

Perspectives

Teaching Legal Research and Writing

Vol. 28 | No. 2 | Fall 2020

In This Issue

45 [From the Editor in Chief by Judith A. Rosenbaum](#)

47 [Transactional Drafting with Donna, Google, and Cooley: Leveraging Technology Tools in a Time of Online Learning by Adam Eckart](#)

During a time of online learning, professors teaching transactional drafting can leverage technology to facilitate student engagement and foster deeper understanding of course concepts. This Article discusses how artificial intelligence, cloud computing, and document assembly tools can be utilized in the transactional drafting classroom and provides specific examples for each.

51 [Grammar, Editing, and Writing Tech Tools: The Teaching Tool You've Been Looking For? by Joe Regalia and Amy Levin](#)

Many legal writing professors have observed that students' grammar, punctuation, and writing skills have declined in recent years, but at the same time, many hesitate to allow students to use writing assistants such as Grammarly and BriefCatch to help them spot these same mechanics issues and aid in fixing them. Professors Levin and Regalia explore the benefits of teaching students to responsibly use grammar, editing, and writing tech tools and the pros and cons of the most prominent tools.

65 [Grading Without Grades by Katherine Brem](#)

In the COVID-stricken spring 2020 semester, we all adapted to "grading without grades." This helped the Author to realize that, in commenting on students' work products, she had just been ranking her students, not teaching them. In this essay, the Author offers a new take on teaching through grading, suggesting ways in which we should alter our commentary so that students can realize achieved progress and implement corrective measures in future assignments.

68 [Teaching Legal Research Using Fairy Tales by John O'Donnell](#)

This Article explains how the Author uses fairy tales in his legal research class. The Author describes how fairy tales can be effective ways of engaging students with the materials and may be adapted to a wide variety of uses such as: examples of legal research concepts, in-class group activities, or as fact patterns for mid-term or final exams.

73 [How to Teach Algorithms to Legal Research Students by Annalee Hickman](#)

This Article calls for legal research professors to include in their curriculum the role of algorithms in electronic legal research. It also includes recommendations for readings, lecture content, and assignments when teaching about algorithms.

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Why Write for *Perspectives*?

Perspectives is for anyone who teaches legal research or legal writing, broadly defined to include the first-year and advanced LRW courses, transactional drafting courses, academic support methodologies, and courses on the American Legal system for international lawyers—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. Most articles average between 4,000 and 7,000 words and are lightly footnoted and highly readable. They may focus on curricular design, goals, teaching methods, assessments, etc.

[Author Guidelines](#)

In Our Next Issue

The next issue will be published in summer of 2021 or late fall of 2021, depending on the number of articles received. If you have ideas about how to teach either legal writing, broadly defined to include most types of law school writing, or legal research, broadly defined to include both introductory and advanced classes, please consider turning those ideas into an article for *Perspectives* that can be shared with our readers.

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From the Editor in Chief

By Judith A. Rosenbaum

Professor Judith A. Rosenbaum is a Clinical Professor of Law at Northwestern University Pritzker School of Law.

I write this in January just after we have passed the dubious occasion of the one-year anniversary of the first COVID-19 cases arriving in the United States. But it is a new year and around the corner, there is hope of the vaccine reaching many of us by the time you receive this issue of *Perspectives*.

This last year has been one of change, as many of us have had to adapt and innovate to find effective ways of teaching legal research and writing via a remote, or mostly remote, environment.

And just as we have experienced change in our teaching lives and are hopeful for good things to come in the new year, we at *Perspectives* have experienced change in the past year and are hopeful for good things to come in 2021.

We first welcome a new Editorial Board. In the last *Perspectives* issue, outgoing Editor in Chief James B. Levy mentioned that the Editorial Board had, for the first time, adopted Bylaws, instituted terms for Board members, and created an open application process for selecting new Editorial Board members. I would like to introduce that Board to you. Most members of the Board were appointed during the restructuring that occurred in the spring of 2019, but we also welcomed two new members this fall, following announcements on the listservs and the open application process that Jim mentioned in his column.

The entire Editorial Board consists of three Executive Editors, six additional Editorial Board members, and the Immediate Past Editor in Chief for continuity. The Executive Editors include the Editor in Chief, Assistant Editor in Chief and Managing Editor. The Editor in Chief and Assistant Editor in Chief were elected this past summer and the Managing Editor was elected in spring of 2019.

As the Author of this column, it should not be surprising that I'm the Editor in Chief, but I'm also listing our names here. The school affiliations and professional titles are in the masthead, so I am not repeating that information. The Executive Editors are: Editor in Chief, Judy Rosenbaum; Assistant Editor in Chief, Robin Boyle-Laisure; and Managing Editor, Brooke J. Bowman. The members of the Editorial Board, in alphabetical order, are Nicole Downing, Catherine M. Dunn, Jonathan Franklin, Jessica Hynes, Joe Regalia, and Michael Whiteman. In addition, our immediate past Editor in Chief, James B. Levy, is remaining on the Board to assist us with the transition.

Second, an Editor in Chief's column appearing as a regular feature is new. There have been columns from previous Editors in Chief, but those columns have appeared only occasionally, usually marking a transition in the Editor in Chief position. I hope this column will become a regular feature. I plan to use it to keep you, our readers, informed about issues before and decisions by the Editorial Board.

My final point is not about something new; instead, it relates to hope. A publication like this only exists when we receive articles for publication. And most, if not all, of those articles come from our audience of readers. I know that the past year has had its challenges, as revising teaching methods has been unbelievably time-consuming. But I hope as 2021 progresses that the need to spend copious amounts of time revising teaching methodologies will have eased. As it does, I hope many of you will have ideas for articles that we can publish and that you will think of *Perspectives* as you consider your publishing options.

Amidst some changes, there are also some constants. First *Perspectives* enjoys unique synergies with an audience of legal writing professors, transactional drafting professors, law

firms and individual practitioners interested in good legal writing, and law librarians in both the academic and corporate worlds. From the beginning, *Perspectives* has been one of, if not the most widely disseminated publications devoted to the teaching of both legal research and writing. In addition, from the beginning, *Perspectives* has received the unwavering support of Thomson Reuters, which for three decades has provided the funds to support first print and now online publication. I want to express, as others before me have done, our sincere gratitude for this support.

In the meantime, be well and stay healthy. I am looking forward to the (hopefully) not too distant future when we can return to in-person meetings where we can continue to share ideas about teaching legal research and writing.

Judy Rosenbaum
Perspectives Editor in Chief
January 2021

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Transactional Drafting with Donna, Google, and Cooley: Leveraging Technology Tools in a Time of Online Learning¹

By Adam Eckart

Adam Eckart is an Assistant Professor of Legal Writing at Suffolk University Law School.

During the spring 2020 semester, the novel coronavirus put a hold on almost everything: birthday parties, social gatherings, spring break vacations, and, most importantly given our professional concern, traditional face-to-face law school learning. Although law students and professors reported feeling uncertain and anxious at the outset of this new reality of law school instruction, the move to online learning generated some benefits, including an increased focus on leveraging technology to facilitate learning.

This Article discusses how I utilized technology to teach transactional drafting in first-year and upper-division legal writing courses at Suffolk University Law School, and hopefully it will inspire you to incorporate some of these techniques into your own class. Using technology tools, students in my classes learned firsthand about how transactional drafting and technology intersect, including how to revise documents with artificial intelligence (“AI”) tools, to draft collaboratively with cloud-based technology, and to create transactional documents with document generation tools.² While technology can independently complete certain tasks for users (think: autocorrect³), technology

in my classroom was introduced, not to answer questions for students, but to facilitate critical thinking by bringing awareness, introducing efficiency, and informing students’ work.⁴

While incorporating technology tools into a course can be daunting for professors at first, incorporating these tools in an online learning environment need not be hard. First, professors can introduce students to technology tools asynchronously with screencasts, recorded lectures, or instructional videos on the vendor’s website. Next, professors can employ technology tools in short, in-class (or “in-Zoom”) assignments, as part of a synchronous class period (having students work independently or in break-out rooms in pairs or small groups), or as homework assignments. Finally, professors can use a portion of the next class, another recorded screencast, a facilitated discussion board thread, or a document posted online for a variety of tasks: to debrief the assignment, to discuss common errors and practice-oriented considerations, and to share student experiences.⁵

To illustrate how I incorporated technology into transactional drafting assignments in my classes, listed below are three technology

⁴ To illustrate this fact, I showed students how the use of technology—employed without use of student critical thinking—can actually damage, rather than improve, final work product by changing the meaning of provisions or sections of a document.

⁵ Professors can also employ additional interactive tools, such as Wikis or video recordings, to solicit student feedback and reactions to using the technology. Another way to solicit student feedback, and foster reflection, is by using assignment wrappers. An assignment wrapper is a short form that students complete along with or after an assignment (such as an exam or a paper), which focuses on the student’s learning process. See generally Sarah Schendel, *What You Don’t Know (Can Hurt You): Using Exam Wrappers to Foster Self-Assessment Skills in Law Students*, 40 PACE L. REV. 154 (2020) (describing how to use assignment wrappers to facilitate student self-assessment and self-reflection).

¹ A portion of this Article is drafted based on the Author’s presentation given at the William & Mary Conference for Excellence in Teaching Legal Research & Writing Online, June 18–19, 2020. Thank you to the participants at that conference for your comments and ideas.

² Our class discussions also touched on ethical issues relevant to the intersection of technology and practice. See Lori Johnson, *Navigating Technology Competence in Transactional Practice*, 65 VILL. L. REV. 159 (2020) (describing the intersection of technology and legal practice in light of professional responsibility).

³ For better or worse.

“While technology can independently complete certain tasks for users . . . technology in my classroom was introduced . . . to facilitate critical thinking by bringing awareness, introducing efficiency, and informing students’ work.”

trends, illustrative products or platforms, and example exercises I explored over the past academic year while teaching online during the coronavirus pandemic.

A. Document Revision: Artificial Intelligence and Donna

AI technology tools assist lawyers in automating a variety of complex and tedious tasks, including revising and editing elaborate transactional documents.⁶ According to a recent ABA Technology Report, only 8% of all lawyers use AI but 26% of lawyers in big firms⁷ utilize AI.⁸ The AI trend is likely to explode (even more!) in the near-term; a recent Wolters Kluwer report noted that 59% of law firms expect AI to have a significant impact on legal work over the next three years.⁹

Donna, an “assistive intelligence” program available as a plug-in for Microsoft Word,¹⁰ utilizes AI to assist lawyers in revising transactional documents. Donna assists in revising a document by highlighting and linking information in a contract or agreement (such as definitions, duplicate clauses, and ambiguous terms) and provides suggested revisions to the user. For each suggestion, Donna offers a fix of its own or proposes that the user makes a manual fix,

⁶ AI tools also assist lawyers in a variety of other legal tasks, including research, document review, analytics, billing, and more. Using AI for document revision, as discussed here, is just one example of using AI in a legal workplace.

⁷ For purposes of this survey, this includes firms with 100 or more lawyers.

⁸ See *ABA Releases 2019 TECHREPORT and Legal Technology Survey Report on Legal Tech Trends*, Am. B. Ass’n, <https://www.americanbar.org/news/abanews/aba-news-archives/2019/10/aba-releases-2019-techreport-and-legal-technology-survey-report-#:~:text=ABA%20releases%202019%20TECHREPORT%20and%20Legal%20Technology%20Survey,how%20attorneys%20are%20using%20technology%20in%20their%20practices> (Oct. 23, 2019).

⁹ See *The 2020 Wolters Kluwer Future Ready Lawyer Survey Report*, WOLTERS KLUWER, <https://know.wolterskluwerlr.com/2020-Future-Ready-Lawyer> (last viewed Nov. 17, 2020).

¹⁰ See Donna.Legal at www.donna.legal. Donna describes itself as “assistive intelligence” rather than “artificial intelligence.” Another AI tool designed to assist with revision is WordRake (<http://www.wordrake.com>), which is designed to edit for clarity and brevity. Some have raised issue with using a female name for an assistant and gender stereotypes or gender roles that may be associated with such a name. This topic could be raised in class to discuss gender roles, perceptions, diversity, or other similar topics (unrelated to the actual use of the tool).

if desired. Because Donna’s suggestions are focused on readability, style, and high-level content rather than substantive law, students must employ their own critical thinking when reviewing suggested changes; accepting all of Donna’s changes could negatively affect a document rather than simplify it.

To introduce students to the concepts of transactional drafting, I have used Donna to teach and practice the skills related to revising a transactional document. In one assignment, I asked students to revise a sample “bad” non-compete agreement using a free trial version of Donna.¹¹ Students interacted with each suggested revision from Donna and determined whether the revision should be made. Additionally, students read and examined other portions of the document to determine whether additional revisions (not suggested by Donna) should be made. By centering the assignment on revising a simple one-page agreement, students obtained practice with an AI tool and began to understand some key skills related to transactional drafting and revising, including the critical thinking skills required to draft and revise a transactional document. The assignment was debriefed in the next class, allowing students to discuss substantive revisions, the limits of AI technology, and reactions to using such technology.¹²

B. Document Management: Cloud Computing with Google Documents

Cloud computing allows lawyers to access data, files, and other work-related information via the Internet from anywhere in the world. Before the coronavirus pandemic, the ABA reported that 58% of lawyers used cloud computing for document management and collaborative work, with small and solo firms

¹¹ I pair this assignment with a persuasive legal memo on non-compete enforceability, so students are familiar with the substantive law related to the enforceability of noncompete agreements before revising a non-compete agreement.

¹² This assignment can also be debriefed with a short screencast to discuss the errors in the documents, which revisions students might adopt, and which revisions students should not adopt (in effect, where the AI technology was incorrect based on the context of the agreement). Students can prepare a reflection after the discussion to reflect on the technology, including its limits, and the revision process.

“By centering the assignment on revising a simple one-page agreement, students obtained practice with an AI tool and began to understand some key skills related to transactional drafting and revising, including the critical thinking skills required to draft and revise a transactional document.”

leading the way in adoption at 60%.¹³ After the pandemic, with more people of all occupations working from home, cloud computing is headed down the runway and about to take off (even more).

