the demands of the administrative position make teaching legal writing (at least teaching it well and still performing the new administrative job) impossible. Fortunately, unless your goal is to become the actual dean of the law school, most of these appointments are temporary. But how do you jump back into teaching legal writing after a significant break?

Similarly, a number of people teach legal writing for a few years (sometimes as an adjunct) and then follow a different path for another few years—either moving back into practice or a clerkship or moving into a non-teaching position—and then take a position teaching legal writing again. The same question pops up—how do you make that transition back into teaching legal writing?

If you are facing this dilemma (or know someone who is),¹ the suggestions below might be helpful.

1) Set your anxiety aside and remember that teaching is FUN!

Teaching is somewhat like riding a bike; once you have learned how to do it, jumping back in years later should be easier than learning in the first place. But preparing to do anything you haven't done in a long time can be stressful. Fortunately, if you are like most legal writing faculty, you genuinely

enjoy teaching. Recall some of your favorite teaching moments, look through a drawer (or electronic file folder these days) of “thank you’s” from former students, or chat with some of the most energetic colleagues on your faculty about teaching. Surround yourself with those positive emotions. Remember that most of us really would teach for free (and even though the grading is a bear, seeing concrete proof of your students’ improvement is also lots of fun!).

2) Jump back in with both feet!

The same preparation you likely employed before you started teaching in the first place can be helpful, but now you have many more tools at your disposal. Use your position as a faculty member to help focus that preparation.

a) Read.

This suggestion may seem obvious, but even if you read it all before and even if you kept up on scholarship in the field, take the time to re-read some key sources. For example, either re-read the book you intend to assign² (or review a number of them), and decide if a different book might work better.

In addition, read (or re-read) some legal writing scholarship.³ For example, reading shorter pieces such as those found in the last two or three years of *Perspectives: Teaching Legal Research and Writing*⁴

² I would like to think I would have done this anyway, but I was forced to take this step. I had previously assigned Charles Calleros’s book, *Legal Method and Legal Writing* (7th ed. 2014); while I was serving as Associate Dean, Arizona State Law Professor Kim Holst became a co-author and they split the book into two separate books, *Legal Method and Writing I* and *Legal Method and Writing II* (8th ed. 2018).

³ If your law school happens to be in the midst of a faculty search for a legal writing position, you can offer to review candidates’ scholarship, which will simultaneously serve as helpful institutional service.

⁴ Additional publications in *Perspectives: Teaching Legal Research and Writing* are available at the following link: <http://info.legalsolutions.thomsonreuters.com/signup/newsletters/perspectives/>.

¹ I recently found myself in this position; I was very fortunate to have a post-associate dean sabbatical during which I could spend time thinking about and preparing for this transition. But even if you don’t have that kind of time, many of these tips should still be helpful.

“But how do you jump back into teaching legal writing after a significant break?”

and *The Second Draft*⁵ would likely be a quick and helpful way to reacquaint yourself with timely and innovative teaching ideas. Review past issues of more scholarly journals designed for those with an interest in legal writing,⁶ reading any articles that strike you as useful for your particular purposes. Review the Legal Writing Institute's SSRN e-journal⁷ and read (or at least skim) helpful articles. It might also be helpful to review some publications designed for practitioners, such as American Bar Association section publications.

In addition to legal writing textbooks and scholarship, review syllabi prepared by colleagues at your law school and nationally. This review will help you think through the structure of your course and ensure that you cover everything necessary. Many faculty include helpful information in their syllabi, such as the professor's policy on the use of electronic devices in the classroom. Moreover, some institutions have begun to require that certain topics be addressed (such as information about seeking accommodations and Title IX information). Reviewing syllabi from others at your law school can be very helpful in this regard.⁸

It might also be helpful to read old student papers (both with and without written comments). This review might remind you of what you can (and should not) expect of most law students and help you think more about if and how to change your commenting style. Similarly, you could ask a colleague to peruse some of her

recent student papers and read other student-drafted documents like moot court briefs.⁹

Last, but certainly not least in terms of reading, review your old teaching evaluations—from peer reviewers and from students, if both are available—to remind yourself of what worked well and what didn't. As always, take them with a grain of salt. But be open to using that feedback to improve.

b) Observe.

