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Legal Writing and International Students: Reconsidering “Complete Immersion”¹



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Before I began my current position, I worked as a writing specialist with multilingual² international students in the LL.M. legal writing program at Penn State Law for four years. At the time I started working with law students, I was taking coursework for my Ph.D. in applied linguistics, focusing on second language acquisition and writing. Since I was new to the field of legal education, I tried to get a better sense of what legal writing faculty saw as best practices in working with international students by speaking with faculty, reading articles in law reviews and journals, and attending conferences. What I found, however, did not always align well with what I was learning in my degree program.

In both conversations with law faculty and published articles in legal education, I found an insistence on the need for “complete immersion.”³ This article will begin by looking at how immersion has been operationalized in legal writing scholarship and practice and compare this with a similar model from applied linguistics. It will then consider how the contexts in which this form of immersion is most effective differ in important ways from a law school context. Finally, it will examine various ways that students’ use of their first language can serve as a resource for second language learning, as well as offer concrete suggestions and considerations for teaching.

Approaches to Immersion

In published articles on legal writing as well as in conversations with law faculty, “complete immersion” seemed to focus on restricting students’ access to their first languages in an attempt to foster their acquisition of English.⁴ In some cases, this manifested itself in recommendations about preventing students from using bilingual translation dictionaries.⁵ Other times, I overheard faculty reproaching students for using their first languages in informal social conversations with peers from their home country or in small-group discussion activities in the classroom. In other cases, faculty mentioned discouraging students from using their first languages for any note-taking in their classes. This emphasis on immersion also seemed to focus more on the quantity of English that students needed to be exposed to rather than the nature of the materials provided, with movies,⁶ music,⁷ and children’s literature⁸ being presented as equally valid sources for language study as casebooks or videos of academic lectures on legal topics. At least part of this emphasis on the quantity of English language input appeared to stem from a belief that such exposure would do most of the work of triggering language acquisition on its own and that allowing students access to their first languages could impede this process.⁹ These ideas are widely viewed with skepticism in applied linguistics today, however.¹⁰

There is no question that providing learners with rich opportunities to use English across a variety of contexts is an important way to support their language development. In fact, the kind of immersion advocated in the approach above can produce impressive results in some cases. Middlebury College's intensive summer language programs are one widely recognized example. Students in these programs sign a "Language Pledge," committing to communicating exclusively in their chosen target language for the duration of the approximately two-month program.¹¹ The program's morning sessions focus on intensive, classroom-based language instruction, while the afternoon sessions provide opportunities for using the target language in more informal contexts, such as arts and crafts or cooking.¹² Students in the program are known for making considerable progress in a very short time.

The Middlebury model is well suited to the context for which it was designed: a short-term experience focused exclusively on general language development for domestic students. However, the situation faced by international students in a U.S. law school setting is significantly different. International LL.M. or J.D. students will spend one or more years outside of their home country. Unlike students in the summer-camp-like atmosphere of the Middlebury program, many of these international law students will have to take care of basic logistical issues relating to managing their visas, finding housing, navigating a foreign academic system, and figuring out how to take care of their other day to day needs. As they do so, they are likely to receive little sympathy or patience when there are gaps in their linguistic knowledge, and some will also experience discrimination based on their accent or race. At the same time, they will be expected to develop not just their general language proficiency, but also their substantive knowledge of U.S. law. This will further involve becoming proficient in highly specialized genres that many monolingual English speakers find challenging.

Code-switching, Translation, and Vocabulary Development

Multilingual law students' use of their first language can play an important role in helping them manage these additional challenges. In the classroom, students' ability to take notes in their first language can be one way to offset some of the cognitive load¹³ imposed by having to process difficult legal concepts, complex linguistic structures, specialized vocabulary, and unfamiliar cultural references at the same time. While some faculty express concern that students' translation of ideas from the course into their first language may result in a distortion of key legal concepts, this does not take into account the fact that even when students do take notes in their first language, they often "code-switch," or move between languages, while doing so. In my experience working with students as a writing specialist, it was common for me to see key English terms or phrases like "owe a duty of reasonable care" interspersed mid-sentence among a series of Chinese characters. This suggests a fairly sophisticated ability on the part of the student to recognize particular expressions and terms of art as having meanings that likely do not have an easy, one-to-one correspondence with their first language. Most students know the potential dangers of direct translation, but those who use it ineffectively may not be aware of strategies for avoiding it. Simply telling these students not to translate is unlikely to help.

One thing that we have come to understand in second language acquisition research is that language learning is not a zero-sum game: you don't have to push one language out to make room for another one.

Instead, students can be taught how to use additional tools to verify their translations, such as using Google Scholar's case law search function to see how a particular word or phrase is used in a U.S. legal context or cross-referencing their initial translations with definitions from monolingual legal dictionaries.¹⁴ In guiding students through this process, faculty will likely need to emphasize that terms that may initially seem to be equivalent (like the civil law term *causa* and "consideration" in U.S. contract law)¹⁵ need to be examined closely to understand how their meanings both overlap and diverge. Faculty will also need to think about what it means to really know a word. For example, knowing the definition of the word "liable" is a good start, but students also need to recognize both how this word differs from related words like "guilty," as well as the word's grammatical constraints. For example, "liable" is preceded by a limited range of verbs, including the copula and "hold." When used with "liable," "hold," in turn, tends to be found in complex transitive constructions ("hold (someone) liable") or in the passive voice ("be held liable"). "Liable" also tends to be followed by a limited range of prepositions: "for" and "to" work well, while "of" and "at" generally do not. The student would further have to recognize which kinds of nouns typically follow each of these prepositions. To build greater textual cohesion between sentences, students also need to develop an awareness of other words derived from the same base, such as the noun form "liability." Knowing these derived forms gives students an additional tool for drawing clear connections between ideas in their texts.

Facilitating Listening Comprehension

Multilingual students may also ask each other questions in their first language when they have not understood something in class. While there can be a potential risk of one student's misunderstanding being transmitted to another classmate, students often know who among their peers is the most likely to have an accurate understanding of the material, and the use of a quick, unobtrusive clarification in their first language can prevent them from becoming even more confused as the class session continues. Particularly for students who have been socialized into academic cultures in which interrupting a professor with a question during a lecture could be seen as disrespectful, being able to receive discreet support from a peer can play a critical role in allowing these students to participate more fully throughout the course as a whole. This support also allows the professor to focus on the main goals of the class session rather than spending time answering minor vocabulary or logistical questions that may not be relevant to the rest of the group.

One way of encouraging such dialogue in the classroom is to build in short pair exercises or small group discussions as a comprehension check during class discussions. Briefly shifting away from a teacher-fronted discussion to small

group work gives students permission to check their understanding and time to formulate a response in English. On its own, this technique can encourage students to participate more actively in full-class discussions, but faculty can also use these small group discussions to check students' understanding by circulating around the classroom to verify that students are on track.

Using the First Language as a Brainstorming and Drafting Tool

Another effective way that many multilingual students use their first language is as a tool for pre-writing and drafting. One of my Korean LL.M. students used to come into our individual meetings with rough drafts of his memo assignments that were annotated with notes to himself in Korean. These notes were his way of both reflecting on his own writing and taking his argument beyond what he could do independently in English. When he had a more nuanced argument that he wanted to express but for which he couldn't quite find the right English phrasing, he would talk me through what he wanted to say step by step, explaining the meaning he wanted to convey by using conversational English, concrete examples, or hypotheticals to illustrate. We then worked together to find a phrasing for his idea that would both express it more concisely and reflect the professional writing style that would be expected in a legal memorandum. The student was able to use these individual sessions as an effective way of expanding his communicative repertoire,¹⁶ a fact demonstrated in part by his eventual admission to the D.C. bar.

Being able to take the first step of drafting his ideas in Korean gave this student a means for shaping his argument in a way that would not have been feasible for him if he had been restricted to using only English. In fact, some of our international J.D. students, who did not have access to such language support, often found themselves struggling with choosing between an English expression that they knew was not particularly effective or changing the content of their argument itself. One Korean J.D. student, for example, confided in me that he often simplified his arguments in his legal writing assignments so that he was sure that he could state them correctly in English. There were other more interesting arguments that he wanted to make, but since he was not confident in his ability to express them accurately in English and was not allowed to seek additional support, he simply omitted them.

Language and Social Interaction

For international LL.M. or J.D. transfer students, who often don't fit neatly into a 1L, 2L, or 3L cohort, the use of their first language can also play an important social role. These students may find that other international students can better relate to the difficulties they face both inside and outside of school than their American classmates can. After having to use English to deal with a parking ticket they received because they misunderstood the abbreviations on a sign, sitting through four hours of classes in which it seems like everyone else can answer all of the professor's questions, being inundated with unfamiliar choices at restaurants (e.g., What kind of toast would you like? How do you want your eggs? Home fries or hash browns?), and just generally feeling like nothing comes easily, a social conversation in a student's first language offers a little respite in what can feel like an endless barrage of English. Research on language learning is increasingly recognizing the

importance of emotion¹⁷, and while these kinds of conversations may not relate directly to students' coursework, discussions of "critical incidents"¹⁸ such as these can also facilitate students' learning of social aspects of language use.¹⁹

Rethinking Immersion in the Legal Writing Classroom

One thing that we have come to understand in second language acquisition research is that language learning is not a zero-sum game: you don't have to push one language out to make room for another one. In fact, research on bilingualism suggests that many aspects of language knowledge form part of a "common underlying proficiency,"²⁰ and that the literacy skills that students have already developed in their first language provide an essential foundation for their development of academic literacy in a second language. Rather than assuming that students are starting from zero, we can capitalize on these existing skills by focusing on the aspects of U.S. legal reading and writing that are not shared across languages and genres, like the specific linguistic and structural cues that signal sections of a case that students need to focus on as well as how to decode genre-specific syntactic structures like the complex clausal and phrasal chains that are frequently used to modify nouns in statutory language.

This approach is quite different from the "complete immersion" described at the beginning of this column. What our current understandings of language learning suggest is that our focus should not be on how to limit students' access to their first language but rather on how to ensure that the English language resources we provide to them build on and expand their existing communicative repertoire. This requires more than just flooding students with English-language input in whatever form happens to be readily available, but instead ensuring that the materials we provide in instructional settings are carefully curated to respond to students' most pressing communicative needs. Given their role in meeting individually with students, writing specialists are well positioned to provide such support.

Further Reading

1. Jim Cummins, *Rethinking monolingual instructional strategies in multilingual classrooms*, 10 *Canadian J. Applied Linguistics* 221 (2007). This article, by one of the leading figures in bilingual education, offers a point by point rebuttal of some common, yet problematic, assumptions about the use of the first language in second language classrooms. Although the teaching strategies he proposes toward the end of the article are intended primarily for K-12 classrooms, the literature he reviews on bilingualism is useful for instructors at all levels.
2. Dana R. Ferris & John S. Hedgcock, *Teaching L2 Composition: Purpose, Process, and Practice*, (3d ed. 2013). This book highlights issues in second language writing and is geared primarily toward faculty who teach first-year college composition courses. For legal writing faculty, the book provides a useful foundation in current approaches to teaching second language writing, including discussions of feedback and assessment.

3. Alissa J. Hartig, *Connecting Language and Disciplinary Knowledge in English for Specific Purposes: Case Studies in Law* (working title, forthcoming). This book begins with a discussion of the discipline-specific nature of legal literacy development and then considers how the challenges this presents may be different for international LL.M. students. The four main chapters of the book provide detailed case studies of four international LL.M. students, two from Saudi Arabia and two from China, as they navigate their first semester legal writing course. While not a major focus of the book, examples of both effective and ineffective uses of translation are examined.
4. John S. Hedgcock & Dana R. Ferris, *Teaching Readers of English: Students, Texts, and Contexts* (2009). Although few legal writing faculty may have the opportunity to design an entire course that focuses on reading, the principles discussed in this textbook, particularly with respect to vocabulary learning and designing individual lessons focused on intensive reading, are a useful resource.
5. Miles Turnbull & Jennifer Dailey-O’Cain, eds., *First Language Use in Second and Foreign Language Learning* (2009). The introduction to this volume provides a concise overview of research on the use of the first language in second language teaching and learning.