Google Docs, a popular cloud computing platform, can introduce students to cloud computing, collaborative drafting, and document management concepts.¹⁴ Google Docs allows students to work collaboratively on a document (without exchanging draft Word documents) and manage a variety of documents in folders accessible from anywhere using the Internet. Google Docs is accessible and familiar to Generation Z, an increasing population in law schools; is free; and performs editing in real time (unlike tools such as Track Changes in Microsoft Word), allowing group members to work simultaneously and collaboratively.¹⁵

I have introduced Google Docs through lessons aimed at teaching collaborative transactional drafting via cloud computing. In one assignment, I asked students to collaboratively revise a residential real estate lease using Google Docs. Students created a new Google document, inserted text of a sample residential real estate lease, and collaboratively revised portions of the pet policy section of the lease agreement.¹⁶ In groups, students decided which provisions needed revisions, exchanged suggested revisions based on substantive knowledge of underlying dog bite liability law, commented on suggested revisions, and created a final lease provision to share in class.

In the next class, the assignment was debriefed by students sharing the suggested revisions to the lease, explaining why such revisions were made, and anticipating how the revisions would be conveyed to a client or supervising attorney. In the debrief, I showed a sample mark-up to students, discussed ethical considerations of cloud computing, and asked students to share their experiences of (and reactions to) collaboratively revising a document with Google Docs.¹⁷

C. Document Generation: Document Assembly with CooleyGo

To assist in establishing a starting point, transactional precedents, forms, and model documents can be used in drafting transactional documents. Lawyers increasingly look to technology to assist in establishing this starting point. In fact, according to the ABA, 35% of solo respondents and 35% of small firms use document assembly software to do just that.¹⁸

The document generation platform CooleyGo, a free resource from the international law firm Cooley LLP,¹⁹ can introduce students to document assembly tools. The CooleyGo platform is designed as a free legal resource specifically for entrepreneurs and covers many types of transactional topics, including entity formation, mergers and acquisitions, intellectual property, and initial public offerings, among others. CooleyGo allows students to identify a form or transactional precedent, insert some basic information about a potential

“After the pandemic, with more people of all occupations working from home, cloud computing is headed down the runway and about to take off (even more).”

¹³ See Dennis Kennedy, 2019 *Cloud Computing*, AMERICAN BAR ASSOCIATION TECH REPORT 2019, https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2019/cloudcomputing2019/ (Oct. 2, 2019).

¹⁴ See Google Docs at <https://www.google.com/docs/about/>. Other similar technology includes iCloud Drive (<https://support.apple.com/en-us/HT204025>), Evernote (<https://evernote.com/>), and Office365 OneDrive (<https://www.microsoft.com/en-us/microsoft-365/onedrive/onedrive-for-business?rtc=1>), among others. Many large firms use other platforms, such as SharePoint (<https://www.microsoft.com/en-us/microsoft-365/sharepoint/collaboration>) or document management systems like iManage (<https://imanager.com/>).

¹⁵ Cloud computing platforms often raise privacy and professional responsibility concerns, which have been discussed in recent scholarship. See Johnson, *supra* note 2 (describing ethical considerations with respect to cloud computing).

¹⁶ I paired this assignment with submission of an objective legal memo regarding landlord dog bite liability so that students were aware of substantive law related to dog bite liability in the relevant jurisdiction before revising the lease.

¹⁷ This assignment can also be debriefed in class or with a short screencast to discuss generating the Google document, and related ethical and privacy issues. Students can prepare a self-reflection based on their experiences using Google Docs, how it may be beneficial in practice, and what privacy issues should be considered.

¹⁸ See Natalie Kelly, 2017 *Solo and Small Firm Technology*, AM. B. ASS'N, https://www.americanbar.org/groups/law_practice/publications/techreport/2017/solo_small_firm (Dec. 1, 2017).

¹⁹ See CooleyGo at www.cooleygo.com. Other law firms, including Wilson Sonsini and Orrick, have similar sources (<https://www.wsg.com/en/services/practice-areas/corporate/emerging-companies.html> and <https://www.orrick.com/en/Total-Access/Tool-Kit/Start-Up-Forms>, respectively). Other sources to use in a legal writing course include Bloomberg's Draft Analyzer, Thomson Reuters Drafting Assistant, Lexis Smart Forms, and consumer-focused commercial products such as LegalZoom (www.legalzoom.com).

“By leveraging these tools to teach transactional drafting in online formats, professors can effectively teach important drafting skills and technology skills while simultaneously fostering increased student engagement in an often-challenging online learning format.”

client, and download an initial transactional document. In addition to providing a wealth of articles and advice related to the law, CooleyGo is reputable, free, and simple.²⁰

I have used CooleyGo in connection with teaching students how to use transactional precedent when drafting new transactional documents for a client.²¹ In one assignment, students generated a nondisclosure agreement using CooleyGo and tailored it with specific comments from the assigning partner.²² Students quickly applied the principles of using a standard form to draft an agreement and understood that a full revision of the agreement—and not simply making the requested revisions from the assigning partner—was required to produce an appropriately tailored transactional document.²³ Students worked collaboratively in pairs, downloaded the generated document and traded comments to create a final version. The final version was graded and returned to students with specific comments provided to each student pair.²⁴

D. An Enhanced Student Experience

While the next academic year (or two) may bring a return to pre-pandemic normalcy to our law school classrooms, the pandemic may also accelerate technology’s impact on the practice

²⁰ Another excellent tool that bridges that gap between AI and document assembly is Woodpecker (www.woodpeckerweb.com), which allows easy document generation and construction by having users fill out key fields populating the terms across a set of documents.

²¹ This assignment was used in an Advanced Legal Writing: Intellectual Property course and was paired with an assignment regarding the ability to protect a trade secret for a potential client, giving students some background in the substantive law related to a nondisclosure agreement.

²² These revisions were designed to make students modify and work with the generated text, including by giving students sample provisions that were somewhat duplicative of generated text and asking students to make sure certain provisions were excluded from the document (but were originally in the generated text).

²³ For example, the nondisclosure agreement generated was created in the context of information-sharing but the nondisclosure agreement being written for class was for an employer/employee relationship, so revisions to the language on the purpose of the document were required (but not specifically called out in the “assigning partner” comments).

²⁴ This assignment can also be debriefed with a short screencast or by employing a discussion board to discuss generating the document and the related revision process.

of law.²⁵ In my classes during the last academic year and throughout the pandemic, students reported that they enjoyed learning about these technology tools because the tools made the course more interesting and dynamic; these tools helped connect the experiences in the classroom to the new realities of “real-world” legal practice. Professors already employing transactional drafting exercises may choose to bolster existing assignments by

- adding a revision portion of an assignment by employing Donna,
- asking students to draft documents using online tools like Google Docs,²⁶ or
- asking students to begin their work with a document generated by CooleyGo.²⁷

By leveraging these tools to teach transactional drafting in online formats, professors can effectively teach important drafting skills and technology skills while simultaneously fostering increased student engagement in an often-challenging online learning format.

²⁵ In fact, technology competence under the American Bar Association’s Model Rules of Professional Conduct (Rule 1.1) is required for lawyers in most jurisdictions and is a skill that is increasingly valued. See Dyane O’Leary, “*Smart*” *Lawyering: Integrating the Duty of Technology Competence into the Legal Writing Curriculum*, 20 U.N.H. L. REV. (forthcoming 2021), available at <http://ssrn.com/abstract=3671632>.

²⁶ Including, potentially, as a collaborative assignment for student pairs or small groups.

²⁷ Professors not yet employing transactional drafting assignments in their legal research and writing courses should consider doing so. Many transactional drafting assignments can be easy to integrate into an existing syllabus. See Adam Eckart, *Deal Me In: Leveraging Pedagogy to Teach Transactional Skills in the First Year Legal Research and Writing Program*, 21 U.C. DAVIS BUS. L.J. (forthcoming 2021), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3689887.

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Grammar, Editing, and Writing Tech Tools: The Teaching Tool You've Been Looking For?

By Joe Regalia and Amy B. Levin

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I. Introduction

Writing mechanics are a key component of most Legal Research and Writing classes, and many of us grade our students' grammar, punctuation, and writing style. Yet there has been a general sense among legal writing professors that students' skills in these areas have declined in recent years. The days of diagramming sentences in middle school seem to be over, and professors have had to spend more time covering simple grammar and punctuation rules in their classes, which takes class time away from teaching essential skills like legal analysis.

Despite this decline in students' basic writing skills, many legal writing professors eschew students' use of writing assistants like Grammarly or BriefCatch. Some say we cannot adequately assess our students' own work if they are using writing programs to fix their writing mistakes before turning in their papers. And perhaps it is unfair to allow students to use these programs if all students may not have equal access to them given cost and other factors.

While these are legitimate concerns, and we will address them, we believe the focus should shift from why we shouldn't use these programs to why aren't we using these programs. We are teaching tech-savvy and tech-dependent millennials and Gen Zers who are familiar with technology¹ and

will be practicing in a legal profession that is becoming increasingly technology driven. Indeed, by some metrics, technology competence is among the most sought-after skills legal employers are looking for.² And incorporating technology into the teaching of grammar and writing mechanics can be a simple way to introduce students to effective technology principles.

Future attorneys not only need to be comfortable using technology in practice, they need to know how to do so effectively and ethically.³ It therefore behooves us as writing professors not to shy away from grammar and writing tools but rather to offer them to our students while teaching them how to use the tools responsibly.

II. Why Our Students Should Use Grammar and Style Tech Tools

We all agree our students need to understand grammar and writing fundamentals to be strong legal writers. But are we in the best position to teach these fundamentals? We would argue no, or at least that we need some help. The hours most of us spend copiously line editing our students' papers for misplaced commas, run-on sentences, subject and verb mismatches, mismatched modifiers, and passive voice inevitably takes time away from other essential skills our students need

law students are predominately digital natives who easily adapt to the pedagogy because they are accustomed to receiving most of their information digitally.”).

² Nat'l Jurist, *Employers Want Lawyers with Tech Skills*, NAT'L JURIST, <https://www.nationaljurist.com/national-jurist-magazine/employers-want-lawyers-tech-skills> (Oct. 16, 2019, 12:59 PM) (“More than 6 in 10 lawyers (62%) surveyed by Robert Half Legal said that their hiring decisions are influenced more by job candidates' technical abilities than their soft skills.”).

³ Erin Coe, *The Skills Every Future Lawyer Needs*, LAW 360 IN-DEPTH, <https://www.law360.com/articles/1242460/the-skills-every-future-lawyer-needs> (Feb. 10, 2020, 8:04 PM EST).

¹ Alex Berrio Matamoros, *Answering the Call: Flipping the Classroom to Prepare Practice-Ready Attorneys*, 43 CAP. U. L. REV. 113, 151 (2015) (“[T]oday's

“Future attorneys not only need to be comfortable using technology in practice, they need to know how to do so effectively and ethically.”

for practice, like legal analysis, understanding audience, using proper tone, and organizing and structuring memos and briefs. With help from writing and editing programs, we can teach these important legal writing skills while also helping students improve their mechanics.

Here's how. Grammar and writing tools allow us to flip the legal writing classroom so students learn punctuation, capitalization, and other basic grammar on their own time, which then frees up time inside the classroom for teaching students other important writing skills.⁴ This does not mean these tools will replace us. Far from it. We will still grade writing style and suggest to students how to correct their errors. But we will get some help teaching basic skills and helping students identify and fix problems in their own writing.

There are several advantages to this approach. First, many grammar and writing programs provide a deeper dive into writing mechanics than we have time for in class, and they already have built-in explanations and suggestions for how to correct errors. These programs are accurate and effective, and they are getting better with time. Why should professors reinvent the wheel with lengthy in-class grammar lectures when there are excellent resources available to teach these skills outside class?

Second, and more importantly, many of these programs also provide detailed, individually tailored feedback. Students see their mistakes in real time and learn how to correct them immediately. They are more likely to pay attention to and fix their errors with this immediate, relevant feedback on their own writing than they are weeks after they have finished writing, when they receive their papers back from us, or after a general, non-personalized lecture on grammar and punctuation.

Third, flipping instruction of grammar and writing mechanics outside the classroom moves the focus from the professor to the student learner. This

⁴ Matamoros, *supra* note 1, at 132 (“By flipping, legal skills faculty not only create more time for active learning opportunities in the classroom, but also increase the amount of time they get to teach and lead students through legal skills development and make students practice-ready.”).

promotes active learning and benefits different learners. “[I]nstead of listening, writing, and comprehending, the student is directly involved in the synthesis and analysis of materials. It permits tailoring to accommodate different learning styles . . . [and] is a more efficient use of teachers’ time.”⁵

Fourth, why not capitalize on the flexibility this technology provides us?⁶ Using grammar and writing tools to help teach mechanics allows students to learn at their own pace, on their own time, which promotes greater ownership of their learning.⁷ It also teaches students information literacy, which is critical in the modern legal profession.⁸ Although our students are digital natives and generally tech-savvy, they are often not very good at using technology or using it responsibly. We need to teach them the benefits of grammar and writing tools to aid their writing but show them the tools are not a substitute for hard work and care.

Finally, students are motivated to learn and succeed. If we show them the value of improving their writing with the use of grammar and writing assistants, they are likely to buy in.⁹ And because many law firms and organizations use these programs, our students should be familiar with them and know how to use them effectively. Employers won’t tolerate errors in mechanics when their employees could have used available tools to prevent them.

III. Practical Considerations of Using These Programs

Grammar and writing assistants are good, but there are some legitimate concerns with using

⁵ Kylie Burns et al., *Active Learning in Law by Flipping the Classroom: An Enquiry into Effectiveness and Engagement*, 27 LEG. EDUC. REV. 163, 166 (2017); see also Matamoros, *supra* note 1, at 144 (“Legal skills instructors who flip their classroom can begin accommodating the educational needs of the strongest and weakest students, expanding the scope of their differentiated instruction.”).

⁶ LUTZ-CHRISTIAN WOLFF & JENNY CHAN, *FLIPPED CLASSROOMS FOR LEGAL EDUCATION* 4 (2016) (“[T]echnology can improve flexibility. Today, students no longer have to be at a particular place at a particular time to receive education.”).

⁷ *Id.* at 25.

⁸ *Id.* at 26.

⁹ “Students will be motivated to use technology when they understand the purpose behind its use and how it will assist them in achieving learning objectives.” Burns et al., *supra* note 5, at 167.

“Grammar and writing tools allow us to flip the legal writing classroom so students learn punctuation, capitalization, and other basic grammar on their own time, which then frees up time inside the classroom for teaching students other important writing skills.”

them in the law school classroom. We will address some of these potential concerns here and explain why we think it is still worthwhile to let students use these programs in our classes.