Either before you begin teaching again or as you start back in the classroom, sit in on some of your colleagues' classes. Legal writing classes will likely be the most helpful,¹⁰ of course, but you can also learn a great deal by sitting in on non-legal writing class sessions. You can also attend teaching workshops, whether offered through your law school, your university, or other groups (such as the LWI one-day workshops, offered late fall each year). Regional legal writing conferences, offered throughout the year at various law schools, also offer the opportunity to hear about (and sometimes watch) effective teaching methods.

c) Practice.

If possible, guest teach a class before you are slated to teach again. If that isn't possible, offer to teach a session at Orientation or a class for non-J.D. students. You could also give a talk on a paper or other project you're working on. Even though it isn't the same as teaching legal writing, it will help you get back into the swing of sharing your thoughts and ideas with others.

“... you can also learn a great deal by sitting in non-legal writing class sessions.”

⁵ *The Second Draft* is available at the following link: <https://www.lwionline.org/publications/second-draft>, and provides “an environment for sharing ideas and insights about teaching legal research and writing.”

⁶ Three main journals come to mind: *Legal Communication and Rhetoric: JALWD*, <https://www.alwd.org/lcr/>; *Legal Writing: The Journal of the Legal Writing Institute*, available at <https://www.lwionline.org/publications/jlwj>; and *The Scribes Journal of Legal Writing*, available at <https://www.scribes.org/the-journal-of-legal-writing>.

⁷ *Legal Writing eJournal* is available at the following link: https://www.ssrn.com/update/lsw/lsn_legal-writing.html.

⁸ Thanks to Alyssa Dragnich for letting me borrow large portions of her syllabus, including portions that are now recommended or required by Arizona State University.

⁹ This undertaking might also be a helpful way to perform some institutional or professional service: you could review student papers for your law school's assessment committee; you could evaluate student submissions for a writing competition, such as the Adam A. Milani Disability Law Writing Competition, sponsored by Mercer University School of Law and the American Bar Association Commission on Disability Rights; or you could review students' moot court briefs to help prepare them for oral argument or help them revise the briefs, if permitted by the competition rules.

¹⁰ In hindsight, I wish I had taken the opportunity to shadow a legal writing colleague for an entire semester. Prior to stepping down from my administrative role but when I had a target date in mind—and hence, knew which semester I would be back in the classroom—spending three or four hours a week to sit in on a colleague's course and talk with her about the class would have been immensely helpful. Time was at a premium, but I am certain I could have carved out forty to fifty hours over the semester to reorient myself to the course I was going to be teaching and to help me anticipate the course in its entirety.

“Administrative work provides a number of learning opportunities...”

d) Write.

Before you return to full time teaching legal writing, you may have the opportunity to think deeply about legal writing by researching and writing a lengthy, scholarly paper on a legal writing topic that interests you. Even if you do not have that amount of time, though, think about writing something (besides your syllabus and the problem or problems you will use that semester) to get you in the right mindset. It can be a book revision, a *Perspectives* or *The Second Draft* piece for a legal writing audience, or even just an outline of your goals and ideas for teaching legal writing again. The point is simple: writing about what you will be doing when you return to teaching legal writing ought to help you prepare to do just that.

3) Remember what you learned through your administrative service.

Administrative work provides a number of learning opportunities, and two of them stand out in terms of training that is helpful as you return to teaching: (a) a better understanding of the big picture; and (b) improved organizational skills.¹¹

¹¹ For some suggestions on how to improve your organizational skills, see Judith M. Stinson, *How LRW Faculty Can Best Position Themselves for Law School Administration*, 30 *SECOND DRAFT* 48, 52 (Spring 2017).

First, one of the main lessons most administrators learn is that perfect is the enemy of good; in the administrative context, for example, revising the semester class schedule six times may make the final schedule a bit better, but the ensuing delay in releasing the schedule to faculty and students would likely create larger problems. Similarly, in the legal writing context, although you could spend an additional fifty hours drafting comments on student papers, over-commenting is generally not an efficient use of your time and not actually very helpful for your students. Identify your goals for each assignment, generate a plan to achieve those goals, and then implement that plan.