NOTES

1. This article is adapted from my presentation with the Association of Legal Writing Specialists at the 2016 Legal Writing Institute Biennial Conference.
2. The term “multilingual” is increasingly replacing “ESL” (English as a Second Language) or “non-native speaker” in scholarship in applied linguistics and teaching English to speakers of other languages (TESOL).
3. For example, this term appeared on a poster describing “best practices for teaching international students” at the 2016 Legal Writing Institute Biennial Conference, and it also appears in a 2008 article by two members of the Legal Writing Institute: Julie M. Spanbauer & Katerina P. Lewinbuk, *Embracing Diversity Through a Multicultural Approach*, 1 *Charlotte L. Rev.* 223, 250 (2008-2009). Current research and theory in second language acquisition do not support this view. See, e.g., Miles Turnbull and Jennifer Dailey-O’Cain, eds., *FIRST LANGUAGE USE IN SECOND AND FOREIGN LANGUAGE LEARNING* (2009). See also Merrill Swain & Sharon Lapkin, *Task-based Second Language Learning: The Uses of the First Language*, 4 *Language Teaching Res.* 251, 268-9 (2000).
4. Katerina P. Lewinbuk, *Can Successful Lawyers Think in Different Languages?: Incorporating Critical Strategies that Support Learning Lawyering Skills for the Practice of Law in a Global Environment*, *Rich. J. Global L. & Bus.* 1, 10-11 (2008).
5. Lewinbuk, *supra* note 4, at 11.
6. *Id.* at 8.
7. *Id.*
8. Spanbauer & Lewinbuk, *supra* note 3, at 241.
9. Lewinbuk, *supra* note 4, at 11-12.
10. See, e.g., Jim Cummins, *Rethinking monolingual instructional strategies in multilingual classrooms*, 10 *Canadian J Applied Linguistics* 221, 221 (2007). The author describes three problematic assumptions in second language education, specifically that “(a) the target language (TL) should be used exclusively for instructional purposes without recourse to students’ first language (L1); (b) translation between L1 and TL has no place in the language classroom; and (c) within immersion and bilingual programs, the two languages should be kept rigidly separate.” Cummins goes on to explain that “[r]esearch evidence provides minimal support for these assumptions and they are also inconsistent with the instructional implications of current theory in the areas of cognitive psychology and applied linguistics.”
11. See *Language Pledge*, Middlebury Language Schs., <http://www.middlebury.edu/lis/academics/language-pledge> (last visited Oct. 16, 2016).
12. See *The Language Schools Experience*, Middlebury Language Schs., <http://www.middlebury.edu/lis/academics/the-language-schools-experience>, (last visited Oct. 16, 2016).
13. For a comprehensive overview of cognitive load theory, see John Sweller et al., *COGNITIVE LOAD THEORY* (2011). For a more accessible, practitioner-oriented treatment of this topic, see Ruth C. Clark et al., *EFFICIENCY IN LEARNING: EVIDENCE-BASED GUIDELINES TO MANAGE COGNITIVE LOAD* (2006).

14. This is not an argument in favor of using translation dictionaries only, but rather for using them as an additional tool. As applied linguist Suresh Canagarajah puts it, this involves a shift from an “either-or” orientation to a “both and more” perspective. Suresh Canagarajah, *Changing Communicative Needs, Revised Assessment Objectives: Testing English as an International Language*, 3 *Language Assessment Q.* 233 (2006).
15. See Kevin J. Fandl, *Cross-Border Commercial Contracts and Consideration*, 34 *Berkeley J. Int’l L.* 1 (2016).
16. For further discussion of communicative repertoires, see Betsy Rymes, *Communicative Repertoires*, in *THE ROUTLEDGE COMPANION TO ENGLISH STUDIES 287* (Brian Street & Constant Leung eds., 2014).
17. See, e.g., Sarah Benesch, *CONSIDERING EMOTIONS IN CRITICAL ENGLISH LANGUAGE TEACHING: THEORIES AND PRAXIS* (2012).
18. This is a term used to describe interactions that generate intercultural misunderstandings. Formal narratives of such incidents are frequently used as an intercultural training tool. For an example of how critical incidents may be used in instructional contexts, see Claudia Harsch & Matthew E. Poehner, *Enhancing Student Experiences Abroad: The Potential of Dynamic Assessment to Develop Student Interculturality*, 16 *Language & Intercultural Comm.* 470 (2016).
19. See Tim Hassall, *Influence of Fellow L2 Learners on Pragmatic Development during Study Abroad*, 12 *Intercultural Pragmatics* 415 (2015). This study identifies ways in which Australian students learning Indonesian in a study abroad context used conversations in English with their Australian peers to make sense of social language conventions in Indonesian. The author argues that learners’ use of the first language, specifically their metapragmatic discussions, facilitated their learning of Indonesian as a second language.
20. Jim Cummins, *Teaching for Transfer: Challenging the Two Solitudes Assumption in Bilingual Education* *Encyclopedia of Language and Education* 65, 68 (Jim Cummins & Nancy H. Hornberger eds., 2008).

First Cars, Treasured Pets, Family Ties, and Other Tales of Growing Up: The Student's Life Story as a Teaching Tool¹



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Law is a complex collage of life stories,² some joyous and others heartbreaking. Our students' own life stories can be transformed into a creative tool to teach them about facts and persuasion. Showcasing students' personal narratives in classroom exercises heightens engagement. And learning about our students' lives may help us form deeper connections with them.

One of the first assignments in my Legal Practice³ class calls upon students to share a part of their life stories with me. The prompt asks them to describe a happy childhood memory and explain why the activity, event, or experience made them happy.⁴ Over the years, I have been privileged to learn about a variety of meaningful moments in my students' lives—the birth of a sister or brother, bonding with parents and grandparents, adventures in places far and near, and milestones on the stage and athletic field, to name a few. This “non-legal” writing assignment not only reveals my students' grasp of grammar, punctuation, and composition basics, but it also helps me get to know them on a personal level. After receiving these heartfelt pieces, I realized that my students' life stories had the potential to become a teaching tool. Using anonymous excerpts⁵ from the non-legal writing assignments, I created in-class exercises to introduce fact identification, fact organization, and elements of persuasion. I also draw on my students' life stories to glean a more holistic understanding of who they are and what animates them.

FACT IDENTIFICATION AND ORGANIZATION EXERCISE

Much of the fall semester of Legal Practice focuses on fact gathering, legal analysis and reasoning, and predictive legal writing. An exercise designed around the non-legal writing assignment is a natural entry point for teaching how to draft a fact statement for a predictive office memo. I select student narratives, typically two to three, to illustrate the importance of legally significant facts⁶ and a logical narrative.

The in-class exercise requires students to identify the organizational structure of the personal story. Often,



the story begins by introducing the main characters and the event or experience. Using this technique, one student, for example, starts her narrative by describing the road trip to pick up Cody, her new pet cocker spaniel:

On August 18, 2001, my family and I began our two hour journey to Wilkes Barre, Pennsylvania to pick up our new cocker spaniel puppy we were naming Cody. My sister and I were in the backseat looking at pictures of him we printed out earlier that morning... After months of deliberation and discussion with our parents about what breed to get, the little buff cocker spaniel was the winner. We arrived at the breeder's house on a brutally hot summer's day, and as we walked into the kitchen where she had the remaining three puppies, we instantly spotted our new addition to the family....⁷

We analogize the beginning of the personal narrative to the context statement in the facts section of a memo—the purpose of the context statement is to acquaint the reader with the parties and their situation.⁸ Students also recognize the organizational scheme of the personal narratives, such as a chronological account of a win on the athletic field or a drive on a family vacation. We then discuss how facts are typically organized in a legal memo, chronologically, topically, or a mix of the two.⁹

Another focus of the exercise is identifying facts and details that develop the narrative and make the story memorable.¹⁰ This passage, for instance, describes, in detail, a student's experience flying in the first-

class cabin of an airplane, after she and her cousin, traveling as unaccompanied minors, were bumped up to first-class, free of charge:

It was really nice, being 12 years old and having people treat me with such courtesy and respect. [My cousin] and I pretended that we were wealthy businesswomen traveling to some exotic land for a business meeting. Not only was the customer service better, the food was much better than the cold sandwich box they served in coach. We had a three-course meal with salad, a baked chicken dinner and dessert. The drinks came in a carafe with a cherry on the side. [My cousin] asked for an extra cherry and they gave her a little jar of cherries with a bow on top. When we exited the plane, they gave us a huge fruit basket and thanked us for 'choosing Eastern.'¹¹

The class considered how word choices, such as "carafe," and details, like the "little jar of cherries with the bow on top," conjured up the elegance and refinement of first class. The exercise illustrates the parallel between the important details in a personal narrative and the legally significant facts in the students' predictive office memo assignments. Just as the details in a story are vital to the reader's understanding, the legally significant facts in a case are essential to the analysis of the legal issue.¹²

PERSUASION EXERCISE

In the spring semester of Legal Practice, students are introduced to persuasion and written and oral advocacy; they write a trial and an appellate brief and deliver an appellate oral argument. The non-legal writing assignment is a trigger for a discussion about persuasive storytelling.¹³ An in-class exercise, again using excerpts from the non-legal writing assignments, requires students to identify themes and main characters in the narratives.¹⁴ They also consider how word choice, sentence structure, and organization help develop the stories.¹⁵ Anecdotes about places—growing up or visiting family in Canada, Jamaica, Israel, Trinidad, Tanzania, Greece, and Puerto Rico—provided rich examples for this exercise. Some students wrote of the sights, sounds, aromas, and feelings they experienced in these locales. Often, a main character was the place itself, and the robust descriptions transported the reader there. This excerpt brings to life the student's summer trips to Trinidad:

Trinidad is a beautiful island with rolling green mountains, white sand beaches, and clear blue skies and waters....

When we arrived at the beach, my cousins and I would race to the edge of [the] water shedding our shirts and shoes along the way. The intense sun made the warm water seem frigid by comparison, causing my sister to hop from one foot to the next as she slowly worked up the courage to fully enter the water; I always ran right into the breaking waves....

The beach was also home to shark and bake—a delicacy consisting of fresh shark meat served in a fried dough bun. Shark and bake, exotic and delicious, was always a highlight of the trip. The sandwiches were made to order at small huts sprinkled along the beach....¹⁶

The appealing description of the “shark and bake” on the beach in Trinidad is likely to grab the reader’s attention and make the story one to remember. Through these types of narratives, the class learns that emphasis, perspective, and details are fundamental to effective storytelling.¹⁷

After working on the in-class exercise, students, in groups or in a class discussion, brainstorm how the techniques used in the personal narratives are relevant in persuasive legal writing. They identify specific facts underlying the controversy in their brief assignment and then explore strategies for emphasizing favorable facts and telling the story from the client’s viewpoint. The everyday human condition and experience students so eloquently write about in their personal narratives underscores the importance of framing facts persuasively when advocating on behalf of a client.

CONNECTING WITH STUDENTS

Discussing the student narratives in the classroom sparks conversation about common life experiences. One student’s memory of a heart-thumping roller coaster ride or beloved first puppy is likely to resonate with others in the class, and this common denominator promotes engagement and dialogue. To inject some fun and playfulness into the classroom exercise, I have, on occasion, shown clips from music videos that portray the theme of the narrative. An excerpt from Fergie’s *Glamorous* followed the story about flying in

The everyday human condition and experience students so eloquently write about in their personal narratives underscores the importance of framing facts persuasively when advocating on behalf of a client.

first class, and one from Rascal Flatts’ *Life is a Highway* accompanied this narrative about the teenage thrill of owning a first car:

As a car enthusiast, I’d have to say the happiest moment before entering college would have to be the day I received the keys to my first car. There I was, seventeen years old with a license fresh out of the press; to me it was almost unreal....

My first car was only a Honda Civic and as insignificant of a car as it sounds to be, it was my baby—my child. I quickly began making it my own by equipping newer, sportier rims allowing the car to stand out more. I added a fresh new set of headlights to replace the older, foggier ones. . . .¹⁸

The non-legal writing assignments are featured in a positive way in the classroom, so the authors no doubt recognize that I am impressed with their work. Hopefully, this knowledge enhances their self-confidence and underscores my interest in them as people and writers.

The non-legal writing assignment also may be used as an icebreaker¹⁹ to open student conferences. Early in the fall semester, my students write the discussion section for a predictive office memo. I critique, but do not grade, the draft. After they receive my feedback, I meet individually with each student to review the draft. In fall 2016, I began most conferences with a remark or question about the happy memory related in the student’s non-legal writing assignment. This approach infused positive energy into the meeting and enabled me to show interest in the student not only as a neophyte legal writer but also as a human being. Expressing curiosity about the student’s life experiences and beginning the dialogue with a topic unrelated

to the law may ease the tension that some students experience when reviewing their work with a professor.²⁰

CONCLUSION

My students' personal narratives have enriched the classroom experience and helped me get to know them as writers. The quality of the writing in the non-legal writing assignments is often outstanding, characterized by clear prose and vivid descriptions. Learning to think and write like a lawyer takes time and practice,²¹ and the non-legal writing assignment is a reminder of students' potential to become excellent legal writers.

And importantly, the non-legal writing assignment helps me get to know my students as people. Instead of remembering a student as the one who wrote a really good rule statement, I tend to think of the big sisters and brothers, musicians, athletes, and world travelers I am privileged to have in my class.