First, our goal as legal writing professors is to teach our students to write well. Professors may rightfully be concerned students will blindly accept corrections without further understanding and learning, and therefore make similar errors in future writing. While this is a valid concern, we don't think it is true in reality.

As explained more below, many tools put students in the driver's seat, requiring them to use their knowledge and judgment to address problems flagged by the tool. So, if you are concerned about students' blindly accepting edits, simply choose a tool that doesn't allow that. What's more, many of these tools teach students *why* they erred. And several of these tools teach well. For example, BriefCatch offers explanations to support its suggestions. And users aren't given the right answer; they are given options to choose from or suggestions for areas to focus on, like highlighting long sentences or passive voice.

Second, students may be overwhelmed by the number or quality of corrections and thus reject the help. This problem is not unique to writing assistants; it exists when professors give comments too. Millennials and Gen Zers are sensitive to criticism but they also crave feedback.¹⁰ What is nice about these programs is they can critique as little or as much of our students' writing as we would like (or they would like) and are catered to each student's unique needs. Our students don't have to fix all identified problems at once. They can try fixing one or two issues for the first assignment, adding one or two more for the second assignment, and so forth. The technology is adaptable, so better for students to adapt it to fit their needs than not use it at all.

Third, professors might worry that the tools will teach the wrong style or grammar rules, or that students might otherwise misuse tools. Most popular tools out there are extremely

well-vetted by experts and practitioners, and one of the authors has used many of them for years with many classes of law students. But professors are encouraged to try tools out well before incorporating them into class to be sure they align with the professors' preferences.

Fourth, if professors allow students to use these programs, they need to ensure the programs are affordable and accessible to all. If some students can afford to use them and therefore do use them, and others cannot and therefore do not, then we are not providing equal access to education in our classes. This is a problem. Fortunately, it is a solvable problem:

- First, many tools are free, have free versions, or have free trial periods. Even free trial periods can be effective for classroom exercises. Professors can assign students to work with a tool for specific editing assignments during a trial period.
- Second, professors can often negotiate free access for specific classes. One of the authors has had regular success with editing app companies by simply requesting access for in-class use. The truth is most vendors jump at the chance to have their tool used in a class setting because it exposes students to the tool.¹¹
- Third, even if you don't manage to get free access, nearly every tool can be purchased on an enterprise basis for all students at your law school. And many of these vendors will negotiate extremely affordable pricing for law schools or individual professors.
- Finally, for professors still concerned about handing over grammar and style teaching to a piece of technology, consider the value of at least using these tools yourself. Professors

¹¹ This strategy is straightforward. Contact the vendor or organization associated with a tool. This information is readily available on every tool's website. An email is usually the best place to start. Explain that you are requesting access to the tool for a law school class as part of the class curriculum. For most tools, this will be enough to get complimentary access. Sometimes a vendor will ask to set up a phone call, and this is a chance to share your goals for incorporating the tool into an activity. Most vendors understand the incredible value of getting more folks to use their tool and will be delighted to help share the tool with your class. If not, the good news is that, as we will discuss below, there are many options to choose from.

¹⁰ See Amy B. Levin & Joe Regalia, *The Feedback Feeding Frenzy: Adding Audio and Technology to the Mix*, 27 PERSPS 44, 61 (2019).

“Millennials and Gen Zers are sensitive to criticism but they also crave feedback.”

“[T]he professor can discuss with students the pitfalls of relying on technology, given that most editing tools will at least sometimes give the students a ‘false hit’—in other words, flag a word or sentence that should not be changed.”

can use editing tools to help streamline the feedback process; the tools instantly point out common grammar and style problems the professor can then choose to pass on to students in the form of traditional feedback.

Another option is to use these tools in very controlled exercises or assignments, rather than handing them over to students to use on their own. For example, one of the authors has created a simple editing exercise in which students use the editing tool BriefCatch in a controlled group exercise in the classroom. Each group runs BriefCatch on a short assignment of their own (or on a sample document). The group then decides which suggestions make sense and why. They must defend their choices to the class as a whole in a short presentation. Another simple controlled exercise is to have students use editing tools to generate a “writing report” on their writing, which they then respond to in class or in a short writing reflection.¹²

Controlled exercises like this also create an excellent chance to address technology skills in general. For example, the professor can discuss with students the pitfalls of relying on technology, given that most editing tools will at least sometimes give the students a “false hit”—in other words, flag a word or sentence that should not be changed.

IV. Choosing the Right Program for Your Teaching Goals

The good news is there are myriad programs available, and they vary in terms of the amount and type of help they provide. Because there is no one-size-fits-all program, you can decide how much or how little help your students receive and the nature of that help.

The grammar and writing mechanics tools fall into several bigger categories:

- A. Purely educational tools that simply teach grammar and writing mechanics lessons, divorced from the student’s own writing.

- B. Tools that are still aimed at education but use the student’s own writing to teach.

- C. Tools that are geared towards making editing suggestions for grammar and writing mechanics but still have a significant educational component.

- D. Tools that are designed purely to make grammar and style edits with little educational opportunity, save when students think about why the tool made the edit.

- E. Emerging tools that do even more of the writing and analysis for students.

Appendix 1 contains a summary of each tool by category. Appendix 2 contains selected screenshots of the different tools.

A. Purely Educational Tools

Some programs are purely educational. They were designed to help teach students grammar, punctuation, and writing style, and they are not editing programs and do not use the student’s own writing to teach.

A well-known example is Core Grammar for Lawyers. Students take an assessment, learn from on-demand lessons, then practice their knowledge with quizzing.

NoRedInk is another popular tool in this category. NoRedInk uses engaging, interactive practice formats—like allowing students to drag and drop parts of a sentence—to reinforce grammar and basic style lessons. One of the authors has had great success using this tool with non-native speakers as well as other law students struggling with basic grammar problems.

You can use these types of programs to teach your students grammar and punctuation fundamentals, and students have a chance to practice what they have learned through built-in exercises. Students do not use these programs in connection with a particular writing assignment; they teach generalized skills the students can then apply to their written work. But it’s easy to assign lessons just as we might assign legal research learning modules from popular vendors.

¹² Tools like Grammarly Pro, Pro Writing Aid, and BriefCatch provide detailed reports that can analyze students’ writing and give them valuable high-level feedback, such as their sentences tending to be too long or convoluted or using passive voice too often.

If you choose to entirely outsource teaching grammar and style, you should use one of these educational programs (or build your own with a simple platform like Google Forms or your school's learning management system). If you choose a vendor's tool, these are paid services. But the good news is many schools have subscriptions already, and if not, they are typically affordable and offer trial periods for you to test them out.

B. Education-Focused Tools That Use the Student's Own Writing to Teach

Besides traditional educational programs, there are editing programs still focused on education but that use students' own writing to teach. These programs hold little risk of students' passively using them because they offer limited editing suggestions, instead flagging potential problems for students and encouraging them to learn how to address them.

Expresso, Hemingway App, and Pro Writing Aid fit into this category. Each provides feedback on a student's own writing while avoiding giving students the "right" answer. For example, with Expresso, a free program, students input text into the application. Students choose what issues they would like the software to flag—e.g., passive voice, long sentences, nominalizations—and the program will then highlight and color code each incidence of the selected error, but it will not suggest fixes. The students are then in the driver's seat to practice using their skills to address the potential problems.

These tools are also valuable because they help students see important grammar and mechanics issues in their own writing, rather than relying merely on examples. They show students trends in their writing like overuse of passive voice, and prompt students to think about how to fix those errors. But they don't *teach* students how to fix their errors, and they don't allow students to see the errors as they write.

C. Tools Geared Towards Making Editing Suggestions but That Still Contain a Significant Educational Component

If you would like your students to receive more robust help from a program that runs live with their word processors, then try something like

Grammarly Pro or BriefCatch. These are editing programs and offer suggestions for addressing grammar and writing style issues, but at the same time, they do two things to encourage students to learn and not just blindly accept suggestions.

First, these sorts of tools typically give students explanations about *why* an editing suggestion is made. So, for example, if BriefCatch flags a redundant phrase, a pop-up pane will not just give students a fix—it will also explain why the phrase is redundant and why readers might get annoyed by it. Likewise, Grammarly Pro will not just point out a verb-tense problem; it will also explain the problem.

Second, these tools typically give students multiple options for addressing an issue, so students can't blindly accept all the suggestions and avoid learning. For example, BriefCatch might offer four or five suggestions for rewriting a redundant phrase or piece of legalese. Students then must use their own judgment and choose which suggestions make the most sense.

In sum, these tools are helpful for students and professors because they highlight a wide range of grammar and mechanics issues in students' writing, provide students with multiple suggestions for how to fix the issues, and give explanations as to why the students should fix the errors. Students are made aware there is an issue and must decide how to fix it. The helpful suggestions remove some angst from the process for students because they are not left in the dark as to what to do.

These robust editing/educational programs are paid applications. But they do offer institutional pricing, as well as long free trial periods. As explained above, you may be able to negotiate a free license for your class, or at the least, a long trial period you could use for several assignments for your students.

D. Tools That Mainly Edit Students' Writing with Little Educational Value

Next, there are tools that merely "fix" grammar and style issues in students' writing. These might be the least helpful from an educational perspective. These tools have the benefit of

“In sum, these tools are helpful for students and professors because they highlight a wide range of grammar and mechanics issues in students' writing, provide students with multiple suggestions for how to fix the issues, and give explanations as to why the students should fix the errors.”

“Better to teach our students how to use these tools effectively and responsibly than to ignore them entirely.”

still flagging potential writing problems for students, but it's much easier for students to just accept each edit and move on without understanding why the program made the fix.

For example, some programs, like the editing function in Microsoft Word and the free version of Grammarly, run live while your students are writing. They spot issues with grammar or style and suggest simple fixes, but they don't offer robust explanations as to why the errors are errors.

WordRake is another popular tool for lawyers that fits in this camp. The tool is effective in cutting out common writing problems like wordy phrases and legalese. But all the editing suggestions are made automatically, and students can just accept them all with little interaction.

The students see the errors with these tools, which is helpful because it creates awareness, and they must decide whether to accept the suggested fixes, which is helpful because it requires judgment and is not an automatic fix. But these tools likely offer the least amount of educational value.

E. Emerging Tools That Go Much Further Than Editing

On the far end of the spectrum are programs like Compose, which actually draft documents and are pretty good at it. These programs offer the most help in that they draft prose, but it may be more help than we want our students to receive in a legal writing course, at least without guidance and a controlled environment.

That said, students should be aware of tools like this for a few reasons. For one, these tools may offer a more cost-effective way for lawyers to represent clients, particularly lawyers who are under enormous time pressures. For another, students should understand the limitations and pitfalls these tools bring. Without context, students may embrace tools like Compose when they graduate without understanding how they work and how to ethically use them.

There may also be compelling educational opportunities in emerging drafting tools like Compose. For example, students can see

tailored examples of legal writing in different contexts. For another, students can work to improve the drafts, using higher-order analytical tools we are training them to deploy.

F. Final Thoughts on Picking the Right Tools to Supplement or Replace Your Grammar and Writing Mechanics Teaching

We have highlighted only a few tools, but there are many more out there. We have listed many of the most popular ones in the Appendix.

Any of these tools can help us fill in the gaps in our students' learning and free up time for other more substantive issues in class. And, because there are so many available tools, you can choose which work best for you and your students—or even mix and match them.

For example, you could supplement an educational program like Core Grammar with a simple tool like the free version of Grammarly so students learn grammar and style rules while seeing how those rules work in their own writing while they write. The tools thus reinforce each other and provide a richer educational experience for the students. Moreover, we believe with all the free tools and versions of tools available, you shouldn't have a problem with access or cost.

III. Conclusion

There are many tools out there, and it may seem overwhelming to dive in. But don't shy away. Start with just one and see how it works. Why not try a free one?

Our students are tech-dependent whether we like it or not. Law practice is tech-dependent whether we like it or not. Better to teach our students how to use these tools effectively and responsibly than to ignore them entirely. And they are meant to free up our work, not add to it.

Let us know which tools you try and how you like them.

Appendix 1

The Major Tools and Some Considerations for Each.

Introduction

Below we explore the most popular tools, beginning with purely educational tools and then moving on to the different categories of editing tools. In the end, we suggest starting with the simple and trying out a course module or group class using a tool. Then as you get more comfortable with the options and activities possible using these tools, progress to more advanced options.

Pure Educational Tools

Core Grammar for Lawyers (<https://coregrammarforlawyers.com>). This is an online, self-directed learning tool to help law students work on their basic grammar skills outside class. We know plenty of professors and schools that use this tool with great success in their programs.

NoRedInk (<https://www.noredink.com>). NoRedInk is excellent for brushing up on grammar and usage. Not only is it a comprehensive resource for grammar lessons, but the developers created neat, intuitive ways to practice. Students select what writing technique they want to hone and practice on sample sentences.

Write.law (<https://write.law>). Write.law uses bite-size animated explainer videos to break down common writing techniques and make it fun for students to learn them. Write.law is now used by a large list of Am Law 100 law firms, courts, agencies, and organizations. Law students can have access to this same writing training, which covers everything from sentence structure basics to more advanced style like transitions and organization. As a disclaimer, one of the authors cofounded Write.law, and he is delighted to offer free access to professors.

Tools That Analyze Students' Writing but Are Focused on Teaching

Expresso (<https://www.expresso-app.org>). This is a phenomenal—and free—tool that gives students unique insight into their writing. They simply paste snippets of their writing into the online platform and select which writing weakness

they want help spotting. Expresso highlights the weaknesses they choose so they can decide how to fix them. For example, students could click on nominalizations and see every nominalization color-coded in their writing. Students can also use Expresso to track their writing improvements over time. We highly recommend checking this tool out. It is easy to build a group or homework assignment focused on analyzing each students' writing tendencies.

Hemingway App (<http://www.hemingwayapp.com>). Hemingway app is a simple tool that helps highlight long sentences, complex phrases, and overused passive voice and other style weaknesses. Color-coded highlights will instantly show students what to work on.

CorrectEnglish (<https://www.correctenglish.com>). This tool is helpful for non-native speakers. It specializes in helping students spot common writing issues for non-native speakers and figure out how to fix them.