Second, chances are your organizational skills improved during your time in an administrative role. Although many legal writing faculty already have some experience with administration (whether by virtue of serving as a program director or associate director, scheduling oral arguments, coordinating TA applications, and the like), after serving in a senior administrative position those skills were likely taken to a new level. You probably now block off a set time each day to deal with email; you now know which hours of the day you are most able to complete various types of tasks; and you are much less likely to feel overwhelmed (and hence, procrastinate) by any

Micro Essay

Artificial Intelligence and the Disappearing Faceless Audience

“Who is your audience?” Of course, advocates have always needed to know in order to effectively present a persuasive argument. Now, artificial intelligence is changing how lawyers approach answering this question. Emerging services, like Ravel Law (recently acquired by Lexis), are giving lawyers and law students new insights into decision-makers, pieced together by algorithms that can study judicial paper trails faster and better than humans. Soon, legal writing professors might need to assign fewer persuasive writing assignments with “faceless” audiences, and more proactively teach students to deliberately incorporate this evolving aspect of legal research into their writing process.

By Drew Simshaw, Visiting Associate Professor of Law, Legal Practice, Georgetown University Law Center.

task you have to face, because you know you can get it done. Take advantage of that increased efficiency and remember the tools that helped you be effective.

4) Remember it will all be okay; you have the best colleagues in the world!

You may not have enough time to prepare in all the ways suggested above. And even after all the preparation in the world, sometimes things don't work out exactly as planned. Returning to teach legal writing after a hiatus can be a little daunting, but know that it will all work out fine for one main reason: legal writing faculty are the best of the best.

At your own law school, your legal writing colleagues are probably some of your best friends. And your legal writing colleagues from around the country are also probably some of your best friends. They want you to succeed. They would do almost anything to help you succeed. They will give you

syllabi,¹² share problems,¹³ help with technology,¹⁴ and answer any and every question you have.

Even if you don't know many legal writing faculty, you can post a question on a legal writing listserv¹⁵ and get a number of responses, generally within minutes. You can also email or call almost any person who teaches legal writing at almost any law school in the country. If you don't remember this from your prior legal writing teaching experience, your colleagues in the field will gladly provide any help and guidance you might need.

In conclusion, embrace the opportunity to teach legal writing again, and I hope these suggestions help make the transition a bit easier.

¹² The entire ASU legal writing faculty sent me their syllabi as I started preparing to teach again; we also have a shared drive where we keep them all posted.

¹³ Thanks to Tamara Herrera for offering this recently.

¹⁴ Thanks to Kim Holst and Sue Chesler for offering to help me figure out TWEN; it seems time to jump into the twenty-first century and have my students submit their papers electronically instead of hard copy (although I am terrified of most technology).

¹⁵ The largest is the Legal Writing Institute's LRW-Prof Listserv (to join, see these instructions: <https://www.lwionline.org/listserv-subscription-management-archive-access>).

“Returning to teach legal writing after a hiatus can be a little daunting, but know that it will all work out fine for one main reason: legal writing faculty are the best of the best.”

Micro Essay

AI has made many tasks easier, including document review and checking legal citations. But as AI moves from merely mundane tasks to deciding disputes, there is a danger that it will violate human rights. Earlier this year, several human rights advocacy groups created the Toronto Declaration on Protecting the Right to Equality and Non-Discrimination in Machine-Learning systems. The Declaration applies human rights standards to the development and use of AI. It's a useful tool to help us guard against the violation of human rights by machines.

By Mark E. Wojcik, Professor of Law, The John Marshall Law School.



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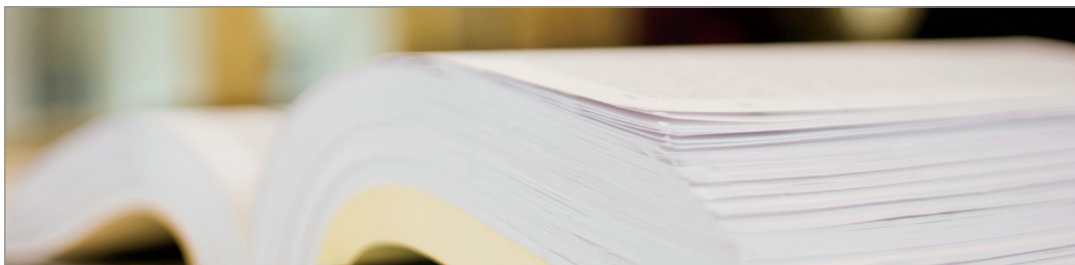
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