NOTES

1. Many thanks to Professor Anne Goldstein, director of New York Law School's Legal Practice Program, for her thoughtful feedback and edits to this piece. And a big thank you to Christopher Ferreira, Mina Miawad, Shanté Morales, and Alexandra Spina, my wonderful former Legal Practice students, for giving me permission to include excerpts from their non-legal writing assignments in this piece.

2. See J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 *Legal Writing* 53 (2008) ("Every legal case starts with a story—the client's story—and it ends with a legal decision that, in effect, offers another version of that story, one cast into a legal framework.")

3. Legal Practice is a required first-year skills course at New York Law School. The first semester focuses on legal reasoning and analysis, fact gathering and interviewing, predictive legal writing, and legal research. Persuasion, written and oral advocacy, counseling and negotiation, and trial and appellate brief writing are studied in the second semester.

4. Professor Anne Goldstein introduced the non-legal writing assignment into the curriculum. The assignment, which showcases students' basic writing skills, may take a variety of forms. The prompt, for example, may ask students to describe a favorite vacation or how they learned a skill. A prompt asking students to share a happy childhood memory should be framed respectfully, recognizing that many children grow up in unhappy environments plagued by sorrow, tragedy and violence. The word count for the non-legal writing assignment is 350-500 words.

5. Names and other identifying characteristics in the narratives should be omitted or changed to preserve anonymity. It is advisable to put students on notice that their narratives may be used in class exercises. This could be explained in the instructions for the non-legal writing assignment. Students could then indicate on their assignments whether they give permission for their narratives to be shared with the class. Alternatively, before creating the in-class assignment, the professor could ask students for permission to use their narratives.

6. Christin Coughlin, Joan Malmud Rocklin & Sandy Patrick, *A LAWYER WRITES* 222 (2d ed. 2013) (legally significant facts determine the outcome

of a case).

7. This is an excerpt from Alexandra Spina's non-legal writing assignment. Although this excerpt was not included in the in-class exercises, it is representative of the selections.

8. Coughlin et al., *supra* note 6, at 235-36 (discussing how to provide context in a Statement of Facts).

9. See Linda H Edwards, *LEGAL WRITING AND ANALYSIS* 142-43 (4th ed. 2015). Excerpts from student narratives that use chronological and topical organizations or a mix of the two may be used together in the in-class exercise to highlight the different approaches.

10. See Ruth Anne Robbins, Steve Johansen & Ken Chestek, *YOUR CLIENT'S STORY* 47 (2013) ("The selection of details from among the available descriptive material allows the writer significant control in creating a vivid or vague mental image for readers.")

11. This excerpt from Shanté Morales's non-legal writing assignment. It was used in an in-class exercise.

12. See Coughlin et al., *supra* note 6, at 222.

13. See Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer For Lawyers On How To Use Fiction Writing Techniques To Write Persuasive Facts Sections*, 32 *Rutgers L.J.* 459 (2001).

14. See *id.*, at 465-469 (discussing character, conflict, resolution, organization, and point of view).

15. Edwards, *supra* note 9, at 222-29 (how to organize and write a persuasive facts statement).

16. This excerpt is from Christopher Ferreira's non-legal writing assignment. It was used in an in-class exercise.

17. See Foley & Robbins, *supra* note 13, at 465-69.

18. This is an excerpt is from Mina Miawad's non-legal writing. It was used in an in-class exercise.

19. See David A. Binder, Paul Bergman, Paul R. Tremblay & Ian S. Weinstein, *LAWYERS AS COUNSELORS* 81-82 (3d ed. 2012) (discussing the use of icebreaking small talk at the beginning of a client meeting to put the client at ease).

20. See Robin S. Wellford-Slocum, *The Law School Student Faculty Conference: Towards A Transformative Learning Experience*, 45 *S. Tex. L. Rev.* 255, 289 (2004).

21. See Judith Wegner, *Better Writing, Better Thinking: Thinking Like a Lawyer*, 10 *Legal Writing* 9 (2004).

The Five Levels of Legal Analysis



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Wilson Huhn's book, *Five Types of Legal Arguments*,¹ which categorizes legal arguments into five categories (text, intent, precedent, tradition and policy), largely inspired me to consider whether it was possible to create a taxonomy of the methods, rather than the types,² of legal analysis lawyers commonly use in legal writing. I began by examining existing methods for teaching legal analysis. What I found in the literature was that teaching legal analysis has become synonymous with teaching analogizing and distinguishing.³ Additionally, when teaching legal analysis, legal writing faculty also tell students to apply the rule to the facts.⁴

What I wanted to do, however, was to be more explicit in my instruction, to create a building block approach, and to scaffold my teaching of legal analysis. As I ventured to give students a more specific and process driven answer to what I mean by rule application, the Five Levels of Legal Analysis ("Five Levels") emerged. The Five Levels gives explicit instruction on how to apply the rule to the facts, using a scaffolding strategy that helps students master a set of skills necessary for a thorough and sophisticated legal analysis. The method I teach consists of five skills with increasing levels of difficulty: (1) fact repetition, (2) rhetorical repetition (with *epimone* and *commoratio*), (3) analogizing, (4) distinguishing, and (5) policy analysis.

While these levels are familiar to legal writing faculty, the Five Levels proposes that teaching legal analysis in the given order of increasing level of difficulty enhances students' legal writing and analytical skills, allows legal writing faculty to identify at which level a student may struggle, and allows for a scaffolding technique that enhances understanding of the analytical process. The scaffolding technique relies on the use of tables, and the rhetorical device of *epimone* and *commoratio*, to guide students through the first three levels. Most importantly, the Five Levels adds to legal writing pedagogy by highlighting the need to teach legal analysis as a series of mini-skills, each with its unique set of teaching and learning challenges.

THE FIRST LEVEL: FACT REPETITION V. STATEMENT OF FACTS

The first level involves mere fact repetition. I explain to students that fact repetition alone does not suffice as legal analysis. Students generally agree that fact repetition is no different from writing the statement of facts. Yet, legal writing faculty need to create a clear contrast between the use of facts in legal analysis from the separate skill of storytelling in the statement of facts.

In the first level, I ask students to break down the rule to its elements, and then to identify legally significant facts from the statement of facts that the student could use to support each element of the rule. The first level exercise aims to assess students' writing abilities and to create a benchmark or reference point for later higher-level exercises.

I use a simplified hypothetical case⁵ with a larceny fact pattern. The rule I use is the common law rule

for larceny. We discuss the rule in class and students break down the elements of the rule as follows: (1) the taking and carrying away, (2) of personal property, (3) of another, (4) with intent (5) to permanently deprive.⁶ I then give the class the following fact pattern:

Albert's cell phone battery was running low. He was desperate because he wanted to call his ailing mother. He walked into a cell phone store and saw a white charger connected to an iPhone 6s on display. Albert asked if he could borrow the charger. The store clerk stated that he could not provide a free charger but that Albert can buy a new one if he likes for \$60. Albert only had \$20 in his pocket. Desperate to reach his mother, Albert unplugged the charger and took it out of the store yelling, "I'll bring it back!" On his way back to the store, the local police arrested Albert for larceny.

Many students wrote a fact repetition analysis without rule to fact application. For example, one student wrote the following fact repetition analysis: "Here, Albert walked into the store to borrow a charger due to an emergency, and Albert stated to the store clerk, 'I'll bring it back!', as he unplugged the charger. Therefore, Albert did not have the intent to deprive."

I found that having students write the fact repetition exercise is most beneficial because it helps students (1) see the contrast to higher-level legal analysis, and (2) better understand the process in writing legal analysis. The first level, in other words, acts as a scaffolding for students before learning the second level.

THE SECOND LEVEL: RHETORICAL REPETITION WITH *EPIMONE* AND *COMMORATIO*

In the second level, I teach students a technique similar to literary devices called *epimone* and *commoratio*.⁷ *Commoratio*⁸ is a rhetorical device where the writer repeats the same idea using different words to dwell upon or return to one's strongest argument. When the words repeated are the same, the rhetorical device is an *epimone*.⁹ I define the use of *epimone* and *commoratio* in legal analysis as the process of borrowing words or phrases from the rule sentence and repeating those words or phrases in the analysis sentences by explaining how the specific words or phrases from the rule apply to the facts. In my use of *epimone* and *commoratio*, the purpose is not merely repetition, but repetition to create both emphasis and

association. Concerning association, the repetition must create a bridge whether between the rule and the analysis or between the facts, issue, holding, rule, analysis, or public policy of two cases. Absent association, the repetition loses its purpose or value within the context of legal analysis.

The idea for using *epimone* and *commoratio* originated from the concept of dovetailing. Writing instructors across diverse genres have generally applied the dovetailing technique as a paragraph or sentence transition device.¹⁰ Dovetailing, however, did not fully capture the emphasis and association needed in the rule application, whereas *epimone* and *commoratio* captured the emphasis and the choice of repeating the same or different words. *Epimone*, for example, seemed more common in rule language to analysis section repetition, while *commoratio* seemed more common in the rule language to facts association and in analogizing. I fused the concept of dovetailing with *epimone* to create a technique that is both an analytical and a writing tool to get students to explain more explicitly their application of the rule to the facts.

The *epimone* and *commoratio* technique I teach acts as a scaffolding and building block to ensure students no longer just repeat facts without explaining how the rule applies to the facts. It is essential to review the rule with the students prior to introducing *epimone* and *commoratio*. Additionally, I teach students to itemize facts to the rule by creating a Table of Rule and Facts. The Table lists all the elements of a rule in one column, and the legally significant facts, in the given fact pattern or case file that supports the rule, in another column. I have seen students add a middle column called "connector" to help them visualize the sentences they need to write. For the larceny fact pattern, I had my students complete a Table as a class exercise, as follows:

RULES	CONNECTOR	FACTS
Taking and carrying away	because/ when	Albert unplugged the charger and took it out of the store
Of the personal property of another	because/ when	cell phone store's white charger
Intent to permanently deprive	because/ when	"I'll bring it back!"; On his way back to the store; Albert asked if he could borrow the charger.

After creating the Table, I ask students to write a CREAC using *epimone* and *commoratio*, where they must repeat language from the rule (R) section when writing the analysis or application (A) section to create emphasis and association between the rule and the facts. The Table makes it easier to teach *epimone* and *commoratio*, by telling students that the rule to fact application must include both the rules and the facts columns of the Table. Most students need a more explicit instruction, so I tell them to repeat the rule language followed by words like “because”, “when”, “since” or any other sentence construction that allows the student to make the explicit connection. Most students opt to use “because” or “when”. I suggest the following easy to remember formula:

epimone/commoratio = (rule language) +
(because/when) + (supporting facts).

I stress to students, however, that the formula is a mere starting point and they must continue the iterative writing process, which may require abandonment of the formula altogether. After *epimone*, I ask students to apply *commoratio* to avoid triteness by repeating the rule using different by synonymous words or phrases. For example, “taking and carrying” may become “removal”. Most students find *epimone* easier to use than *commoratio*, especially when most rules involve terms of art. One can certainly say that the rule language lends itself to *epimone* while the supporting facts lend itself to *commoratio*.

Later, I show examples of ineffective and effective uses of *epimone* and *commoratio* from past students,¹¹ as follows:

1. Ineffective *Epimone* 2:

This Court should hold that Albert did not commit larceny. Under the common law, **larceny is the taking and carrying away of the personal property** of another with the intent to permanently deprive. *X v. Y*, 11 Q. App. 22 (1950). A perpetrator who intended to return the property after some time does not possess the requisite intent to deprive permanently. *State v. Bass*, 33 Q. App. 44 (2000). In *State v. Bass*, the court held that the defendant did not intend to permanently deprive because he indicated that he would return the stereo in a week. *Id.*

Here, Albert did not commit **larceny** because even though there was **taking and carrying away**

of a **personal property**, Albert did not **intend to permanently deprive** when he said to the store clerk, “I’ll bring it back.” Therefore, Albert did not commit larceny.

I explain to students that the example is an ineffective *epimone* because it does not explain how each element of the rule applies to the facts. The writer certainly repeats words or phrases from the rule in the analysis section, perhaps to create emphasis, one of the previously stated purpose of *epimone* and *commoratio*. However, the second purpose of creating association is lacking because there is no further explanation connecting each element of the rule to supporting legally significant facts. Without an explicit association, there remains logical gaps or assumptions in the analysis.