EditMinion (<https://prod.uctivity.com/>). This is free, easy to use, and fast. It shows users their most frequently used words, average sentence length, and the longest sentence by words. It also highlights adverbs, weak words, passive phrases, and clichés.

Editing Tools That Offer Direct Writing Suggestions but Still Have Strong Educational Components

BriefCatch (<https://briefcatch.com>). This is the most advanced editing tool built specifically for legal writers. The tool offers editing suggestions that provide students with ideas about writing style and help them spot small issues like citation problems, missing parentheses, italics, and more. BriefCatch excels at catching legalese and wordy constructions like long noun clauses. BriefCatch also flags problematic sentence structures like sentences with misplaced modifiers or other common problems lawyers have. BriefCatch

also catches consistency problems like missing quotes and smart quotes. BriefCatch has a report feature that rates students' writing and allows them to track their progress. It also provides a simple snapshot of their sentence lengths, as well as overused words.

Best of all, BriefCatch uses a side pane and offers students writing options and explanations. It doesn't just edit for them. Students must decide when and how to incorporate any suggestions, so learning is maximized.

One minor downside: BriefCatch is on the spendy end compared to some other tools, so a school-wide license would need to be negotiated or purchased. That said, long trials are free so this tool could be used for short-term exercises.

Pro Writing Aid (<https://prowritingaid.com>). This advanced tool gives students visual insight into writing that other tools cannot. It highlights students' writing to help them learn new techniques, but also offers style edits with a few clicks.

One downside is that it has a bit of a learning curve. Students may be overwhelmed by the user interface's many options. But the investment is worth it. PWA helps shore up all sorts of style techniques—like missing transitions, pronoun problems, clichés, vague wording, sentence-length variation, over-dependence on adverbs, passive voice, and over-complicated sentence constructions. Color-coded analysis of student writing also gives them more insight into their writing mechanics. PWA is a fantastic option, in addition to Brief Catch, due to its extensive writing explanations and editing options.

Grammarly Pro (<https://www.grammarly.com>). Grammarly works a little differently because it makes editing suggestions in a side panel. This allows students to see a more detailed explanation about why the edit may help, empowering them to understand the reasoning behind each suggestion and remain the decision maker about any edits. Grammarly also has features that make for engaging activities like its writing-tone

analyzer, which can help students figure out what tone they are striking in their emails.

Most of the robust style features come with the paid Pro version only. Among other things, paid users get detailed analysis of their writing, grammar, and mechanics, giving them insight into everything from their average sentence length to verb strength and much more.

SmartEdit (<https://www.smart-edit.com/>). This is a downloadable editing tool that works within Word or as a stand-alone version. SmartEdit offers 20 types of checks on your content. This list includes checking for misspellings and misused words, looking for repeated phrases, and highlighting adverbs.

Style Writer (<https://www.editorsoftware.com/stylewriter.html>). Find style improvements across a sizable database of suggestions. They have developed several rating scales, including a BOG index that purports to capture more than simple readability statistics. Style Writer has been around a long time and is trusted by tons of authors, legal and not. This is a great option for a teaching or editing tool.

Editing Tools That Are More Passive and Provide Less Explanation

Microsoft Word. Microsoft Word's style and grammar editor is limited, but it can still aid students in editing their work. The key is to make sure students have enabled all the grammar and style edits. To do that, simply click on "Options" in the File menu, then click on "Proofing," then make sure you've turned on all the grammar checking, including the "Grammar and Refinements" in the drop down.

This is the easiest editing tool to start out with because you and your students already have access to it. It's easy enough to have students run Word's advanced style editor and to structure in-class or out-of-class exercises aimed at deciding whether to accept suggestions and why. But Word's built-in editor is limited. Because of patented and proprietary editing technology used by other tools, Word's grammar and style suggestions are fairly basic.

WordRake (<https://www.wordrake.com/>).

WordRake is designed to cut clutter from students' legal writing. It cuts legalese, redundant phrases, and similarly clunky constructions. It is also one of the easiest tools to use: One click and WordRake is away, scrubbing a document.

WordRake makes all its edits inline, like Word's native track changes. Simply decide which edits to accept and move on. There are no features students need to configure or set.

But that is also a limitation in that students are not given as much insight into why a suggestion is being made. WordRake is a great option for working with students on cutting excess clutter from their writing, but it doesn't offer any explanation or options to students, so there are fewer opportunities for learning.

Grammarly Free (<https://www.grammarly.com>). Grammarly's free tool is great at catching even tricky typos like words spelled correctly but used in the wrong context. The free version will not highlight nearly as many style and mechanics issues as the paid version.

PerfectIt (<https://intelligentediting.com>). This tool is great for checking small issues like consistent abbreviation use. Something unique here is that PerfectIt also allows you to enforce your own style rules, which is not a feature most other tools allow. This means you could theoretically tell the tool which conventions you prefer students follow.

WhiteSmoke (<https://www.whitesmoke.com>). WhiteSmoke is an older tool that can translate languages and offers style edits like several of the other advanced tools out there. WhiteSmoke is not commonly used by legal writers, at least so far as the authors know. And we have not tried it out in the classroom.

Slick Write (<https://www.slickwrite.com/>). This simple tool edits content for the usual suspects: adverbs, passive voice, and awkward phrasing. Slick Write is also great for finding word replacements with its built-in thesaurus.

Ginger (<https://www.gingersoftware.com>). This tool provides excellent grammar suggestions, and even offers a "personal trainer" to help students work on their specific writing problems. Ginger has a suite of tools, including not only a grammar editor, but also a personal writing trainer tool and a tool to help students come up with ways for rewriting a sentence. But Ginger is a paid tool. School-wide or class-wide discounts and perhaps even free access may be available.

After the Deadline (<https://www.afterthedeadline.com>). This is an open-source grammar checker that works surprisingly well. The tool gives very limited feedback on spelling errors and provides grammar and style suggestions. It's free but offers fewer suggestions than many other tools.

Emerging Tools That Cover More Than Basic Writing and Style

Compose (<https://compose.law>). Compose is an automation tool that integrates legal research, writing, and high-level analysis all in one tool. It creates a helpful argument outline, fills in background discussion, and makes it easy to incorporate research.

Compose's decisions are all user-driven, but the tool automatically writes the actual prose for students, at least as a first draft. After selecting from available arguments for the type of document you are writing, as well as which cases you'd like to rely on, Compose prepares a first draft document. This raises some concerns about whether this tool does too much for students or could misguide them. So, we recommend trying this tool out before using it with students.

Currently, the company that owns Compose, Casetext, does not offer free licenses to schools. But we expect that free licenses will soon be available, like Casetext's free school licenses for its research tool.

Appendix 2

Select Screenshots of Tools

Figure 1: Word Style Editor

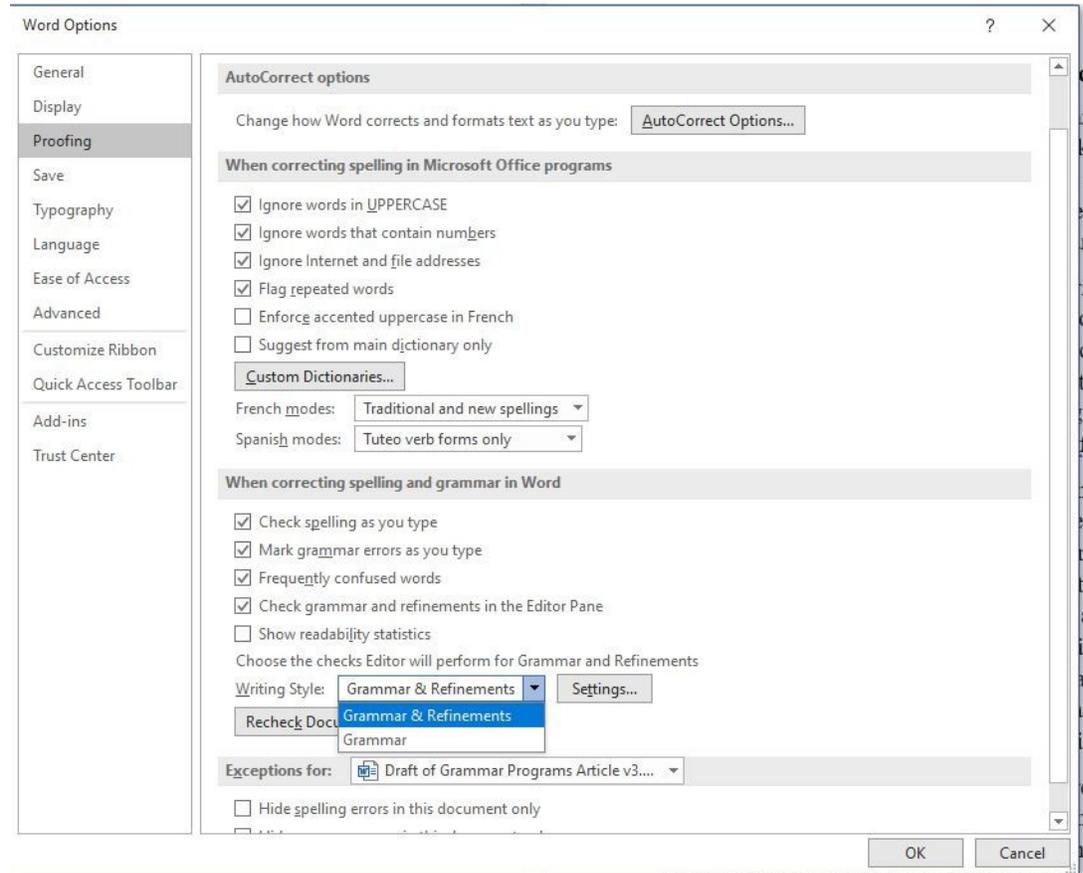


Figure 2: Grammarly

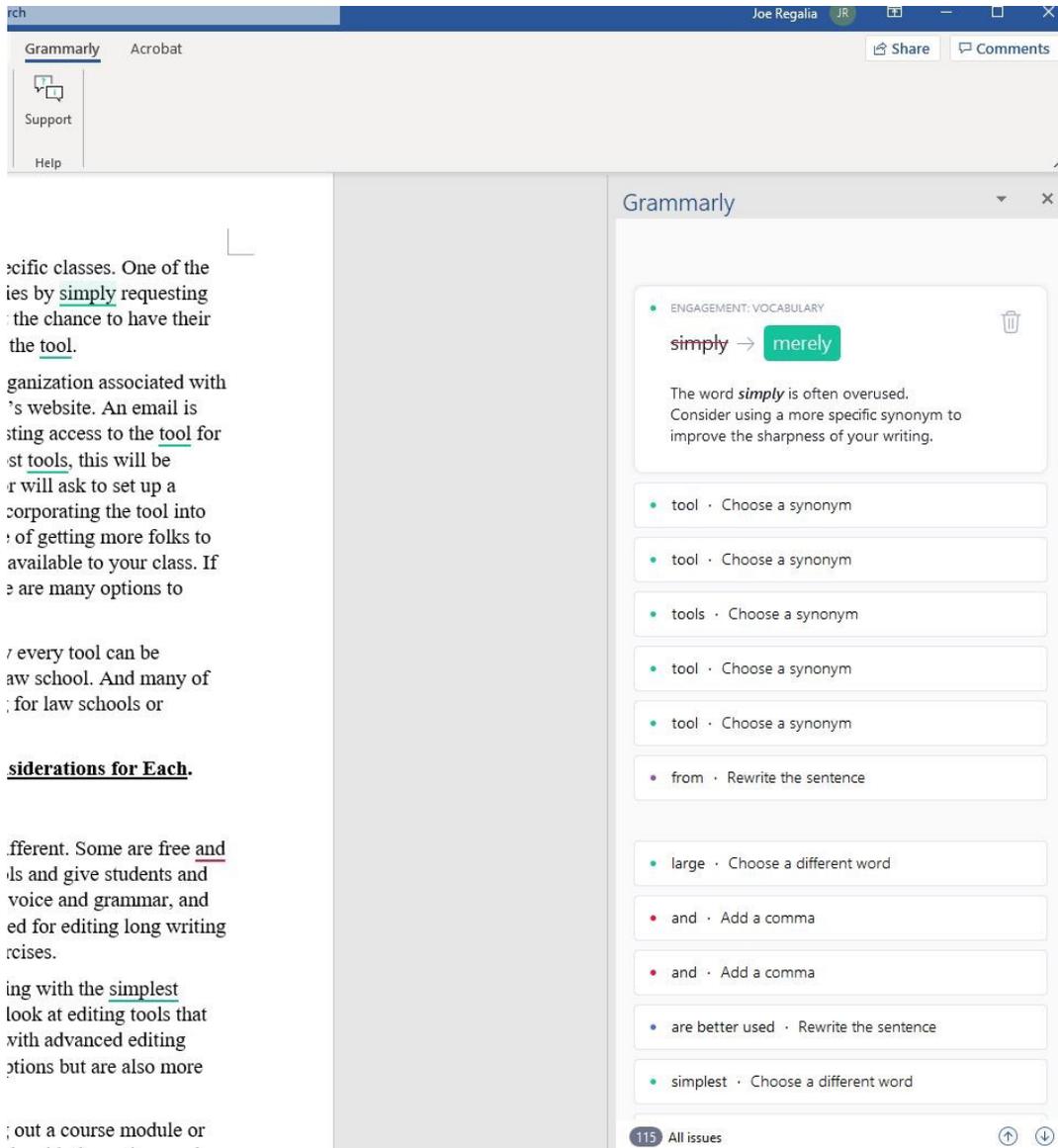


Figure 3: Hemingway App

The screenshot shows the Hemingway App interface. At the top, there is a toolbar with options: Bold, Italic, H1, H2, H3, Quote, Bullets, Numbers, and Link. Below the toolbar, the main text area contains the following content:

Hemingway App makes your writing bold and clear.

The app highlights lengthy, complex sentences and common errors; if you see a yellow sentence, shorten or split it. If you see a red highlight, your sentence is so dense and complicated that your readers will get lost trying to follow its meandering, splitting logic — try editing this sentence to remove the red.

You can **utilize** a shorter word in place of a purple one. Mouse over them for hints.

Adverbs and weakening phrases are **helpfully** shown in blue. Get rid of them and pick words with force, **perhaps**.

Phrases in green have **been marked** to show passive voice.

You can **format** your *text* with the toolbar.

Paste in something you're working on and edit away. Or, click the Write button and compose something new.

On the right side, there is a sidebar with the following information:

Hemingway Editor

Readability
Grade 6
Good

Words: 133
Show More ▼

- 2 adverbs, meeting the goal of 2 or fewer.
- 1 use of passive voice, meeting the goal of 2 or fewer.
- 1 phrase has a simpler alternative.
- 1 of 11 sentences is hard to read.
- 1 of 11 sentences is very hard to read.

Figure 4: Write.law

The screenshot shows the Write.law interface. At the top, there is a blue header with the text "write.law". Below the header, there is a navigation menu on the left side with the following items:

- Legal Writing Walkthroughs
- 0% complete
- Search by lesson title
- Introduction 0/1
- General Legal Writing Walkthrough 0/2
- Legal Writing Walkthrough INTERACTIVE (selected)
- Legal Writing Walkthrough Recap QUIZ - 6 QUESTIONS
- Email Walkthrough 0/2
- Legal Memo Walkthrough 0/2
- Motion Walkthrough 0/2
- Appellate Brief Walkthrough 0/2

The main content area is titled "Legal Writing Walkthrough" and contains a list of 9 items:

1. Caption
2. Contents
3. Authorities
4. Introduction
5. The Story
6. Argument
7. Other Trial parts
8. Other Appellate Parts
9. Memos, Reports, and More

On the right side, there is a sample legal document titled "IN THE UNITED STATES DISTRICT COURT". The document contains the following text:

LYNN PARK, on behalf of herself and all others similarly situated,)
Plaintiff,)
v.) Case no. 1:18-cv-02116
BARRIER DIAGNOSIS INC.,)
Defendant.)

Below the document, there is a section titled "DEFENDANT BARRIER DIAGNOSIS INCORPORATED'S MOTION TO DISMISS AMENDED COMPLAINT AND MEMORANDUM IN SUPPORT".

At the bottom right, there is a "NEXT LESSON" button.

Figure 5: Expresso

Expresso | How to use | Metrics | Tutorial | About

granted the annuity **application**, reasoning that once Mr. Salinas **reached** age 55, he **was no** longer able to adjust his work and **find employment** that would **not** have required him to lift over 20 pounds. AR-300. The Board awarded him a monthly **disability** annuity of \$1,624.35 from October 1, 2012, through September 30, 2013, and a monthly **disability** annuity of \$1,647.33 from October 1, 2013 forward. AR-310. On September 17, 2014, Mr. Salinas timely requested **reconsideration** of the Board's **decision**, arguing that the Board erred in **setting** October 1, 2012, as the first day on which he would be entitled to **disability** benefits. He contended that the proper date **was** instead his 55th birthday, October 9, 2010, because that **was** the point at which the Board determined he could **no** longer **work** any job. AR323. The **Board's Reconsideration Section** denied that **reconsideration** request, AR-324 to 325, and Mr. Salinas appealed to the Bureau for review of the start date of the

Analysis complete

Clean text formatting

Metrics for editing

synonyms	🟢 hover mouse over words in text to see synonyms
weak verbs	25.8%
filler words	0.5%
nominalizations	13.3%
entity substitutions	13.3%
negations per sentence	0.38
clustered nouns	4.5%
long noun phrases	1.9%
passive voice per sentence	0.13
modals	1.4%
rare words	26.9%
extra long	25%

Figure 6: BriefCatch

Second, professors can often negotiate free access for specific classes. One of the authors has had regular success with editing app companies by simply requesting access for in-class use. The truth is most vendors jump at the chance to have their tool used in a class setting because it exposes students to the tool.

This strategy is straightforward. Contact the vendor or organization associated with a tool. This information is readily available on every tool's website. An email is usually the best place to start. Explain that you are requesting access to the tool for a law school class as part of the class curriculum. For most tools, this will be enough to get complimentary access. Sometimes a vendor will ask to set up a phone call, and this is a chance to share your goals for incorporating the tool into an activity. Most vendors understand the incredible value of getting more folks to use their tool and will **be delighted** to help **make the tool available to your** class. If not, the good news is that, as we will discuss below, there are many options to choose from.

Third, even if you **don't** manage to get free access, nearly every tool can **be purchased** on an enterprise basis for all students at your law school. And many of these vendors will negotiate extremely affordable pricing for law schools or individual professors.

Editing Tool Survey: The Major Tools and Some Considerations for Each.

Introduction

The universe of editing tools is large. And each is a bit different. Some are free and some are on the spendy side. Some are great teaching tools and give students and professors insight into writing fundamentals like passive voice and grammar, and helpful writing tools like transitions. Some are better suited for editing long writing projects and some are better used for one-off writing exercises.

Below we explore the most popular editing tools, beginning with the simplest editing tools focused on pure grammar editing. Then we look at editing tools **that are** more focused on teaching writing. And we finish up with advanced editing tools that offer the most nuanced and extensive editing options but are also more

BriefCatch

Edits | Scores | Report

Editing Points: 51 / 100

Edit: 26 of 52

Ignore All | Undo | Ignore | Change

PUNCHINESS

make the tool available to your → share the tool with your

share the tool to your

Favor strong verbs.

Figure 7: Word Rake

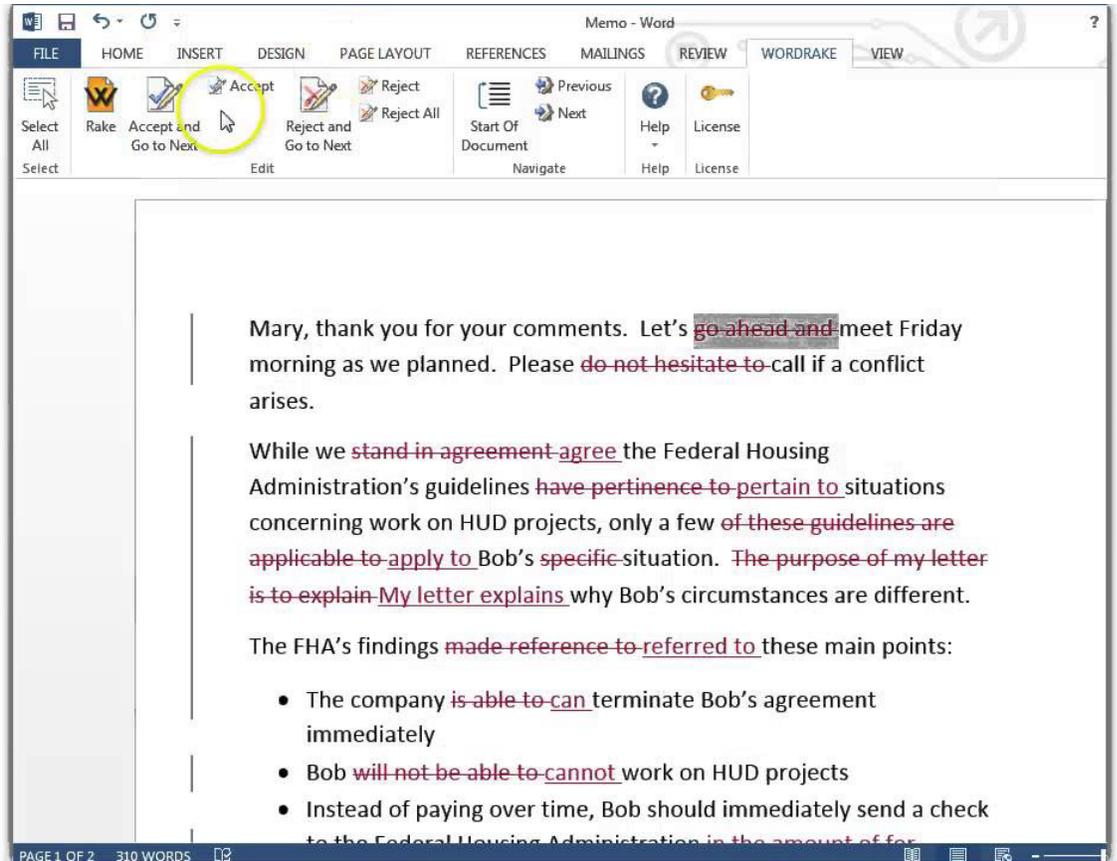
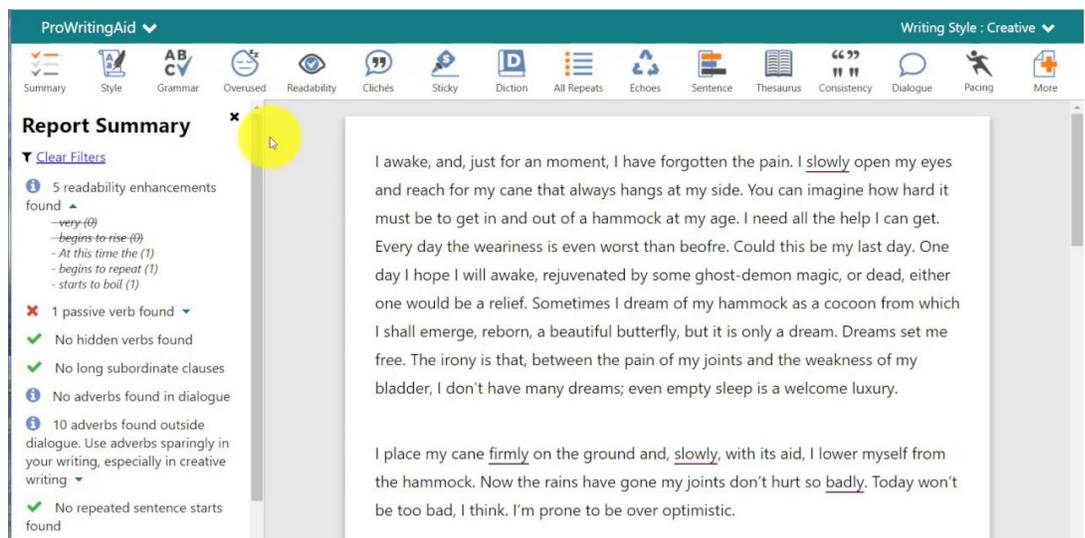


Figure 8: Pro Writing Aid



Cite as: Katherine Brem, *Grading Without Grades*, 28 PERSPS. 65 (2020).

Grading Without Grades

By Katherine Brem

Katherine Brem is a Clinical Associate Professor at the University of Houston Law Center.

Is it just me? Or did you too notice a difference in the quality of your comments on students' written work in the COVID-19-stricken spring 2020 semester? Eleven years into teaching I wouldn't say I am *happy* with how I comment on student papers or exams. There will always be room for improvement. But I do feel as though I've struck a balance between usefulness to the student and convenience for me. Now, having entered a world of grading without grades,¹ I'm rethinking everything. Rather than thinking of grading as nothing more than a means to rank our students, we can approach grading as one last opportunity to teach them.

I've found freedom in commenting on the overall quality of a student's written work, rather than the student's work specific to an assignment. No more do I feel compelled to justify my ranking of a student's work product vis-à-vis that of her classmates. Rather, I find myself thinking about which skills the student has mastered and which require additional honing. And I wonder how I can capture this broad-based thinking now that we have returned to a world of grading *with* grades. This Article examines each of these questions in turn and, along the way, reviews prior scholarship on best practices to follow when commenting on student work product.

I. Teaching through Grading

We all strive for constructive commentary in grading. But in spring 2020, I realized how much more constructive my comments can be. I'm not proud. I acknowledge I frequently grade on a deadline. And when I do grade, my comments

are short, pointed, and occasionally even brutal. They focus on the student's ability to master the tasks assigned in the specific assignment. Did the student adequately analyze the law? Did the student communicate that analysis in a meaningful way to the intended audience? And, because I teach legal writing, did the student incorporate good grammar, proper word choice, active sentence structure, and essential research in the final work product? Each of these is a valid concern. Those who have considered best commenting practices agree. Good commentary should "show students precisely where their writing is unclear, pose questions designed to illuminate thinking problems underlying the unclear communication, and provide models for expressing analysis more clearly."² Even at the worst of times, my commentary complied.

But good commentary should also engage the student in a conversation about the strengths and weaknesses of her written work product.³ And here, I realize I've been falling short.

Although subconscious on my part, I realize now how much of my prior commentary has been focused on justifying my ranking of a student's work product as either better or worse than that of her colleagues. Of course, I never overtly compare work product. But the commentary is more negative than necessary, and it is retrospective—focused on the specifics of the assignment—rather than providing commentary on skills the student has mastered, or has yet to master, so that the student can realize progress achieved and implement corrective

“[G]ood commentary should also engage the student in a conversation about the strengths and weaknesses of her written work product.”

¹ Perhaps your institution called it pass/fail grading, or as my university did, satisfactory/no credit awarded grading. Whatever nomenclature you used in the second semester of the 2019–2020 academic year, what I mean is grading a law student's written work without awarding a numerical or letter grade.

² Jane Kent Gionfriddo, *The "Reasonable Zone of Right Answers": Analytical Feedback on Student Writing*, 40 GONZ. L. REV. 427, 438 (2005) (citing Carol M. Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561, 568 (1997)).

³ Anne Enquist, *Critiquing Law Students' Writing: What the Students Say Is Effective*, 2 LEGAL WRITING 145, 185 (1996).

“I found [grading without grades] deeply satisfying and can only attribute my pleasure in the task to a sense that I was, in fact, teaching my students, not grading them.”

measures in future assignments. I have been “grading” my students, not “teaching” them.

I gained this awareness as a result of what you might call serendipity. When the spring 2020 semester was interrupted by COVID-19, I was teaching two groups of students, one in an upper-level litigation-related drafting class and the other in a first-year legal writing class. Both groups were working on dispositive motions, but with staggered deadlines. One group turned in a fully briefed dispositive motion before our faculty voted to move to “satisfactory/NCR” grading. I marked these motions up right away but held off on returning the papers. Shortly after our faculty vote to change the grading policy, I marked up the second set of dispositive motions. The experience differed substantially from any other grading I had ever done. I found it deeply satisfying and can only attribute my pleasure in the task to a sense that I was, in fact, teaching my students, not grading them. I felt liberated as I was grading this second set of motions. So I regraded the first set of motions, liberally changing my commentary from my first round of grading:

- “Good IRAC” next to a well-structured argument became “Excellent mastery of IRAC. Your next task is to focus on sentence-level editing. Here are three ways you can improve this writing technique”
- And instead of “Poor case choice. Why cite an intermediate court of appeals case for this substantive rule when a case from the Supreme Court is available?” I reframed this harsh commentary to achieve a positive, teachable moment: “I’d like to see you work on case selection technique. Remember our discussion of precedential value the first week of school? Those principles always apply when deciding which cases best support your client’s position. When multiple cases exist to support a legal theory, and intermediate court of appeals cases are no more factually similar to your client’s facts than a high court case, prefer the high court case.”