2. Effective *Epimone* and *Commoratio*

This Court should hold that Albert did not commit larceny. Under the common law, larceny is the **taking and carrying away** of the **personal property** of another with the **intent to permanently deprive**. *X v. Y*, 11 Q. App. 22 (1950). A perpetrator who intended to return the property after some time does not possess the requisite intent to deprive permanently. *State v. Bass*, 33 Q. App. 44 (2000). In *State v. Bass*, the court held that the defendant did not intend to permanently deprive because he indicated that he would return the stereo in a week. *Id.*

Here, Albert did not commit larceny because he did not intend to permanently deprive the store of a **personal property - the iPhone charger**. There was **taking and carrying away** when Albert **unplugged the iPhone charger** and **took it out of the store**. However, Albert lacked the requisite intent because he did not **intend to deprive** the store of the iPhone charger **in a permanent sense** when Albert said to the store clerk, **“I’ll bring it back!”** The phrase “I’ll bring it back” establishes that the deprivation is **not permanent** and that there was **intent to return** the item. In other words, it was a **borrowing** and **not a stealing** of the iPhone charger. Therefore, Albert did not commit larceny.

I explain to students that the example, though not perfect, demonstrates an effective use of the *epimone* and *commoratio* technique because the analysis section borrows similar words or phrases from the rule language (an example of *epimone*) and associates

the rule language to the facts using different words or phrases from the facts (an example of *commoratio*).

Getting students to use *epimone* and *commoratio* does not necessarily mean students achieve legal writing mastery. What the second level ensures is the elimination of fact repetition that lacks legal analysis and the creation of scaffolding for higher-level analysis. I remind students that writing is an iterative process that requires multiple revisions, and revisiting strategic decisions about persuasive writing techniques. These decisions include, among others, which rule to highlight, the use of a topic sentence, rule sequence, and parallelism.

THE THIRD LEVEL: ANALOGIZING

The third level involves a type of legal analysis that is well known: analogizing, or to compare relevant aspects of one case to another in order to arrive at a better understanding.¹² In the third level, I begin by teaching students the basics of a good analogy like presenting the facts, holding, and analysis of a case first before writing the analogy.

I teach students to create another table called the Table of Analogies, which lists legally significant facts according to the elements of the applicable rule, the issue and holding, and the court’s analysis. I then ask students to add to the table all cases they intend to use for analogy. I usually give the Table of Analogies assignment to students in conjunction with their legal research. After the assignment, I ask the student to combine the Table of Rules and Facts with the Table of Analogies, as follows:

RULES	FACTS	CASE 1: STATE V. BASS
Taking and carrying away	Albert unplugged the charger and took it out of the store	[unknown]
Of the personal property of another	cell phone store’s white charger	stereo
Intent to permanently deprive	“I’ll bring it back!”; On his way back to the store; Albert asked if he could borrow the charger.	Indicated he would return the stereo in a week
Holding	There should be no larceny	No larceny
Analysis	There should be no intent to permanently deprive	No intent to permanently deprive

Because my students previously worked on the Table of Rules and Facts in the second level, connecting facts to the elements of the rule, they found it easier to work on the Table of Analogies, connecting the facts of a case to the elements of the rule. I also ask students to add rows for holding and analysis. Afterwards, I ask students to identify similarities in the combined Table from the Case(s) column(s) to the Facts/Rule columns. I then ask the students to continue writing the CREAC by adding case analogies to the analysis section.

I have found that teaching *epimone* and *commoratio* in the second level made it easier to teach students to make explicit analogies in the third level. When writing analogies, students connect facts, issues, rule, holding, or analysis by using the *epimone* and *commoratio* technique once again, but this time to highlight the similarities. In other words, students connect language from the case a student intends to analogize to the language of the fact pattern/case file. The use of *epimone* and *commoratio* makes the analogy explicit and helps students avoid using comparison words or phrases but without actually making a comparison, as in the following example of an incomplete analogy: “In *State v. Bass*, the defendant said he would return the stereo just as Albert did.”

Instead, the use of *epimone* and *commoratio* has helped students make analogies that are more effective, as in the following example:

Likewise, in *State v. Bass*, the defendant indicated that he would return the stereo just as Albert indicated he would return the charger. The court held the defendant did not intend to permanently deprive when there was an indication that the stereo would be returned. Just as the court in *State v. Bass* held that the intent to return the stereo did not make the Defendant liable for larceny, this Court should hold that Albert’s intent to return the charger did not make Albert liable for larceny. s

It is important to note that the use of comparison words and phrases like the adverb, “likewise,” and the phrase, “just as,” remains essential. However, the use of *epimone* adds two things: (1) rhetorical emphasis on the similarities, and (2) explicit association between the case and the fact pattern/case file. The above analogy, though not perfect, employs *effectively* because it makes explicit comparisons using appropriate repetitions and associations.

The phrases “return the stereo” and “return the charger” creates an emphasis on the word “return” and creates an association between the words “stereo” and “charger”, both being “personal property” according to the rule. Later, another repetition with the phrases “intent to return the stereo” and “intent to return the charger” creates another layer of repetition and association with the word “intent”, which repeats the “intent” language of the larceny rule and the holding in *State v. Bass* that “the defendant did not intend to permanently deprive.” I have found that teaching students to use *epimone* helps them make thoughtful and explicit analogies.

THE FOURTH LEVEL: DISTINGUISHING AND COUNTERARGUMENTS

In the fourth level of analysis, I incrementally remove the scaffolding while continuing to build a more difficult level of analysis (distinguishing and counterarguments) on top of previously mastered levels (rule application and analogizing). Learning to make distinctions, however, requires learning to make analogies first because, as I explain to students, the two analytical skills occupy two sides of the same coin. Unlike the use of *epimone* and *commoratio* when making analogies, however, distinguishing requires additional analytical and writing skills: (1) students must be able to anticipate the strongest counterarguments, (2) identify the meaningful distinction, and (3) explain why the distinction matters to the case’s outcome.

In teaching students to write the distinguishing section, I begin by reviewing with them various examples of sentences that make distinctions. I also review commonly used contrasting phrases like “unlike”, “on the other hand”, “while”, “however”, and “on the contrary”. I teach students to anticipate counterarguments,¹³ especially those supported by a case. I ask students to research cases that weaken or contradict the argument, and then to distinguish those cases. I warn students, however, that they must identify what I call “meaningful distinctions” that could change the outcome of the case, rather than “meaningless distinctions” that distract and ultimately weaken the overall analysis. I also remind students to minimize time on counterarguments, but to distinguish cases swiftly.

*The epimone and commoratio technique
I teach acts as a scaffolding and building
block to ensure students no longer just repeat
facts without explaining how the rule
applies to the facts.”*

I continue working with tables. I tell students to add to the combined Table, those cases with opposite outcomes or negative treatments of the rule, specifically including the facts, issue, holding, rule, analysis, and other pertinent factors. In this regard, some scaffolding still exists. Using the Table, students can then look for meaningful distinctions. We spend time discussing the Table in class, and I ask students to explain specific similarities and differences among the cases, especially as they pertain to their arguments.

I have found that students find distinguishing a more difficult skill than analogizing even with the combined Table, which now has a more limited use. The difficulty is partly because writing a distinguishing analysis requires the writer to be more concise, but more importantly to make nuanced judgments on what counterarguments to focus on.¹⁴ Additionally, students are not likely to rely on the *epimone* and *commoratio* technique when making distinctions because there are no similar words or phrases to borrow and connect. The scaffolding is coming off.

THE FIFTH LEVEL: POLICY

The fifth level of analysis consists of policy arguments, and poses an even more difficult challenge to students because the scaffolding has all but disappeared. Notably, policy analysis can take place in the rule, explanation, or analysis section of CREAC. In the rule and explanation section, policy analysis requires a discussion of the purpose behind the law. In the analysis or application section of CREAC, policy arguments can arise concerning both the purpose behind and the application of the law. In the analysis section, policy arguments may also require an explanation of how the identified purpose supports arguments made in the first four levels.

Students find policy analysis difficult because, in comparison to the first four levels, policy analysis

requires advanced reading, research, and imaginative skills. While students may find it easier to analyze policy already explained in a court opinion, they struggle when they need to interpret policy on their own. Additionally, students may find it easier to explain the purpose behind the rule, than to explain how the policy enhances an analogy or distinction.

I begin my class on policy analysis with a discussion of the various types of policy arguments. It is important to explain to students the different types of policy arguments, including economic, normative, institutional, judicial administration, and equity and fairness policies.¹⁵ Policy analysis requires students to think about the rule beyond its meaning. I do class exercises where I state a series of rules, and ask students to discuss the possible policies behind the rules. When teaching policy analysis, it is important to begin with simple rules, and then increase the level of difficulty. Students must also learn to research and argue the intended and unintended consequences of the rule. I make sure to have a class discussion and a short written assignment on the policy behind the applicable rule of the assigned case file. I also incorporate policy assignment when teaching legal research. Finally, I have students revisit their first four levels of analysis and ask how policy arguments that arise from the cases found in the research may enhance the first four levels. It is important to inculcate to students the necessity of reaching the fifth level when conducting legal analysis. Many simply ignore it completely.

CONCLUSION

The use of the Five Levels allows for a scaffolding approach to legal analysis pedagogy. I have found that the Five Levels give students a more detailed command of the rule, and a clear guideline on how to connect the rule to the facts. Overall, students have a methodical process to follow when conducting legal analysis that allows the student to build one skill on top of another. Further, the Five Levels makes it easier to identify the level or levels at which a student may struggle. The process then allows students reach a level where they can better work on improving their writing style and techniques.

NOTES

1. See generally, Wilson Huhn, *FIVE TYPES OF LEGAL ARGUMENTS* (Carolina Academic Press 2007).
2. I explain to my students that Huhn's *FIVE TYPES OF LEGAL ARGUMENTS* focuses on arguments about the rule's interpretation, while the *Five Levels* focuses on arguments about the rule's application.
3. See Richard K. Neumann, Jr. & Shiela Simon, *LEGAL WRITING* §9.2, 52-54 (Aspen Publishers 2008); David Romantz & Kathleen Vinson, *LEGAL ANALYSIS: A FUNDAMENTAL SKILL* 37 (Carolina Academic Press 2009); Laurel Currie Oates & Anne Enquist, *THE LEGAL WRITING HANDBOOK: ANALYSIS RESEARCH & WRITING* (6th ed., Walter Kluwer 2014) ("HANDBOOK"); Laurel Currie Oates & Anne Enquist, *JUST BRIEFS* (Walter Kluwer 2003); Nadia Nedzel, *LEGAL REASONING, RESEARCH, AND WRITING FOR INTERNATIONAL GRADUATE STUDENTS* 76 (Aspen 2008).
4. See e.g. Mary Ray, *THE BASICS OF LEGAL WRITING* (Thomson West 2006); Deborah E. Bouchoux, *ASPEN HANDBOOK FOR LEGAL WRITERS* 158-160 (3d ed, Aspen 2013). See Nedzel, *supra* n. 3, at 76; Neumann and Simon, *supra* n. 3, at §16.5, 110-111; and Romantz and Vinson, *supra* n. 3, at 78, 125.
5. It is essential to use a very simple set of facts with a simple rule so the focus of the discussion remains on teaching the *epimone* and *commoratio* techniques.
6. In later memos, students learn rule synthesis.
7. See Barbara Price Wallach, *Epimone and Diatribe; Dwelling on the Point in Ps.-Hermogenes*, *Rheinisches Museum für Philologie*, 272-322 (1980), available at <http://www.rhm.uni-koeln.de/123/Wallach.pdf> (last accessed Dec. 17, 2016).
8. A Latin word that means, "to delay or dwell on a point."
9. A Greek word that means "to tarry or to delay."
10. See, for example, Oates & Enquist, *JUST WRITING* 64 (Aspen 2003); Oates & Enquist, ("HANDBOOK"), *supra* n. 3.
11. For purposes of this article, I have edited and simplified the students' sample paragraphs to bring focus on *epimone* and *commoratio*.
12. Neumann and Simon, *supra* n. 3, at §9.2, 52; and Romantz and Vinson, *supra* n. 3, at 38.
13. Counterarguments for briefs and counteranalysis for memos.
14. I found that some students have a hard time identifying meaningful versus meaningless distinctions, adding to the challenge of writing the fourth level. Additional practice exercises may be helpful in this regard.
15. Romantz and Vinson, *supra* n. 3, at 37.

Editing and Polishing in 10 Steps



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Few would disagree that legal writing is often daunting to first-year law students. Students must learn the TREAT, IRAC, and/or CREAC structures, which can appear overly repetitive and boring at first glance. They must learn to synthesize cases and apply complex legal concepts to sometimes-convoluted fact patterns. This can be enough to overwhelm even the most ambitious and hardworking students.

We were once those ambitious and hardworking 1Ls. We loved our Legal Research and Writing class, but that didn't make it any less challenging. As 2Ls we served as "Writing Fellows" to staff the law school's Writing Center, affording us the chance to relive the 1L experience, this time through a supervisor's perspective of student work. Although each student is unique and no two writing conferences were alike, we realized after meeting with dozens of students each month to discuss the development of their legal writing and analytical skillsets that many struggled with a similar set of issues.