My revised comments all followed this same pattern. Rather than simply telling a student

why I deducted points, I framed my criticism in light of the assignment’s learning objectives and suggested steps the student should take to remedy any defects in the future. My comments didn’t differ significantly in substance, but the tone reflected my interest in promoting “lasting learning,” rather than simply helping the student to fix a problem in a given assignment.⁴ And, for me, that is a silver lining to these COVID-stricken times.

It turns out that my revised commentary matches well with expert recommendations for best practices in commenting on student work.⁵ In a dated, yet still relevant study, Professor Anne Enquist of Seattle University School of Law asked five legal writing professors to comment on a total of eight student-written assignments from anonymous second-year students, and then had the students evaluate the comments for effectiveness.⁶ The sample size is small, but the results show remarkable consistency: Students need commentary that considers both audience and purpose,⁷ and they prefer commentary that is specific,⁸ but also encouraging, professional, and empathetic.⁹

It is this difference in tone that I see in my own comments these days. Rather than using my comments to the students, at least in part, as a means of justifying the grade I have awarded, my sole aim now is to ensure that students find my commentary useful. In the spring 2020 world of grading without grades, I learned to give students a takeaway, not just an explanation, and the tone of my current commentary reflects that. It is naturally more positive and forward-looking. This has been an organic change, not an intentional

⁴ *Id.* at 191.

⁵ See, e.g., Aida M. Alaka, *Phenomenology of Error in Legal Writing*, 28 QUINNIPAC L. REV. 1, 61–62 (2009); Enquist, *supra* note 3, at 188–89.

⁶ Enquist, *supra* note 3, at 146.

⁷ *Id.* at 191.

⁸ *Id.* at 160.

⁹ *Id.* at 166–68. Some fifteen years later in a separate study, Professor Aida Alaka of Washburn University School of Law conducted interviews of ten former students, seeking to understand why students continue to repeat errors that professors have pointed out to them. The focus of the two studies differed, but the results did not. See Alaka, *supra* note 5, at 6.

one, but the students will benefit no matter the cause. As the students in Professor Enquist’s study explain, this sort of positive, forward-looking commentary helps them to identify strengths to build upon¹⁰—and prioritizes as-yet unmastered skills for them to develop¹¹—the next time they write. For me, it just makes grading more fun.

II. Revisiting Grading in a World with Grades

This has led me to question how I will continue these practices now that we have returned to the real world of grading *with* grades. The demands of the job haven’t changed. As we are painfully aware, the curve demands we rank our students’ work product, and—at least in the legal writing

realm—we must offer commentary not just on writing skills, but also on the quality of a student’s research and analysis skills. No matter the discipline, to offer this quantity of useful commentary in a meaningful fashion is a lot to ask of faculty who are already weighed down by large student loads and excessive grading responsibilities. As a legal writing professor, my plan is to incorporate multiple drafts of the same assignment in my syllabus and to focus additional attention on providing students with a thoughtful, organized, “big-picture” end-comment to summarize the student’s strengths, identify particular skills the student should develop in the next assignment, and offer specific examples of how the student might develop these skills.¹²

First Draft	Margin Notes	Discuss the student’s legal analysis and organization. ¹³
	End Comment	Briefly summarize margin notes and identify no more than three writing skills for the student to prioritize when reworking the final draft.
Final Draft	Margin Notes	Critique basic writing skills, identifying when students have mastered a skill, but also offering an example of how to improve a writing technique the student has not yet mastered.
	End Comment	Briefly summarize margin notes and suggest no more than three writing skills for the student to consider when drafting the next assignment; comment on the student’s progress in legal analysis and organization, identifying the student’s strengths and weaknesses.

No matter the discipline, these same principles will apply. Any professor can promote lasting learning by identifying strengths to build upon and skills to develop. Perhaps a student’s analysis is dead-on, but the student’s ability to communicate that analysis lacks depth—or vice versa. In describing these strengths and weaknesses, faculty can empower the student to improve the next time that student sits for an exam. By mindfully offering such forward-looking commentary, I hope to recreate the freedom and delight I have found in grading without grades.

III. Lessons Learned in This “Satisfactory” World

In adversity, we find strength. COVID-19 has wreaked havoc on higher education and our universities may never be the same. Students’ needs, on the contrary, remain constant. If no other good

can come of the spring 2020 “semester-interrupted,” at least it can inspire each of us to closely examine the benefits we can and should offer our students through grading. Rather than thinking of grading as nothing more than a means to rank our students, we can approach grading as one last opportunity to teach them. And the delight we find in influencing a student’s personal growth is, after all, why many of us entered the academy in the first place. With this realization I have found pleasure in grading. And that might well be as extraordinary as the COVID-19 crisis that inspired me.

¹² In researching this Article, I was surprised to learn Professor Alaka describes similar changes in her own curriculum as a result of her study. Alaka, *supra* note 5, at 63.

¹³ Did the student identify proper authorities and adequately understand and apply those authorities to the client’s facts? Is the document organized in such a fashion to maximize its usefulness to the intended audience, both from a large-scale and small-scale perspective? And by “large-scale organization,” I mean the manner in which the student organized the framework of analysis. Is there a proper road map? Did the student address preliminary issues first? In contrast, by “small-scale organization,” I mean whether the student organized analysis of each legal issue in the expected IRAC format.

¹⁰ Enquist, *supra* note 3, at 166–68.

¹¹ *Id.* at 159–60.

“Rather than thinking of grading as nothing more than a means to rank our students, we can approach grading as one last opportunity to teach them. And the delight we find in influencing a student’s personal growth is, after all, why many of us entered the academy in the first place.”

Cite as: John J. O'Donnell, *Teaching Legal Research Using Fairy Tales*, 28 PERSPS. 68 (2020).

Teaching Legal Research Using Fairy Tales

By John J. O'Donnell

John J. O'Donnell is the Reference and Faculty Services Librarian at St. Thomas University School of Law.

Once upon a time in a legal research class far, far away, there was a princess who did not have access to Westlaw or Lexis . . .

Alright maybe there was not a fairy tale like that, but . . .

I. Introduction

In my weekly attempts to make my legal research class more interesting and engage students with the materials, I have been employing “fairy tales.” I have learned that fairy tales can function in a variety of ways. They not only serve to keep the students’ interest during a three-hour night class, but they can easily be adapted to various parts of the class as examples, group exercises, weekly assignments, or as fact patterns for mid-terms or final exams. If the students are not interested and engaged in the materials, then they are not going to learn as much. I really enjoy legal research and find it interesting, and I want to share my enthusiasm with the students.

II. Legally Correct Fairy Tales

I cannot take credit for the use of fairy tales as they relate to legal scenarios. An excellent book, *Legally Correct Fairy Tales*, by David Fisher, is a great starting point.¹ My goal is to describe in detail how I use fairy tales in a legal research class to engage students in the materials. Any of the fairy tale scenarios can be changed into a fact pattern in which the students can be asked to apply a given legal research concept to a fact pattern. I tend to use the fact patterns

toward the end of my class when the students have, hopefully, been able to apply what they have been learning throughout the term.

A. Researching Federal Statutes—Snow White

One of the fairy tales that I have used the most successfully is Snow White. First, picture an image on the screen of Snow White and the seven dwarfs. The dwarfs are equipped with their pickaxes and look like they are headed off to work. Snow White is in the background by a house waving goodbye to the dwarfs. I then have the students guess the legal issues involved with the scenario. In the fact pattern from *Legally Correct Fairy Tales*, Snow White runs a diamond mining company, “Snow White Inc.,” and her employees are the seven dwarfs. Some students guess she might have violated child labor laws, some guess slavery, adultery, and other off-color accusations. I then ask the students, “Does anyone notice any similarities among the type of employees Snow White has hired?” I give them some time and eventually most classes notice that Snow White has hired not one, not two, but seven individuals—all of whom are men, all of whom are white, and all of whom are short (each is exactly 48 inches). Therefore, the Kingdom is charging Snow White with employment discrimination. We actually have three separate issues for the students to research: first, discrimination based on gender, second, discrimination based on race, and third, discrimination based on height. This gives three legal issues and, adding the prosecution or defense of each issue, we have six separate areas for the students to research.

I then break up the students into six groups. Each group is given an index card with a specific issue to research. For example, group one’s card might say, “Prosecution team: Can Snow White hire only men to work in her diamond mine?” Group two’s card would say, “Defense team: Are there any exceptions that make it permissible to hire only one gender in the workplace?” Next, students would research the fact pattern using Westlaw or Lexis. I would then

¹ Davis Fisher, *LEGALLY CORRECT FAIRY TALES* (1996). For other resources discussing fairy tales and the law, see Katherine J. Roberts, *Once Upon the Bench: Rule Under the Fairy Tale* (<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1247&context=yjllh>) and *FABLES OF THE LAW: FAIRY TALES IN A LEGAL CONTEXT* (Daniela Carpi & Marett Leiboff eds., 2016).

“[Fairy tales] not only serve to keep the students’ interest during a three-hour night class, but they can easily be adapted to various parts of the class as examples, group exercises, weekly assignments, or as fact patterns for mid terms or final exams.”

go around to each group, making sure that they are on the “right” track and giving them suggestions, steering them toward primary or secondary sources. Each of the scenarios is designed to emphasize a certain type of legal research bibliographic source.

For the first two legal issues, discrimination based on race and discrimination based on gender, both have federal statutes on point.² The defense teams are encouraged to research any exceptions that might exist in either of the first two issues. For example, even though the United States Code Title VII states that one cannot discriminate based on gender, there is a “bona fide occupation qualification” defense. The students may discover that the airline industry tried to use this defense to explain why they could hire only female flight attendants. A current-day exception under the “bona fide occupation qualification” might be to argue that a women’s prison should have only female prison guards.

For the third legal issue of height discrimination, there are no federal statutes and very few states that have laws on the point. This is a great opportunity to shift the focus to secondary sources. There is an excellent sixty-page law review focused entirely on height discrimination.³ Ideally, the students would find this law review and recognize the usefulness of the article. The article comprehensively describes the current status of height discrimination, discusses the few states that have laws, and provides 323 footnotes for additional research. The students will see in application the concept that there are certain sources in legal research in which someone else has already done much of the research on a given topic, and to take advantage of this research. A discussion of other similar sources that provide comprehensive coverage such as *American Law Reports* could follow.

In addition, during the class on citators, I try to emphasize that one can Shepardize/KeyCite materials other than primary sources.

Since the law review article was a bit older, this was an opportunity to see if any of the students remembered that law reviews can be Shepardized/Key Cited in order to find any newer law reviews on the same topic.

B. Teaching Statutory Interpretation/Annotated Codes—Goldilocks Fact Pattern

When using fairy tales, I often start with the lesson that I want the students to learn and then “reverse engineer” the appropriate fairy tale to achieve the goal. My aim is to find a good fit for a given fairy tale to a given legal research topic.

For example, if I want the students to learn the importance of an annotated code, I often have them first look at just the state code at a given state’s website (non-annotated). I then use a fairy tale in which there is a statute where they have to look at the case annotations to see how the statute has been interpreted by a given jurisdiction.

Goldilocks and the Three Bears is a good fit for this scenario since Goldilocks can be accused of a few different crimes. In my altered scenario, Goldilocks goes hiking with her hiking club up at Big Bear Lake in California. She gets separated from her group. It gets late, she comes across a cabin, enters the cabin, helps herself to some food, and decides to spend the night there. I first have the students brainstorm as to the possible crimes Goldilocks could have committed.

Possible crimes include the following: breaking and entering, trespassing, and burglary. For issues related to burglary, California requires that one have intent to commit a felony upon entering a property for it to be a burglary. The students must consider Goldilocks’s intent, asking, “Did she intend to commit a crime when she first came across the Bear family cabin?” Often, I have the students explore other facets of the burglary statute. In my altered fact pattern, Goldilocks takes some small items from the Bear family cabin when she leaves in the morning. Another aspect for the students to explore is that burglary, in certain jurisdictions, can be committed only at night. Students learn that they often must find additional information

“When using fairy tales, I often start with the lesson that I want the students to learn and then ‘reverse engineer’ the appropriate fairy tale to achieve the goal.”

² 42 U.S.C. § 2000e (2018).

³ See, e.g., Isaac B. Rosenberg, *Height Discrimination in Employment*, 3 UTAH L. REV. 907 (2009).

“It is my hope that students will see, in a practical setting, that the statutes are notorious for containing vague words and the importance of statutory interpretation.”

and must ask additional questions in order to have all of the information to properly research a given situation. For example, in this case, they need to know at what time Goldilocks entered the Bear family cabin, and what the definition of “night” is in the statute or the case law.

The breaking and entering statute is another useful example in which the students could learn about statutory interpretation and the importance of the annotated codes. The students must read the case annotations in order to see how “breaking” is defined in the given state’s statutes. In California, it is possible that just going over the space (called the plane) between a screen door and the main door of a residence counts as a “breaking” even if the person never opens the main door of a residence. It is my hope that students will see, in a practical setting, that the statutes are notorious for containing vague words and the importance of statutory interpretation.⁴

An additional lesson is that virtually no states have an annotated code on their state websites. This can lead to further discussion and lessons on the best use of the Internet versus Westlaw and Lexis and ethical considerations of using or not using each service.

C. Researching Federal/State Jurisdiction/ Administrative Regulations

One can also tailor any of the fairy tale scenarios to either one’s own state’s jurisdiction or federal jurisdiction. For example, when I want the students to research administrative regulations I ask, “What if the cabin Goldilocks broke into was a vacation cabin that was located on federal land?” and “Which agencies may manage federal land?” This leads to a discussion of the possible federal agencies involved.⁵ Or, “Where would one find all of a given federal agency’s regulations?” This question leads the class to then apply their

previously learned knowledge of the Code of Federal Regulations and the Federal Register.