In our quest to provide the sort of meaningful, practical help and feedback that we craved as 1Ls, this worksheet was born. It is a compilation of writing techniques that we gathered over our six cumulative years as law students and four cumulative years as Writing Fellows in the George Washington University Law School Writing Center. Hundreds of students and dozens of Writing Fellows and LRW professors at GW

Law have used this worksheet, and we are proud of its place as an innovative, student-generated component in GW's legal writing curriculum.

This worksheet suggests ten drafts to chip away at clunky arguments, grammatical errors, and inconsistencies to create a polished final work product. Each draft focuses on a single concept to make the editing process more targeted and manageable. Where possible, we have tried to provide formulas to explain suggested sentence structures, and examples to show how these intricate concepts can apply to the types of fact patterns that students deal with. In addition to directly helping students, this worksheet is also an invaluable glossary tool in the editing process by allowing Writing Fellows to quickly provide detailed feedback by referencing particular sections. For example, rather than using a comment bubble to explain the intricacies of fact-to-fact comparisons in response to a problematic analogy, we were able to simply reference the relevant portion of the worksheet with a "fact-to-fact" notation.

As with any writing guide, this worksheet is not a "be-all end-all solution." Easy reading is indeed hard writing and requires significant time and experience to master. This guide merely provides a logical methodology for editing and polishing legal writing and explains some of the basic concepts that students may already be familiar with, but have not yet mastered. We hope that this worksheet can gain widespread distribution, and that you and your students find it useful in your quest for clear, concise, and effective legal writing.

1. Principles vs. Parentheticals (Rule Explanation (RE) Section)

Perhaps the most common misstep in the early drafting process of legal writing is hiding the rule (principle) inside a parenthetical, and injecting legally significant facts (LSFs) from previous case law into the sentence itself:

In *Jones v. Smith*, the court found that Sam was bad because he sold his brother's new car. See *Jones v. Smith*, 843 F.2d 217 (holding that when someone sells another's car, they're bad).

- » This sentence tells the reader several things about *Jones v. Smith*:
 - Sam had a brother
 - Sam's brother had a new car
 - Sam sold his brother's car
 - The court found that Sam was bad
- » This sentence asks the READER to synthesize these facts, figure out what they really mean, and only then provides a rule to follow inside the parenthetical.

What if we swapped the format around and provided our synthesized rule in the sentence, thereby taking credit for our hard work?

When someone sells another's car, they're bad. See *Jones v. Smith*, 843 F.2d 217 (holding that because Sam sold his brother's new car without his knowledge, he was bad).

- » The idea is to use the body of the sentence to explain a principle you're trying to posit, and then back it up with LSFs in the parenthetical following your citation.

Next, we want to include a more thorough rationale to our parenthetical. This will help the reader truly grasp the "essence" of the case we are citing to:

When someone sells another's car, they're bad. See *Jones v. Smith*, 843 F.2d 217 (7th Cir. 2013) (holding that Sam was "bad" when he sold his brother's new car without his knowledge, because depriving others of their property without their consent amounts to unethical and morally reprehensible behavior).

By strategically choosing which LSFs to include in the parenthetical (and back up our rule statement), we can set up the reader to start making the connections to our case before even mentioning how this applies to our case. The goal is to have the reader think your argument was their idea!

The Formula(s):

[Principle/Rule Statement]. See [CASE], CITE ([verb] ing that when LSF LSF LSF, the court [outcome] because...).

[Principle/Rule Statement]. See [CASE], CITE ([verb] ing that [outcome] when LSF LSF LSF, because...).

2. Fact-to-Fact Comparisons (Rule Application (RA) Section, Setup in RE Section)

Once we have successfully stated our principles in the RE, and backed them up with proper LSFs in a parenthetical citation, it's now time to USE these LSFs to our advantage, and effectively "drop the hammer."

Many early drafts lack a parallel structure when applying a rule, and compare case names to people or facts which leaves the reader to draw conclusions.

Similar to *Smith v. Jones*, here, Paul sold Andrew's boat without his consent.

- » This example leaves a reader asking, "What facts from *Smith v. Jones* are relevant to this case?" The intended analogy is unclear and relies on the reader implicitly remembering the facts and holding of *Smith* and making the same connections between those facts and the author's present case. This is risky, and should be avoided.

A parallel structure walks the reader from each point to its conclusion, forcing the reader to connect the dots within the case precedent. Additionally, it is important to spell out the conclusion for the reader.

Similar to "the taking" in *Smith v. Jones*, where the defendant sold his brother's car without his brother's knowledge and the court ultimately found the defendant to be "bad," here, Paul sold Andrew's boat without his consent, and therefore a court will likely find that Paul is similarly "bad."

This comparison may be done via two separate sentences if this would add clarity and concision to the analogy. This also may be appropriate if the parallel structure would result in an unwieldy, long sentence.

Similar to “the taking” in *Smith v. Jones*, where the defendant sold his brother’s car without his knowledge and the court ultimately found the defendant to be “bad,” **here**, Paul sold Andrew’s boat without his consent. **Therefore** a court will likely find that Paul is similarly “bad” for taking Andrew’s boat.

It’s also important for authors to make logical comparisons between cases. Make sure that the things you’re saying are similar *actually have* similarities!

The Formula:

[Similar/Unlike] [LSF/Issue] in [CASE], where LSF LSF LSF, [here/in this case], LSF LSF LSF, and therefore [outcome/analogy].

3. “Why” / “Because” Highlight

Most early drafts will lack specificity, which often leads to logical gaps in your argument. By reading through your analysis and forcing yourself to ask “Why?” after each sentence, these gaps can become extremely visible.

- “Why” is this the case?
- “Why” do I care?

Both of the above questions should be readily answered either within an adjacent sentence, within a parenthetical, or within the sentence itself.

Print out your draft and highlight every time you have used the words “Because” or “therefore.” Now go through and look for areas missing these highlights and insert the basis for your conclusions!

When someone sells another’s car, they’re bad. *See Jones v. Smith*, 843 F.2d 217 (7th Cir. 2013) (holding that Sam was “bad” when he sold his brother’s new car without his knowledge, **because** depriving others of their property without their consent amounts to unethical and morally reprehensible behavior).



LOOK FOR LOGICAL GAPS! Are you trying to make the reader infer a rule that you have not explained in your Application section? Are you trying to make the reader draw a conclusion that you have not supported with the legally significant facts? **Don’t try to hide bad arguments; you need to do the work for the reader!**

4. Passive Voice Check (is/was/are/were)

Passive voice occurs when the object of an action is made to be the subject of a sentence. Although passive voice can be a powerful tool when used strategically (there’s nothing like telling someone “mistakes were made” when you are trying to create distance between the mistakes and the person who made them!), the indiscriminate use of passive voice indicates a lack of clarity in writing. If you can paste in the words “by zombies” following your verb and have the sentence still flow, you have used passive voice!!!

Samlin was not properly stabilized **[by zombies]** when he left Kutrolli hospital, and therefore will likely be able to recover under EMTALA.

By removing passive voice from your writing, the reader gains a better understanding of who or what is performing the action:

Dr. Zheng did not properly stabilize Samlin prior to discharge, and therefore a court will likely find that Kutrolli Hospital violated EMTALA.

Conversely, passive voice can be tactically used to, among other uses, conceal a bad actor: “mistakes were made” vs. “the defendant made a mistake.”

An easy way to filter out a significant percentage of passive voice in your draft is to search for the words IS/WAS/ARE/WERE/BE and rework sentences to remove these words. It’s important to tell the reader WHO IS DOING THE ACTION.

5. Opportunities for Precision

Check for overly-strong language

- Authors can accidentally create red flags when using words like:
Clearly/Obviously/Always/Never/Certainly/
Necessary/Require[d]
- Don’t overstate the facts, and don’t insult the reader by stating something is obvious that may not be obvious to the reader.

Check for Rule and Application Mirroring

- This helps the reader anticipate your argument’s direction, which can lead the reader to your conclusion before you even present it.
- Your application section should “mirror” the order in which you presented the rule/explanation.
 - Consider highlighting each RA sentence and pairing it with its corresponding RE sentence.

Check for “The + Noun”

- When authors use “the + noun” it can cause the reader to think they should know *which* “noun” you’re talking about.
- Many times, simply replacing “the” with “a” or “an” can signal to the reader that this is a generic placeholder for your comparison.
- Other times, this is an opportunity to add legally significant facts and thus specificity to your writing.

Similar to *Hensley*, where **the [an] officer** reasonably relied on . . .

Check for “Literalisms”

We often say things out loud that don’t necessarily mean what they sound like. In legal writing, it’s very important to actually mean what you write!

Since vs. Because

I have been tired **since** Thursday. I am tired **because** I’m a law student.

“As long as” vs. “So long as”

The lecture was **as long as** the game. You can pass **so long as** you read.

While vs. Although/Whereas

I run **while** listening to music. **Although** I listen to music, I can’t sing.

Check for Tense Mismatch (Past / Present / Future / Participles)

It’s important to comb through your paper for tense mismatches. This can be easily missed if you are not looking specifically for this error:

Although Kutrolli Hospital provided Samlin with a medical screening within its own policy, the hospital violates[ed] EMTALA by providing other patients with disparate treatment.

Check for Improper Pronouns

Be careful using words like he/she/her/it/they in your writing where it isn’t extremely clear to whom you are referring.

They [The court] found that **he** [the defendant] was bad because he sold his brother’s car without **his** [his brother’s] knowledge.

Check for “That” vs. “Which”

- If removing the restriction following the subject would alter the meaning or function of the sentence, use “that.” Otherwise, use “which.”
- Generally, the restrictive clause is not separated by commas when using “that.”

Legal writing **that Jake has polished** is more effective.

Legal writing, **which can be technical,** is difficult to master.

6. Read Out Loud #1 (Fix all clunky areas)

- Reading your drafts out loud is perhaps the single best way to spot clunky areas in your writing.

Other patients ~~did receive~~ [received] such further screening that they ~~were able to avoid~~ [avoided] further injury.

- Find a quiet place and read a physical copy of your paper out loud. As you read, mark any areas that seem awkward and go back through to make adjustments as needed. You should closely examine anything that causes you to pause or stumble.

7. Mechanical Fixes

Check for Hanging Headers and Thesis Sentences

- Make sure there are at least two lines of text below any header or thesis.
- Ensure you properly utilize the page break function.

Punctuation (Check for quotes ending a sentence.)

- Search for any instances where you accidentally left a period (or comma) on the outside of quotation marks:

Kutrolli’s policy requires all medical personnel to take “special precautions.”-

- Note that semicolons, question marks and exclamation points go outside of quotation marks.

8. Check for Persuasion (Can you be more persuasive?)

- Read through every sentence of your draft and ask yourself if there is perhaps a better way to state each idea. Many times, early drafts will tend to “lead with their chin,” and present the opposing argument upfront. Always lead with your strongest argument and strategically fold in any opposing viewpoints.

• Confirm your purpose

- Are you writing a predictive memo? If so, you are NOT a judge. Your job is to predict what “a court **will likely find.**”
- Is this a motion or brief? If so, “this court **should** find...”
- Know your audience, and make strategic word choices!

9. Citations (Bluebook)

- Make sure to take time to go through your draft and look for:
 - » Improperly cited materials/cases
 - » Supra footnotes that have moved in the editing process
 - » Missing citations (Pin Cites, Record Cites, etc.)
 - » Placeholders you had previously left (telling yourself to cite later)
- Ensure that string cites are actually adding value to your analysis.
 - » Where applicable, utilize the *See, e.g.*, signal instead.

10. Finalize Your Work Product!

Re-read Assigning Documents

- Fact Pattern
 - Print out a fresh version of your assigning docs and highlight any LSFs that seem important. Be sure to ask yourself whether you have used all of these facts. Why/why not?
- Assigning Memo
 - If the attorney assigning your memo has specifically told you to not worry about various elements or issues, make sure you have disposed of these in your “umbrella” paragraph.

- Local Rules (if applicable)

When writing a document that will ultimately be sent to a court, ensure you have read and re-read the local rules to ensure that your document complies with these rules.

Read it out loud for a second time (If you make ANY adjustments, wait an hour, read out loud again)

This is a CRITICAL part of the drafting process. It may require multiple rounds of reading your draft out loud and making changes, but taking time between reading and editing provides your mind that critical “freshness” needed to find tiny mistakes.

SET IT DOWN FOR A DAY

Budget your time effectively to allow for a full day off prior to turning in your work. At this point, you should feel VERY good about your work product, and now it's only about finding mistakes you have overlooked. A full day off can be as effective as another pair of eyes.

Read out loud for a third time, make any needed edits (If you make ANY adjustments, wait an hour, and read out loud again)

As a hard-set rule, do not allow yourself to turn in a document that you just found an error in. If you find a mistake prior to turning in your document, it's definitely possible there are others still out there. Take an hour, set it down, and read it out loud again.

Moving Beyond Just-in-Time Writing



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JUST-IN-TIME WRITING

Many of you will be familiar with the following scenario. At the start of the semester, you give your students a syllabus that lays out important dates for the course, including the deadlines for writing assignments. Your students glance at the deadlines and immediately start to plan backward. If, for example, the closed memo is due on October 15 at 5 p.m., your students (with a few rare exceptions) will instinctively start to ask themselves how much time they need to write the memo, get it to you by 4:59 p.m. on October 15, and get a good grade. This thought process will then give rise to a new, interim date in each student's mind: the date upon which the student must start work on the memo. Of course, some students will do a better job than others in coming up with a reasonable estimate (and sticking to it).

This scenario, which I call "Just-in-Time Writing," frustrates legal writing professors for a number of reasons. There are the inevitable handful of students

who have seriously underestimated how long they need to write a closed memo and who seek an extension at the last minute. There are the students whose analysis is solid but whose papers are riddled with typos and grammar errors that evince a last-minute scramble with no time left for proofreading. And there are those who, unfortunately, miss the deadline altogether.

I despair of Just-in-Time Writing for slightly different reasons. I am now in my second year of teaching after several years at a large law firm. With the perspective of this recent transition, I now firmly believe that although students in a traditional legal writing and research class will learn what a lawyer writes, they will not even start to learn how a lawyer writes. We can teach students to produce a predictive or persuasive memo that resembles the work product of a "real" practicing lawyer (with varying degrees of success for each student). However, no student who practices Just-in-Time Writing will understand the behind-the-scenes, intensely collaborative efforts that are essential to a high-quality piece of legal writing.

In the rest of this article, I first dive a bit deeper into how a lawyer writes, using the example of a law firm. I chose a law firm because I am most familiar with this environment. The process described, however, is similar in a small law office, judge's chambers, prosecutor's office, or any other setting in which a group of lawyers work in a hierarchical or collaborative setting. I then explain some of the techniques that I am using in the classroom to try to move students away from Just-in-Time Writing to a writing method that more closely approximates how they will likely work as lawyers, judicial clerks or law interns. I call

this method “Responsive Writing,” for the reasons explained below. Finally, I provide some practical tips about teaching techniques that have worked (and have not worked) in my efforts to convince students to move toward Responsive Writing.

RESPONSIVE WRITING

How does Just-in-Time Writing differ from the Responsive Writing process of a practicing lawyer? Well, in just about every way, but fundamentally, the difference boils down to whether the students focus on the end result or on the writing process itself.

Just-in-Time Writing focuses on the end result. Just-in-Time writing is a solitary endeavor in which a student works toward an end goal that is entirely the student’s: to achieve a good grade in a particular course. The student may consult with a professor or teaching assistant, but the student does most of the work alone. Just-in-Time Writing is prevalent in high school and undergraduate courses, which usually offer the students little advice or guidance about how to get from initial assignment to finished product. So it is no wonder that most of our first-year law students, even those with prior work experience, practice Just-in-Time Writing.

By contrast, a lawyer working on a major piece of writing such as a memo or contract virtually never enjoys a linear, solitary progression from first assignment to finished product. The lawyer is writing not for the lawyer’s own purposes (a grade on a transcript) but for a client’s. Clients can be fickle; their priorities can shift; they can change their minds about goals and methods. Moreover, a junior lawyer fresh out of law school rarely works on a major writing assignment alone. That junior lawyer will have at least one supervisor, and likely several supervisors of differing ranks, looking over the junior lawyer’s shoulder. Those supervisors will use the junior lawyer’s research and developing thoughts to inform their views of how to proceed with the matter at hand. Often, as a result of a junior lawyer’s initial findings, a supervising lawyer with more experience will make a strategic decision to change course. This decision will, of course, alter the junior lawyer’s mandate for the writing project. Throughout this process, the junior lawyer must adapt – the writing process must respond to changing circumstances. This is Responsive Writing.

Let’s take the example of a law firm to illustrate how Responsive Writing works. And let’s assume that, as is typically the case, the senior lawyers on a client team ask the junior associate to prepare the first draft of a piece of writing – for example, a predictive memo that the lawyers have promised to deliver to the client in a week. The process might unfold as follows:

DAY SEQUENCE OF EVENTS

- Day 1** The junior associate starts research and prepares a rough outline of the memo based on research findings. The junior associate promises a draft to the senior associate within 48 hours.
-
- Day 2** The partner drops by in the morning to suggest a new legal theory that the team had not previously discussed. The junior associate goes back to do more research based on new theory. Late in the day, the senior associate asks for a draft of the memo first thing the next morning. The senior associate and the junior associate discuss the research findings, leading the junior associate to do some supplemental research in light of the senior associate’s suggestions.
-
- Day 3** The junior associate delivers the draft to the senior associate in the morning.
-
- Day 4** The senior associate gives detailed comments to the junior associate. The partner then calls, says the client has requested an informal sneak preview of the memo in the next 24 hours, and requests to see a draft of the memo that evening. The junior associate delivers the draft by early evening.
-
- Day 5** The partner, senior associate, and junior associate meet first thing in the morning to discuss the draft. The partner likes the research but points out some flaws in the logic supporting the associates’ conclusions. The partner also provides extremely detailed line edits. The junior and senior associate work closely together for a few hours to incorporate the partner’s comments into the draft and then deliver a revised draft to the partner. After incorporating some light comments from the partner on the revised draft, the junior associate prepares an informal, one-page executive summary of the memo that the team can email to the client. After comments from the senior associate and partner, the junior associate emails the executive summary to the client.
-
- Day 6** The client calls to ask some questions about the email and to correct a few factual assumptions that the lawyers had made. Based on this conversation, the junior associate revises the memo and delivers it to the senior associate and partner, along with an email summarizing the points raised by the client.
-
- Day 7** After incorporating comments from the senior associate and partner, the junior associate emails the memo to the client.
-

The key difference between the responsive process described above and Just-in-Time Writing is that a lawyer, particularly a junior lawyer who is often charged with preparing a piece of writing, is never working in a vacuum with only a looming deadline ahead. More-senior lawyers want to review drafts, discuss ideas, ask questions, change tactics. Clients call with new facts, or modified priorities. Collaboration among lawyers or between lawyers and clients helps reveal weaknesses in the analysis. Clients cannot wait for the final memo; they demand an earlier oral or written (usually emailed) summary or bullet point list of conclusions. Ultimately, all of this work comes together in the final written work product. The process, however, can often feel like two steps forward, one step back. Then repeat.

INCORPORATING RESPONSIVE WRITING INTO THE CLASSROOM

Of course no legal writing professor can simulate this exhaustive process for dozens of students at a time. In our Lawyering program, we do meet with our students regularly in the weeks before an assignment deadline. However, the students who take advantage of the opportunity are often self-selecting (i.e., those who least need the help). The conferences take up a significant amount of time outside of the classroom, and we do not have enough time to simulate the rapid-fire interventions from supervisors and clients that a junior lawyer often faces in the writing process.

I am trying, however, to find ways to move the legal writing classroom away from Just-in-Time Writing to a more collaborative, more piecemeal, less linear model that more closely simulates Responsive Writing – within the constraints of a legal writing professor’s available time. I describe below the tactics that I have used to break a multi-week writing process into smaller pieces, and to force the students to review their own writing critically.

1. Suggested writing milestones

For each major writing assignment, I provide suggested weekly milestones to guide the students as they work toward the seemingly distant final deadline (i.e., complete your research within the first week; list all your legal rules by the end of the second week). These suggested milestones have had mixed success, for the same reason as the optional student

“I am trying, however, to find ways to move the legal writing classroom away from Just-in-Time Writing to a more collaborative, more piecemeal, less linear model that more closely simulates Responsive Writing.”

conferences: the motivated and organized students are more inclined to follow the suggestions. Those students who would most benefit from a directed writing schedule often do not want to accelerate or complicate their Just-in-Time Writing process.

In this respect, the academic setting is less effective than a law office in teaching Responsive Writing habits to students. In a law firm, partners, senior associates, and clients all provide incremental deadlines on short-form pieces of work that feed into a larger assignment. For example, a senior associate may ask for, and provide feedback on, a draft table of contents for a large contract before the junior associate starts any detailed drafting of terms. In a first-year legal writing and research class, professors simply do not have enough leverage to provide this type of ongoing, incremental advice and assessment to students.

2. Periodic in-class quizzes on writing assignments

I give several quizzes related to the assignment—of increasing complexity—during the writing process. The quizzes address, among other things, the students’ understanding of the question, their legal research, their rule synthesis, and their analysis of ambiguous facts. The quizzes seem more helpful to the students than the milestones, because the quizzes force students who are lagging behind in their work to face the fact that they need to step up their efforts. Struggling to answer even the most simple quiz question in class has provided a useful reality check for some students.

The quizzes also align closely with the Responsive Writing process. As I tell my students, they always need to be prepared for that moment when, as a junior associate, they find themselves in the elevator with a supervising attorney who uses the moment to start asking questions about the junior associate’s work on



a particular assignment. The quizzes simulate that impromptu questioning and impress upon students the need to develop an early command of the subject matter, well in advance of any stated deadline for an assignment.

3. Peer editing exercises on excerpts of writing assignments

I ask the students to bring a short segment of their writing to class early in the writing process to use in a small-group exercise. For example, students bring in their draft statement of facts for their open memos, divide into pairs, and ask each other questions about the drafts: Why is Fact A relevant for the Statement of Facts? Aren't you stretching the truth a little about Fact B?

This exercise has a two-part benefit. First, each student receives editorial advice on that student's draft. This advice is admittedly from a peer who may be struggling with many of the same issues as the writer, but that peer likely has a perspective on the facts or the law that the writer has not thought of. And second, each student steps into the role of an editor during the exercise, asking the same types of critical questions that we professors ask when we review students' work.

Similar to the quizzes, this exercise works well because it is so similar to what happens in a law practice, where lawyers constantly consult with colleagues for second opinions and perspectives. It is essential that students get comfortable both seeking out, and giving, advice on writing and thinking through a problem.

4. Substantive editing well in advance of deadline

I have required the students to bring a complete (although rough) first draft to class a week before the final deadline. We use these drafts for editing exercises designed to illustrate to the students that editing goes far beyond proofreading, and that the first draft is only a small step towards a final work product. For example, the students number their legal rules in their law section and then look at the order in which they have applied those legal rules to the facts. Usually the order of the legal rules and the order of the fact application are entirely different, and reconciling them requires the students to think about what the most logical structure would be.

Many students have said that they found this editing work surprisingly helpful. The students initially resented the requirement to produce an early draft, but they discovered that their memos significantly improved as a result of front-loading their writing process. They commented that the last week before the deadline was a valuable opportunity to improve their writing in ways that they would not have done if left to plan their own writing schedules. And I tell them that the process is a bit closer to how Responsive Writing works in a law firm, where a junior associate produces multiple drafts for review by supervisors well in advance of any final deadline.

5. Interventions in the writing process

To nudge the students out of their linear, solitary writing process, I provide interruptions from hypothetical characters in the fact pattern that we're using for a memo assignment. For example, I send an email from the "client" introducing new facts and questions while the students are working on a memo. The students must respond to the questions quickly and concisely, and must take the new facts into account in their work.

These tactics have succeeded for reasons similar to the quizzes. Intrusions on the students' writing process are designed to (1) give a gentle nudge to those students who are lagging behind in their work, in the same way that a client or senior associate might do for a junior associate by calling to check in on the junior associate's progress; (2) emphasize the process of drafting, consulting with colleagues, and rethinking, rather than merely drafting and finalizing; and (3) force the students to be flexible in the face of unanticipated

changes, because in a client-service business, those changes are inevitable. One unanticipated side benefit: the students find this type of real-world simulation fun and exciting, and it provides a welcome contrast to the routine of most law school classes.

HOW TO TEACH RESPONSIVE WRITING: LESSONS LEARNED THUS FAR

I am still developing my thoughts about how best to teach Responsive Writing to students who have usually known nothing but Just-in-Time Writing before coming to law school – and who have often succeeded with Just-in-Time Writing because it is the prevailing practice in high school and undergraduate courses. Even from my brief experiments thus far, though, some key takeaway lessons have emerged.

First, merely suggesting to students that they should be allocating more time to their writing, and even providing specific writing milestones for guidance, is not effective. Most students have never had reason to question the benefits of Just-in-Time Writing. When balancing the significant demands of a full class schedule, law students are not inclined to put significant extra effort into a writing process that feels foreign and has no quantifiable impact on their grade.

Second, most first-year law students have no idea about the importance of editing. They do not even know how to edit their own work. They understand the concept of proofreading, although some proofread better than others. But they have never learned why they need to allocate significant time to substantive editing. Just-in-Time Writing is about getting words down on the page; it teaches the students nothing about how to rearrange, massage, replace, and finesse those words to improve the final product.