D. Additional Research Fact Pattern: Statutory Interpretation—Hansel and Gretel

Another fact pattern that lends itself well to statutes and statutory interpretation is Hansel and Gretel. In the *Legal Correct Fairy Tales* version, Hansel and Gretel have been using psychedelic drugs in the woods. The two become disoriented and claim to come across a gingerbread cabin with a candy-covered roof. In their hallucinogenic-influenced and slightly paranoid state, Hansel and Gretel end up killing a sweet old grandmother in the cabin. Hansel and Gretel claim that the grandmother was in fact a cannibalistic evil witch. There are various defenses and issues that Hansel and Gretel may explore such as self-defense, mens rea, and the insanity defense.

E. Teaching Secondary Sources— Sleeping Beauty

If I want the students to understand the importance of choosing the best secondary source for the situation, one fairy tale I often start with is Sleeping Beauty. In *Legally Correct Fairy Tales*, the King is hesitant to allow a potentially heroic attempt at reviving Sleeping Beauty. The hero attempts to use an experimental treatment known as “mouth-to-mouth” resuscitation.

Ideally, the students would have already learned that law reviews are often a great place to look for a discussion of issues in which the law has not yet caught up with the advances in science and technology. Students who are new to the law often assume that they should be able to find a case on any situation. One lesson they could learn is that there is very little case law for a given legal situation, especially in areas related to science and technology. However, certain sources, such as law reviews, lend themselves well to discussions of how future laws might or should apply to quickly changing areas such as experimental medical treatments.

F. Research Fact Pattern for Complex Litigation—Big Bad Wolf

If I would like the students to research a more complex issue, for a final exam perhaps, *Legally Correct Fairy Tales* has some more complex causes

⁴ Another fact pattern that can be used to explore this concept is the stereotypical cartoon image of a freshly baked pie sitting on a windowsill.

⁵ A given parcel of federal land could be managed by the Bureau of Land Management, the National Forest Service, the National Parks Service, or the Fish and Wildlife Service.

of action as well. One example I have used for a final exam is the Three Little Pigs. In this fairy tale, the Big Bad Wolf is charged under a RICO claim for the ongoing racketeering, extortion, and general terrorizing of the three little pigs. RICO is a good cause of action since most first-year law students or paralegal students are not going to have any prior knowledge of this statute. However, RICO is a bit complicated because it involves both criminal and civil causes of action.

Another more complex area for students to research is the products liability case that Jack and Jill bring against the Imperial Bucket Corporation. Jack and Jill claim that their untimely tumbling down a steep hill was caused by the faulty design and manufacture of the water bucket. Other related issues that the students could research are lack of instructions on how to use the bucket or lack of warning labels on the obviously dangerous product. As you can see, there are a variety of issues for the students to research.

G. Additional Research Fact Pattern for Complex Litigation: Little Red Riding Hood

I have also used a long-involved scenario of Little Red Riding Hood who is bringing a copyright infringement case against a film company that is using her likeness and name in a new film called, “The Adventures of Little Red Riding Hood.” In the *Legally Correct Fairy Tales* version, Little Red Riding Hood is a very successful businesswoman who makes a wide range of “Little Red Riding Hood” products. The legal issues that I have had students research in the past have included the following: copyright infringement, trademark, right to publicity, and invasion of privacy. As with all of the fairy tales, I often slightly alter the facts in order to emphasize a given cause of action.

H. Research Fact Pattern: Cases/Common Law—Humpty Dumpty

If I discover that a legal issue is just too complex for the students, I can always just change the questions to ask what their initial findings were on the lawsuit and what sources they used to come up with those findings. For a less complicated legal fact pattern, I have used Humpty Dumpty for students

to research the issues of negligence, assumption of risk, and medical malpractice. In *Legally Correct Fairy Tales*, Humpty Dumpty claims that all the King’s horses and all the King’s men did not correctly put him back together again.

I. Researching Secondary Sources—The Old Lady Living in the Shoe

In my class, I emphasize the importance of understanding the differences among all of the various secondary sources. In a mid-term or a final, I often have students explain why they did or did not choose a given secondary source in order to research a given fact pattern. This helps me figure out first, which students learned the differences among the various secondary sources and second, which students are able to choose a secondary source that fits the needs of a particular research fact pattern. In other words, was the student able to evaluate the secondary sources and choose one that would help them get the information they needed in the most efficient way?

Again, my goal is to engage the students with the fact patterns in order to encourage them to think what the best sources might be, given a certain type of fact pattern. For example, in *Legally Correct Fairy Tales*, the Old Lady Living in a Shoe dies and does not leave a will. You could ask the class what is the best way to start their research. I begin by telling students, “Let’s say that you do not know anything about wills and trusts.” Then I ask them, “In this case, where might be a good place to begin your research?” This leads to a discussion of legal encyclopedias and other good sources to use when one knows little or nothing of a given topic.

Then the students in a class could actually start researching the scenario using Westlaw or Lexis. Traditionally, going back a few years, we would use the print statutes and cases for the first two or three weeks of the course and then use the online research databases for the rest of the course.

“[M]y goal is to engage the students with the fact patterns in order to encourage them to think what the best sources might be, given a certain type of fact pattern.”

III. The Flexibility of Fairy Tales as Fact Patterns

Fairy tales can be adapted to just about any aspect of a legal research class. As I stated earlier, they can be used as brief examples, in-class group activities, or fact patterns for mid-terms or finals.

It does take a fair amount of time to match the fairy tale to a given legal research concept. However, once you have worked out this part, the examples may be used repeatedly, as examples or group projects. In other words, even if you have already used a given fairy tale as a final exam you can still use it the next term as a group project, or as a practice for the new final exam.

Traditionally, I have taught my legal research class in a more traditional bibliographic manner, at least for the first few weeks. The students have to know and understand the differences between primary and secondary sources, codes and annotated codes, and know the wide-ranging purposes of the varieties of secondary sources. Against the current testing trends, I continue to give closed-book knowledge-based mid-terms where the students have to memorize

certain legal research points and concepts.

Toward the end of the course, I introduce the application of their knowledge to fact patterns.

IV. Researching Happily Ever After

My goal in writing this Article is to suggest a fun way to help newer instructors of legal research and for those who might have limited experience as junior attorneys. I have found that one of the most challenging parts of teaching is coming up with examples, group exercises, and a brand-new mid-term and final exam every single term. I have often used the fact patterns either straight from *Legally Correct Fairy Tales* or I have adapted them to the particular lessons of the class that term. Even if I have to adapt the facts in the fairy tales, it takes much less time than coming up with an original fact pattern from scratch. Finally, it is my hope that by exposing new legal researchers to interesting fact patterns, it increases the likelihood that they will be actively engaged while effectively learning the legal research concepts. In this way, it is also my hope that legal research will not be seen as a necessary evil, but rather something that students will enjoy in their careers, *happily ever after*.

“[I]t is my hope that by exposing new legal researchers to interesting fact patterns, it increases the likelihood that they will be actively engaged while effectively learning the legal research concepts.”

Appendix 1

Quick Reference Chart

Research Topic	Fairy Tale Fact Pattern
Federal Statutes	Snow White and the Seven Dwarfs
Annotated Codes	Goldilocks, Hansel and Gretel
Complex Research	Big Bad Wolf, Little Red Riding Hood, Jack and Jill
Federal Jurisdiction	Goldilocks
Administrative regulations	Goldilocks
Secondary Sources	Old Woman Who Lives in a Shoe, Sleeping Beauty
Simple Fact	Humpty Dumpty

Cite as: Annalee Hickman, *How to Teach Algorithms to Legal Research Students*, 28 PERSP. 73 (2020).

How to Teach Algorithms to Legal Research Students

By Annalee Hickman

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I. Introduction

Recently, the role of algorithms in legal research has become a hot topic among legal research professors—namely how various legal research databases return different results from searching because of their unique algorithms. Because of how algorithms affect (and limit) electronic legal research, legal research students should be informed about their effects. Although many legal research professors have called for the inclusion of algorithms in instruction,¹ a specific and ideal curriculum for teaching algorithms to legal research students should be developed. While it is not necessary for law students, or even legal research professors, to be experts on how algorithms work and how they are created, a basic understanding of the role of algorithms in electronic legal research will serve any attorney well. This Article calls for legal research professors to include in their curriculum the role of algorithms in electronic legal

research and the warning that different algorithms on different databases cause results to appear in varying relevancy orders. To assist, I include recommendations for readings, lecture content, and assignments. Each recommendation is based on my firsthand experience teaching algorithms to first-year law students over the past three years.

II. Readings

The leading expert in this area of algorithms in legal research is Susan Nevelow Mart. Mart has published a plethora of relevant pieces which can assist legal research students in understanding the role of algorithms in legal research.² The one I (still³) recommend is *Every Algorithm Has a POV*.⁴ This article is shorter and feels more appropriate for a law student reader, as opposed to Mart's other articles, which are more thorough and better fits for a law librarian or attorney reader. *Every Algorithm Has a POV* provides a useful overview on the importance of understanding the issue of algorithms, and it offers "Mart's candid analysis of various search engine algorithms and users' ignorance about how these providers write their algorithms."⁵ It "serves as an eye-opening warning to law students," emphasizing the importance of understanding algorithms and making

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¹ See, e.g., Jamie J. Baker, 2018: *A Legal Research Odyssey: Artificial Intelligence as Disruptor*, 110 LAW LIBR. J. 5, 28 (2018) [hereinafter Baker, 2018: *A Legal Research Odyssey*] (“It behooves law librarians to bring . . . issues surrounding the use of algorithms to light during legal research instruction.”); Jamie J. Baker, *Beyond the Information Age: The Duty of Technology Competence in the Algorithmic Society*, 69 S.C. L. REV. 557, 575–77 (2018) (sharing “practical tips for teaching competent use of algorithms”); Sherry Xin Chen & Mary Ann Neary, *Artificial Intelligence Legal Research and Law Librarians*, 21 AALL SPECTRUM, May/June 2017, at 16, 20 (“The time is ripe for law librarians to incorporate background knowledge of . . . database algorithms . . . into the legal research curriculum.”); Iantha M. Haight, *Digital Natives, Techno-Transplants: Framing Minimum Technology Standards for Law School Graduates*, 44 J. LEGAL PRO. 175, 208 (2020) (“Law schools should cover the basics of . . . [a]lgorithms.”); Nicholas Mignanelli, *Critical Legal Research: Who Needs It?*, 112 LAW LIBR. J. 327, 342 (2020) (Legal research professors “should use [their] pedagogy to instill in [their] students a healthy dose of skepticism about claims of objectivity and neutrality . . . in the context of technology.”); Paul D. Callister, *Law, Artificial Intelligence, and Natural Language Processing: A Funny Thing Happened on the Way to My Search Results*, 112 LAW LIBR. J. 161, 204–05 (2020) (“Helping students see . . . categories of potential bias [of search algorithms] is something worthy of classroom discussion.”).

² See, e.g., Susan Nevelow Mart, *The Algorithm as a Human Artifact: Implications for Legal Research*, 109 LAW LIBR. J. 387 (2017) [hereinafter Mart, *The Algorithm as a Human Artifact*]; Susan Nevelow Mart, *Every Algorithm Has a POV*, 22 AALL SPECTRUM, Sept./Oct. 2017, at 40 [hereinafter Mart, *Every Algorithm*]; Susan Nevelow Mart et al., *Inside the Black Box of Search Algorithms*, 24 AALL SPECTRUM, Nov./Dec. 2019, at 10; Susan Nevelow Mart, *Research Algorithms Have a Point of View*, 46 COLO. LAW. 10 (2017); Susan Nevelow Mart, *Results May Vary in Legal Research Databases*, 104 A.B.A. J. 55 (2018).

³ See Annalee Hickman, *Engaging Legal Research Students Through Supplemental Readings from the Last Decade*, 26 PERSP.: TEACHING LEGAL RSCH. & WRITING 65, 70 (2018).

⁴ Mart, *Every Algorithm*, *supra* note 2.

⁵ Hickman, *supra* note 3.

“When discussing how algorithms affect attorneys, legal research professors should emphasize . . . that legal research databases have different algorithms, resulting in different search results.”

informed research decisions, since algorithms may impede their finding of relevant law.⁶

Some legal research textbooks are beginning to include references to algorithms.⁷ They vary, though, in their explanations and treatment of algorithms. Depending on the robustness of the discussion of algorithms in the textbook you use, you may consider using the supplemental article discussed above,⁸ especially if your textbook does not specifically warn students about algorithms or adequately explain how algorithms work.

III. Lectures

For algorithms, I recommend providing students with a fifteen-minute lecture about how algorithms affect and limit electronic legal research. The lecture’s structure should be twofold. First, it should answer: why should I, as a law student, care about algorithms in legal research? Second, it should answer: how do algorithms affect me when I do legal research?

Some important points about why law students should care about algorithms can include the following:

- “For lawyers, 2018 was the year of the algorithm—the year that sophisticated computer intelligence emerged both as a legitimate aid to legal decision-making and as a potential source of discrimination, bias, and error.”⁹
- “[T]he future of legal research lie[s] with algorithms.”¹⁰

⁶ *Id.*

⁷ See, e.g., KENT C. OLSON, AARON S. KIRSCHENFELD & INGRID MATTSON, *PRINCIPLES OF LEGAL RESEARCH* 21–24, 312–16 (3d ed. 2020); AMY E. SLOAN, *BASIC LEGAL RESEARCH: TOOLS AND STRATEGIES* 230–34 (8th ed. 2021); BEAU STEENKEN & TINA M. BROOKS, *SOURCES OF AMERICAN LAW: AN INTRODUCTION TO LEGAL RESEARCH* 24, 28–29 (4th ed. 2019).

⁸ See Mart, *Every Algorithm*, *supra* note 2.

⁹ Tad Simons, *8 Things a Good Lawyer Does That a Computer Algorithm Can't*, THOMSON REUTERS: LEGAL EXECUTIVE INST. (Feb. 19, 2019), <http://www.legalexecutiveinstitute.com/lawyers-can-do-algorithm-cannot>.

¹⁰ Yolanda P. Jones, *Expansive Legal Research*, 44 INT’L J. LEGAL INFO. 241, 267 (2016).

- “Algorithms lull us into believing our searches will always give us the most relevant results.”¹¹
- “Without understanding how the algorithms generate results, it is difficult, if not impossible, for attorneys to vet the information.”¹²
- Law students should be “disillusion[ed]” that the “computer intelligence” and algorithms can “do[] the [legal research] work for them” because of all “the limitations of these [legal research databases].”¹³

These quotes show that algorithms are now an integral part of legal research and will affect the results and research law students and attorneys do; thus, students and attorneys should understand algorithms and make adjustments in their research because of them.

When discussing how algorithms affect attorneys, legal research professors should emphasize the crux of Mart’s scholarship—that legal research databases have different algorithms, resulting in different search results.¹⁴ To be thorough while researching, law students should run searches in multiple legal research databases when they have the opportunity to do so. Further, they should not necessarily give deference to the top ten search results presented in a particular legal research database, nor to the order in which the results are listed as relevant.

Moreover, the legal research class lecture should explain to law students that it is currently impossible to fully comprehend the algorithms because legal research databases do not reveal to us all the factors involved in producing results through algorithms. This is a challenge to teaching algorithms. While we do not fully understand how the algorithms work, the information we do have is nonetheless beneficial to legal research students, as it will help them to better critically assess search results and see how algorithms affect their legal research.

¹¹ Haight, *supra* note 1, at 208 (footnote omitted).

¹² Baker, 2018: *A Legal Research Odyssey*, *supra* note 1, at 22–23.

¹³ Callister, *supra* note 1, at 210.

¹⁴ See *supra* note 2.

At one point, we knew that Westlaw had the following factors that affected its algorithms:

- West key number system,
- statutory indexes,
- KeyCite,
- secondary sources, and
- document usage patterns.¹⁵

And that Lexis had these factors:

- phrase recognition,
- case names and citations,
- concentration of terms,
- coverage of terms,
- prominence,
- recentness,
- document segment the search term appears in, and
- number of hits within document.¹⁶

The factors of Westlaw and Lexis are significant because (1) these may not even still be the factors as they are not publicized on either's database; (2) the factors on Westlaw and Lexis differ from one other, and (3) some of the factors may be ones that students may not necessarily want to influence their searches. For example, "document usage patterns" under Westlaw means that if a document is opened and/or saved a lot then it will show up higher (signifying more relevance) in the search results list. Perhaps that case is popular for a particular issue and so it is higher up on "relevancy," but the

attorney is using it for a less common reason and, therefore, the prioritization of the case in the search results is misleading as to its importance with this particular research question. For the West key number system, if relevant cases with the search terms appear in the results, and those cases have a common West key number among them, then the algorithm may include other cases that do not have the search term in the results because they have the same key number attached to their headnotes. These results may occur because they may have synonyms of the search term (or the term searched for shows up in the editor-written headnotes and not in the opinion of the case).¹⁷ If a legal researcher wants a specific term to appear in the opinion, then irrelevant results may be in the search results list because of this factor.

For additional lecture content on algorithms, consider including in your legal research curriculum the list by law librarian Iantha Haight of minimum technology standards of law school graduates for the topic of algorithms. She argues that law students "must understand:

- a. What an algorithm is
- b. The impact of data quality on an algorithm
- c. How experts analyze algorithms
- d. Critiquing an algorithm
- e. Values choices and biases in algorithms."¹⁸

Using these technology standards as an outline, legal research professors can make sure that their students are able to intelligently apply algorithms with caution when they are running searches in legal research databases. For example, they can encourage students to think about the data quality that an algorithm on a legal research database may have or the values choices and biases in the algorithm. This means that the students may want to use terms and connectors searches and

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¹⁵ Mart, *The Algorithm as a Human Artifact*, *supra* note 2, at 400 & n.75 (citing Thomson Reuters, *WestSearch: WestlawNext Search Technology*, <https://docmh.com/embed/wlnsearch> [<https://perma.cc/S8GV-R5SL>]). Mart's article was published in 2017, and the Westlaw article cited in it is not still published on Westlaw's website.

¹⁶ *Id.* at 401–02 & n.83 (citing LexisNexis, *Lexis Advance Faculty FAQs*, http://www.lexisnexis.com/documents/pdf/20111216091630_large.pdf [https://web.archive.org/web/20160620151641/http://www.lexisnexis.com/documents/pdf/20111216091630_large.pdf]). Mart's article was published in 2017, and the LexisNexis source it cited could not be retrieved in January 2021. A search to see if more recent literature had been published by LexisNexis on this topic yielded no additional source.

¹⁷ See Thomson Reuters, *supra* note 15.

¹⁸ Haight, *supra* note 1, at 212.

search within specific secondary sources in order to avoid a bias against treatises, for instance.¹⁹

IV. Assignments

An example of an assignment that I do during class time is to have my law students do their own version of the exercise that Mart expands on in *The Algorithm as a Human Artifact*.²⁰ Using the

facts from one of the memos they have researched and written that semester, they craft a natural language search, filtering to cases in a specific state jurisdiction. They then compare the top ten results in Westlaw, Lexis, and Google Scholar²¹ and chart them similar to Figure 1 below.²²

Figure 1²³

Top Ten	Westlaw	Lexis	Google Scholar
1.	Scott v. Scott (Utah Ct. App. 2016)	Scott v. Scott (Utah Ct. App. 2016)	Haddow v. Haddow (Utah 1985)
2.	Myers v. Myers (Utah Ct. App. 2010)	Myers v. Myers (Utah 2011)	Garcia v. Garcia (Utah Ct. App. 2002)
3.	Myers v. Myers (Utah 2011)	Scott v. Scott (Utah 2017)	Myers v. Myers (Utah 2011)
4.	Pendleton v. Pendleton (Utah Ct. App. 1996)	Black v. Black (Utah Ct. App. 2008)	Bagshaw v. Bagshaw (Utah Ct. App. 1990)
5.	Black v. Black (Utah Ct. App. 2008)	Myers v. Myers (Utah Ct. App. 2010)	Bridenbaugh v. Bridenbaugh (Utah Ct. App. 1990)
6.	Scott v. Scott (Utah 2017)	Bagshaw v. Bagshaw (Utah Ct. App. 1990)	Knuteson v. Knuteson (Utah 1980)
7.	Haddow v. Haddow (Utah 1985)	Williamson v. Williamson (Utah Ct. App. 1999)	Jeppson v. Jeppson (Utah 1984)
8.	Wacker v. Wacker (Utah 1983)	Jeppson v. Jeppson (Utah 1984)	Black v. Black (Utah Ct. App. 2008)
9.	Levin v. Carlton-Levin (Utah Ct. App. 2014)	Garcia v. Garcia (Utah Ct. App. 2002)	Barber v. Barber (Utah Ct. App. 1990)
10.	Garcia v. Garcia (Utah Ct. App. 2002)	Andersen v. Andersen (Utah Ct. App. 1988)	Munns v. Munns (Utah Ct. App. 1990)

Generally, students are shocked when they see these differing results about a memo they have been researching for most of the semester. However, they are also comforted to see that the databases do agree to a certain extent. By doing a verification like running the same search on more than one database to see how the algorithm affects a specific research question, the students can tangibly see how much they should (or should not) trust the search results from the legal research databases.

Assignments such as this one develop awareness in students and tend to send the message more clearly than just reading an article on algorithms. This exercise is valuable because it is important for students to realize that they should neither rely on just one legal research database, nor look at only the top ten results. With Google Scholar

¹⁹ Callister, *supra* note 1, at 203. Additional biases include prioritization, classification, association, and filtering. Mart, *The Algorithm as a Human Artifact*, *supra* note 2, at 394–95 (quoting Nicholas Diakopoulos, *Algorithmic Accountability: Journalistic Investigation of Computational Power Structures*, 3 DIG. JOURNALISM 398, 399 (2015)).

²⁰ Mart, *The Algorithm as a Human Artifact*, *supra* note 2, at 406–16.

²¹ While Mart also compares search results across Fastcase, Ravel, and Casetext, I have found I do not have sufficient time to include more than three research databases. Additionally, I teach the class period on algorithms before the law students are familiar with Fastcase, Ravel, and Casetext.

²² The blank version of this figure is adapted from Mart, *The Algorithm as a Human Artifact*, *supra* note 2, at 421.

²³ This search was for “termination of alimony” without quotes in the Westlaw, Lexis, and Google Scholar legal research databases. The search was limited to cases in the state of Utah. The cases are highlighted light blue if they appear in the top ten results of two databases and are highlighted in a darker blue if they appear in the top ten results of all three of the databases.

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being free and all state bars currently giving licensed attorneys free access to either Casemaker or Fastcase,²⁴ most law students, once they graduate, should be able to research in more than one legal research database, even if they do not have a subscription to Westlaw or Lexis. Students should also consider various search terms and understand that a result may appear simply because it is viewed often by other researchers on the database or is cited often by other sources, even if the result is not important or relevant for their needs. This assignment drives these points home.

V. Conclusion

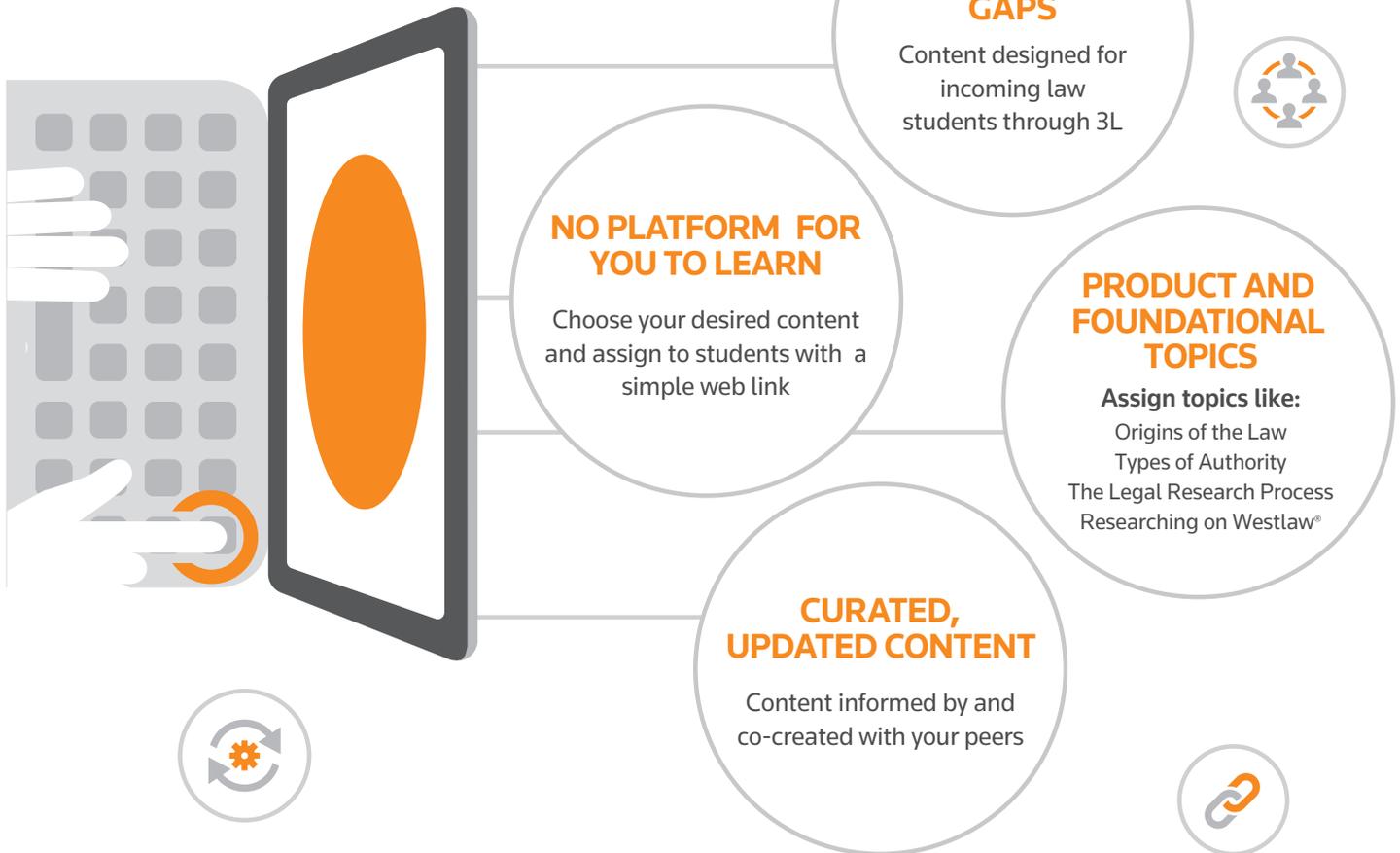
Overall, the role of algorithms in legal research is a topic that should be integrated into legal research courses when possible. With readings, lectures, and assignments, legal research professors can adequately prepare law students to handle algorithms in their future legal practice. If legal research professors teach law students how to search in legal research databases but neglect to warn them about algorithms and their varying effects on search results, legal research professors are not adequately preparing their students to become successful attorneys.

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²⁴ For a list of which state bar associations have subscriptions to which legal research database, see *Legal Research via State Bar Associations*, GOODSON LAW LIBRARY, <https://law.duke.edu/lib/statebarassociations/> (last visited Feb. 19, 2021). Note that while Casemaker and Fastcase announced their merger on January 5, 2021, current free access to either Casemaker or Fastcase remains unchanged. *Id.* (citing *Casemaker and Fastcase Merge to Become the Leader in Legal Research and Analytics*, FASTCASE (Jan. 5, 2021), <https://www.fastcase.com/blog/fastcase-casemaker-merge/>).

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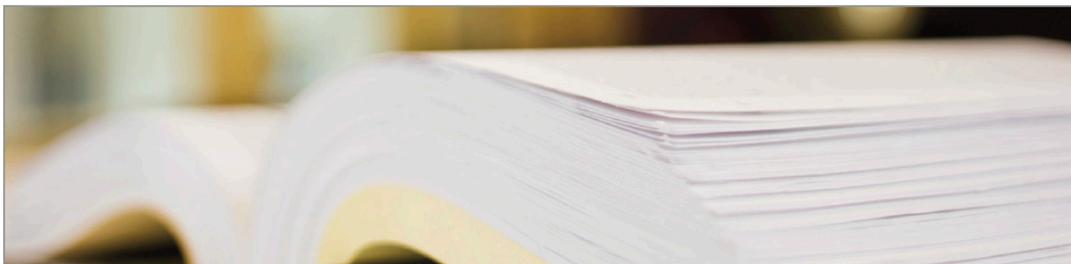


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