Third, once students are forced out of their Just-in-Time Writing habits and receive some guidance in how to edit and improve their work, they respond quickly. They start to create their own writing schedules, with more nuances than simply “start date” and “end

date.” They look at their own writing more critically. They realize the enormous gap between first draft and finished product. They anticipate the questions that a professor (or client, or supervising attorney) is likely to have about their work.

Getting students to this point requires convincing students that Responsive Writing will serve their interests as law students, and ultimately as practicing lawyers, better than Just-in-Time Writing will. In many cases, this realization unfolds gradually as the students proceed through a writing class that is far different from any class they have experienced previously. The quizzes, peer editing, and self-editing exercises often open the students’ eyes to how much more work they could do on what they had previously considered to be a pretty good draft. The editing exercises get more sophisticated over the course of the year. I tell the students that my goal is to give them an arsenal of substantive editing skills that they can use on their own writing, in their own time.

.....
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understand the behind-the-scenes,
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.....

I have also found that simple stories about how lawyers engage in Responsive Writing resonate with the students, who often have trouble seeing how their coursework relates to the career for which law school is supposed to prepare them. For example, I tell my students about a first-year associate who was immersed in research on a memo for a client, supervised by a partner and myself, when I was a senior associate. The partner and I dropped in on the first-year associate unexpectedly one day and started asking him questions about his research. The hour-long conversation revealed that the associate had uncovered some unexpected information, which led us to completely revise our goals for the memo. The associate enthusiastically redirected his research and writing after we had changed the scope of the memo, even though we had just significantly added to his workload.

This anecdote shows Responsive Writing in action. We had outlined a memo that we wanted to deliver to the client, and the associate had done a substantial amount of research and early drafting. If the associate had been left to his own devices, he would have produced a memo that capably adhered to our original outline. But

we disrupted his drafting process, probed his research findings, and questioned (and ultimately rejected) the validity of our original approach. As a result, the three of us working together substantially improved the final memo.

CONCLUSION

Although I firmly believe that students will fare better in law school if they can shed their Just-in-Time writing habits, improving their law school performance is only a short-term goal. Ultimately, my goal with introducing Responsive Writing to my students is to better prepare them for their law careers, and in particular for their initial years as lawyers. I base this goal on personal experience. As a fresh law school graduate, I would have benefited greatly from understanding how my clients and supervisors would expect me to work. As a mid-level and senior associate, I always sought out for my team the rare junior associate who had this understanding: the associate whose efficiency, advance planning, and flexibility allowed that associate to handle the interruptions, course changes, input, and challenges that would inevitably come from clients and colleagues alike. I hope that the students who embrace Responsive Writing and leave behind Just-in-Time writing will stand a much better chance of becoming that rare and incredibly valuable new lawyer.

Treat It Like Book Research: A New Approach to Teaching 1Ls Lexis and Westlaw



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If you ask first-year law students whether they prefer online research or book research, the overwhelming answer will be online research. And, why not? Students are accustomed to using the internet. A 2010 study by the Pew Internet Project found that nearly 100 percent of undergraduate students use the internet.¹ Another Pew report found that 73 percent of college students used the internet rather than libraries for research and only 9 percent of students reported that “they still gather information the old-fashioned way.”² Simply stated, students entering law school are not accustomed to using traditional library materials.³

For most incoming students, book research seems antiquated. Students moan when they are forced to learn book research; however, they get excited for Lexis and Westlaw training. This excitement likely stems from students equating technology with ease and quickness. Lexis and Westlaw perpetuate this belief with their marketing.⁴ Yet, veteran researchers know that legal research is rarely easy or quick.

For unsophisticated researchers, Lexis and Westlaw present unique problems because of the multitude of search results. First, many students lack a basic understanding of the difference between primary and secondary authority. Yet, absent a focused search in a specific database, an individual search will generate both types of authority. Lexis and Westlaw perpetuate this problem by placing a search bar on their home screens. That search bar is too great of an invitation for eager, yet inexperienced, researchers to insert a search query without first formulating a careful and focused research plan. Second, students fail to understand the court hierarchical structure and the importance of jurisdiction.⁵ Again, an unfocused search will likely generate court decisions from different levels and differing jurisdictions. The consequences for unfocused searching are apparent: students have a tendency to rely on irrelevant authority,

and they become inefficient researchers. Perhaps an illustration will elucidate this point. Running unfocused searches in multiple databases is akin to walking through a library and browsing the entire collection. No researcher in his or her right mind would conduct research in that manner. It would simply be too unproductive and time consuming.

Yet, Lexis and Westlaw representatives teach students to begin searching by using the search bar on the home screen. They then tell students not to be concerned with the large number of results, including results from various jurisdictions and differing types of law, because they can filter the results later to get more focused results. While this is true, waiting to filter invites confusion, and this problem is compounded when students enter law school with “the inability to judge the quality of information”⁶

Given these obstacles to effective research practices, students need a new approach to electronic research. The purpose of this article is to present a new method to teaching Lexis and Westlaw that compensates for students’ deficiencies. This approach brings the benefits of book research to Lexis and Westlaw.

THE APPROACH’S RELATIONSHIP TO BOOK RESEARCH

For students unfamiliar with legal research, the tendency is to treat electronic legal research like a Google search. They expect fast and relevant results without much effort.⁷ However, they usually discover that the initial results are not helpful; consequently, their inclination is to enter another search. In no time, students enter search query after query without making any progress.

On the other hand, book research offers several advantages over electronic research.⁸ First, students can more readily determine the type of the law they are researching, because the book tells them so. This permits students to easily distinguish between a statute, a case, or a secondary source. The same cannot always be said for students using electronic research.⁹

Second, book research heavily relies on indices and tables of contents. These tools enable researchers to discover additional, or more specific, search terms. Third, book research can be more forgiving than electronic searches because the researcher has the

ability to see the relationship between search terms and can move fluidly between the index, table of contents, and the actual text. To illustrate, the index may point the student to section 10, but the answer actually appears in section 12. After determining that section 10 is not relevant, a student can quickly get to the relevant section by turning to the table of contents instead of starting the search over. In other words, the initial search may get you to the right street, but not the exact house. You don’t need to start the directions over (i.e., generating more searches); instead, by consulting the map (i.e., the table of contents), the right house can be located.

By incorporating the advantages of book research into electronic searches, students will apply focused searches in specific databases, thereby reducing the number of searches and accumulating more relevant hits. Overall, this methodology helps students become more effective researchers.¹⁰ The rest of the article discusses the methodology for teaching students how to treat electronic research like book research.

PREPARING TO USE ELECTRONIC RESEARCH

Students often approach electronic searching with little forethought, causing them to either forget or overlook the fundamental steps of research.¹¹ Consequently, they have a tendency to sit at the computer and type in one search after another. The first step is to break students of this habit and to help them see that electronic research requires the same amount of thought and preparation as book research. To illustrate the connection between electronic and book research, I ask students to envision electronic research as a large digital library. I tell them to picture themselves walking into a library and going to the most applicable room in the library that is relevant to their research problem. For example, if presented with a problem governed by Ohio law, they should ask themselves where they would go in the library to access the Ohio materials. Obviously, they would not walk into the room housing federal materials. Instead, they would go straight to the room that contains the Ohio resources. By envisioning electronic research as a physical library, students will likely approach their electronic research in a more focused manner.

Second, students need to understand the organizational schemes of Lexis and Westlaw. To do

this, students should be taught that both platforms divide the database content into the following general content folders: all content, federal materials, state materials, and practice-specific materials. For state materials, each state folder is divided into primary law (statutes, cases, and regulations) and secondary material. The federal folder is organized based on primary law (statutes, cases, and regulations). Accordingly, students can start their research in the applicable jurisdiction effortlessly by simply selecting the applicable folder.

Third, students must devise a research plan, as they would before doing book research. A typical research plan should involve the following steps: 1. develop research terms; 2. determine jurisdiction; 3. consider applicable secondary sources; 4. follow the trail to primary authority; and 5. validate the law. Although students will be using electronic research, they should be reminded that a written research plan will help them stay on task.

Once students understand how Lexis and Westlaw organize their databases and how to create a research plan, they are ready to be presented with the research steps.

RESEARCH STEPS

1. Developing Research Terms

As with book research, students must spend time generating search terms before sitting at the computer. To help students with this important step, I teach students to consider the following categories: 1. the parties; 2. places and things; 3. claims and defenses; and 4. relief sought.¹²

2. Starting with Jurisdiction

The next step is to determine the applicable jurisdiction. Narrowing the search to the specific jurisdiction will yield fewer and more relevant results. To do this, students should be taught to ignore that tempting search bar on the home page.¹³ Instead, like book research, students need to go to the correct room in the library. This is achieved electronically by clicking on the applicable folder that houses the material for the subject jurisdiction.

3. Examining Secondary Sources

Having navigated to the correct jurisdiction folder, students should start their research by consulting

secondary sources. Accessing jurisdiction-specific secondary sources can be achieved easily on both Lexis and Westlaw. For many state jurisdictions, Lexis and Westlaw provide state-specific secondary sources in the state content folder.¹⁴ Federal-related secondary sources are in the “All Content” folder on Westlaw. For Lexis, federal-related secondary sources are located under “Secondary Materials” in the “Content Type” folder.

To research a secondary source, students should limit their search to the index or table of contents, as they would in book research. When using Westlaw, students can conduct a search in the secondary source index. The indices are located in the “Tools & Resources” box on the right side of the screen. This allows students to scan the index for relevant search terms much like looking at the print version. On the other hand, many of the common secondary sources that young legal researchers will use cannot be searched through an index in Lexis; however, Lexis permits searches in the table of contents, which still achieves focused results.

4. Reviewing Primary law and Citators

To research primary law, students should follow the primary source links from the relevant secondary material that they found. This is the preferred method for finding primary law when the students are unfamiliar with the topic they are researching. Nevertheless, if students know that a statute applies,¹⁵ then they can go directly to the statutory database for the relevant jurisdiction.¹⁶ When searching by the statutory database, students should be taught that the approach to Westlaw and Lexis vary somewhat. The key difference is that Lexis does not permit index searching. Thus, when using Lexis, students should begin their search in the table of contents; in Westlaw, however, students can begin their search in the index.¹⁷ Having found the relevant statute(s), the students will be able to review the annotations for relevant case law and additional secondary materials. Once students have located the applicable primary law, they will need to validate the law using Shepard’s on Lexis or KeyCite on Westlaw.

MODELING THIS APPROACH FOR STUDENTS

Students need to visualize the steps of this approach. Accordingly, I show them how the approach works through the following hypothetical:

Student works for the public defender’s office in Toledo, Ohio. She has been assigned to help Barry. A police officer pulled over Barry for running a red light. During the stop, the officer observed the barrel of a gun on the back seat, sticking out from underneath a hoodie jacket. Accordingly, the officer arrested Barry for possession of a concealed weapon. Write a memo analyzing whether Barry has a defense to the charge because the weapon was not fully hidden.

To emphasize the importance of treating electronic research like book research, I ask the students to verbalize the research steps. Then, as a class, we walk through each step.

Steps 1-2: Develop Search Terms and Jurisdiction

As a class, the students discuss the applicable search terms to use and the appropriate jurisdiction. Without fail, the students agree that Ohio is the appropriate jurisdiction. However, students may differ on search terms. Nevertheless, I approach the problem using different search terms offered by the class so the students can learn that they can arrive at the same result with different terms.

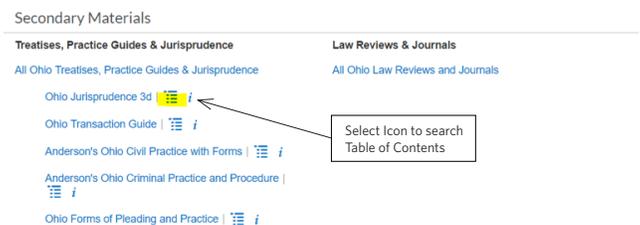
Step 3: Consult Secondary Sources

Understanding that Ohio is the jurisdiction, I open the Ohio database. I pause to tell the students that opening the Ohio database is similar to walking into the Ohio room in the library. This is a good time to remind students as to the importance of beginning research in a secondary source. I then show the students where to find secondary sources in the Ohio database. To create a mental picture, I tell the students that we are now looking at the area in the Ohio room that contains the secondary material. Both Lexis and Westlaw offer *Ohio Jurisprudence*. At this stage, I explain that a state-specific *Jurisprudence* is a good starting point for secondary material. Here, I again pause to create the mental picture that the students are looking at *Ohio Jurisprudence* on the shelves. To reinforce the need to use indexes and table of contents, I ask students how they access material in books. This question is used to generate a discussion on the differences between the search bar in electronic searching and indices and tables of contents in book research.¹⁸ To further emphasize the importance of indices and tables of contents, I explain that using the search bar at this

stage is akin to simply opening up a random book and flipping through it, which is a worthless exercise. With this background, the students are now prepared to apply the search terms to a specific secondary source. Because the Lexis and Westlaw platforms differ, the “treat it like book research” method should be presented in both formats.

A. Lexis

Rather than doing a search in Lexis generally or in *Ohio Jurisprudence*, the “treat it like book research” method requires students to begin searching terms in the table of contents. This is achieved by selecting the outline icon to the right of *Ohio Jurisprudence*.



Source: Lexis Advance. Reprinted with the permission of LexisNexis.

To ensure that the search is done only in the table of contents, rather than in the entire *Ohio Jurisprudence* database, the “Table of Contents (TOC) only” feature must be selected.



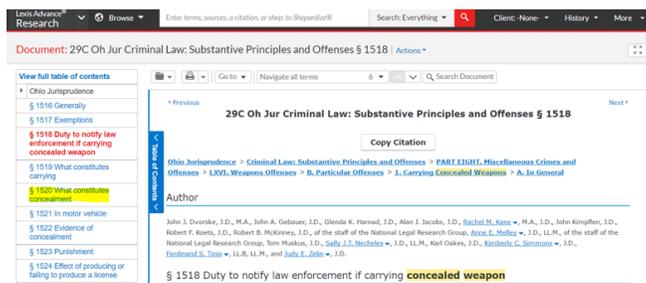
Source: Lexis Advance. Reprinted with the permission of LexisNexis.

At this point, it makes sense to discuss the search terms that students offered. More often than not, students offer the term “concealed weapon.” I explain the utility of a Boolean search and thus enter the search as: ‘concealed /5 weapon.’¹⁹ To show the students the advantage of searching in the table of contents, I next run the search in the Ohio Jurisdiction database. That search generated 62 results, which would be a difficult number for a student to manage.

However, running the search query in the table of contents only generated one result: “§ 1518 Duty to notify law enforcement if carrying concealed weapon.”

I ask the class to read this section and determine its relevance. I typically receive a resounding “no.” At this point, I tell my students not to panic because panicking leads to more searches which leads the students farther away from the answer.²⁰ Rather, I show the students how to use the table of contents.

When the table of contents tab is opened, we learn that § 1518 appears in the chapter discussing carrying concealed weapons. Seeing this, we can have some confidence that, while our result did not provide the exact answer, it may be close. In fact, after the students scan the list of section headings, students notice § 1520: “What constitutes concealment.” Upon reading that section, the class concludes that we have reached the relevant section, and the students learn that a weapon need not be entirely hidden from view to be concealed.



Source: Lexis Advance. Reprinted with the permission of LexisNexis.

B. Westlaw

Because the Westlaw approach differs from Lexis, I walk the class through the same hypothetical on Westlaw. Having already developed the search terms and jurisdiction, I move directly to the Ohio database and select *Ohio Jurisprudence*. Unlike Lexis, Westlaw permits searching in the index itself. To search the index, click the General Index under “Tools & Resources.” To keep the mental pictures going, I tell the students that this is akin to pulling the index for *Ohio Jurisprudence* off the shelf.

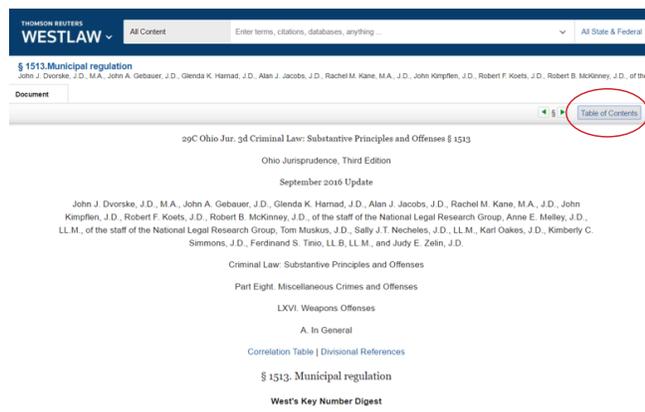


Source: Westlaw. Reprinted with the permission of Thomson Reuters.

Now that I am in the index database, I input the same query²¹ from Lexis: “concealed /5 weapon.” The search revealed seven results from the index, a manageable

number. I ask the students to scan the result. Most students recognize that the second result appears to be the most relevant: “Weapons and Firearms.” When that result is selected, the index appears for “Weapons and Firearms” opens.

At this stage, I ask the students to apply additional search terms, just as they would if looking in a print index. Students note several relevant entries, such as “Arrest, carrying concealed weapons, CRIMSUB § 1516” or “Carrying weapons, concealed weapons, general discussion, CRIMSUB § 1513, 1516 to CRIMSUB § 1526.” A review of those sections, however, shows that they are inapplicable. Yet, having gone through the Lexis exercise, the students know that we must be close because we are in the area addressing concealed weapons. At this point, I remind the students that we must be on the right street but not at the right house yet. Accordingly, instead of formulating a new search and starting over, the students know that the next step is to examine the table of contents.



Source: Westlaw. Reprinted with the permission of Thomson Reuters.

There, we see the entire break down of the section on weapons and note that Part B addresses “Particular Offenses.” Concealed weapons appears at the beginning of that part, and in particular, the students quickly locate § 1520, “What constitutes concealment.” After reading that section, the class comes to the same conclusion that a weapon need not be entirely hidden from view to be concealed.²²

Step 4: Primary Law

Having found the relevant secondary treatment on the matter, I show the students how to navigate to the primary sources found in secondary material and reiterate the importance of reading the primary

By incorporating the advantages of book research into electronic searches, students will apply focused searches in specific databases, thereby reducing the number of searches and accumulating more relevant hits. Overall, this methodology helps students become more effective researchers.

law. Lastly, the students should be shown how to use Shepard's and KeyCite to (1) ensure that the law is good and (2) determine if there is more recent law on the matter.²³

ADVANTAGES TO THIS APPROACH

Several advantages exist to this approach. First, it keeps students focused and on track by putting students in the relevant jurisdiction. Second, it limits the number of results from a search query. Instead of throwing search after search at a research problem, which increases student confusion and frustration, this approach helps students achieve relevant results with minimal searches. Thus, it removes the pressure of coming up with the ideal search query. In other words, students merely need to get close to where they need to be and then they can zero in on the right section by using the table of contents. Finally, this approach has an advantage post-graduation as fewer searches reduce the cost for using Lexis and Westlaw. Generally speaking, each search is charged separately. Accordingly, throwing search after search at a problem will unnecessarily increase the cost of the research, thereby leading to an unhappy employer and unhappy client.

Students do not need a lot of "bells and whistles" to conduct effective electronic research. They just need the basics. Teaching students to treat electronic research like book research gives students the basics to help them become better researchers.

NOTES

1. Aaron Smith et al., *College Students and Technology* (July 19, 2011), <http://www.pewinternet.org/2011/07/19/college-students-and-technology/>.
2. Ziming Liu, *Print vs. Electronic Resources: A Study of User Perceptions, Preferences, and Use*, 42 INFO. PROCESSING & MGMT. 583, 584 (2006), <http://ce.uoregon.edu/aim/ElecInfoW11/PrintsvsElectronicResources.pdf>.
3. Professor Jerome McDonough, Associate Professor of the University of Illinois' Center for Informatics Research in Science and Scholarship, has observed that students use libraries "to study, to socialize, to hit the newly installed cafe designed to lure them in, but they're not using library materials, or library services, at anything like the rate they did even ten years ago." *Trends in library usage*, http://www.revolv.com/main/index.php?s=Trends%20in%20library%20usage&item_type=topic. Indeed, many of my first year students report that they never conducted book research, and many do not even know how to use an index.
4. For instance, Lexis claims that its platform incorporates "innovative yet simple tools . . . to zero in on relevant facts fast." <http://www.lexisnexis.com/en-us/products/lexis-advance.page>. Additionally, Westlaw boasts that it can "complete your research faster," *Why Westlaw Next*, 6 (2014), available at http://info.legalsolutions.thomsonreuters.com/pdf/wln2/1-373938_v6.pdf, and, "YOU FIND Exactly the search results you need, relevant to your legal issue. No more, no less." *Thomson Reuters Westlaw online legal research*, <http://legalsolutions.thomsonreuters.com/law-products/westlaw-legal-research/>.
5. Ian Gallacher, *Forty-Two: The Hitchhiker's Guide to Teaching Legal Research to the Google Generation*, 39 AKRON L. REV., 151, 168 (2006) (noting that first year students "have not fully assimilated such fundamental concepts as court hierarchy and precedent [and] the relationship between state and federal courts – all liabilities for the legal researcher:").
6. Kristen Purcell et al., *Part IV: Teaching Research Skills in Today's Digital Environment* (Nov. 1, 2012), <http://www.pewinternet.org/2012/11/01/part-iv-teaching-research-skills-in-todays-digital-environment/>.
7. Aliza B. Kaplan & Kathleen Darvil, *Think [and Practice] Like a Lawyer: Legal Research for the New Millennials*, 8 LEGAL COMM. & RHETORIC: JALWD 153, 164 (2011).
8. In fact, a 2013 survey of practitioners conducted by the American Association of Law Libraries' (AALL) Task Force on Identifying Skills & Knowledge for Legal Practice found that attorneys still rely on print material for research. See *A Study of Attorneys' Research Practices and Opinions of New Associates' Research Skills* (June 2013) 30, <http://www.aallnet.org/sections/all/storage/committees/practicetf/final-report-07102013.pdf> ("Over 40% of respondents say they use print "frequently" (26.9%) or "very frequently" (15.4%).").
9. In my experience with 1L students, students fail to differentiate between the sources of law within electronic search results. Thus, students think a result is case law when in reality it is a statute. Although Lexis and Westlaw categorize the results, I find that most students do not pay much attention to those categories. This may be because they are used to Google, which does not differentiate sources. It may also be a result of students not fully understanding the differences between legal sources. Regardless, I find that students can see the distinction easier when using book research.
10. My approach works well for students that already have an understanding of how to conduct book research, and it is recommended that this approach be taught either alongside or after book research. Nevertheless, this approach can be taught in places where students are not exposed to book research. In those situations, it is recommended that the professor brief students on indexes and tables of contents: what they are, how they are used, and their utility in conducting research.
11. Kaplan & Darvil, *supra* n. 7 at 164.

12. These categories come from Amy E. Sloan in *RESEARCHING THE LAW: FINDING WHAT YOU NEED WHEN YOU NEED IT* 24-26 (2014), a required 1L text at my school.

13. Admittedly, the main search bar can be a useful tool to the seasoned researcher. But for the student with little to no electronic research experience, the main search bar creates more problems than solutions.

14. For the few state jurisdictions that do not have state-specific secondary sources, Lexis and Westlaw provide general secondary sources, such as *AMERICAN LAW REPORTS* and *AMERICAN JURISPRUDENCE 2D*. Westlaw also contains *CORPUS JURIS SECUNDUM*. The steps outlined in this article apply to those sources as well.

15. If the students know that a statute does not apply, then they can proceed directly to the cases database for the relevant jurisdiction.

16. However, beginning a search in the statutory database is not recommended for novice researchers, as the secondary database will help students gain the necessary understanding of the law needed to advance their research.

17. Westlaw provides the indices for the federal and state statutes in the "Tools & Resources" box on the right-side of the screen.

18. A professor may want to consider using the print equivalents when teaching this methodology. I have done that to show students how the "treat it like a book" method can be just as effective as print research. Bringing books to class would be especially important in institutions that do not expose students to book research.

19. To show the students the benefit of a Boolean search, I also show them what happens when the search is "concealed weapon." That search yielded four pages of results from the table of contents. To further illustrate the importance of searching only the table of contents, I run the search in "Search All Documents in this source." A search using "concealed weapon" yielded 49 pages of results, while the "concealed /5 weapon" search yielded five pages. Very quickly, the students see the benefit of the table of contents search. While sophisticated researchers may be more equipped to handle large results, novice researchers lack the skills to navigate through the results efficiently.

20. In my experience, when young researchers do not get helpful results, they simply enter new search queries. Within a matter of minutes, students can run multiple search queries but not get anywhere. This is the digital equivalent of spinning your wheels.

21. A student needs to be careful when using Westlaw. When entering a search, a suggestion box appears under the search bar with a list of possible questions and suggestions for secondary sources, cases, statutes, etc. The problem with this box is that the suggestions are not limited to the jurisdiction the student selected. Thus, if a student abandons the search and selects one of the tantalizing suggestions, she could be in an irrelevant jurisdiction and not even know it. For example, when I started to type this search, the first suggestion that appeared was a section from the *MARYLAND LAW ENCYCLOPEDIA*. Because of this problem, I advise students to ignore those suggestions.

22. By showing students this approach in both Lexis and Westlaw, the professor (1) does not show favoritism to one platform and (2) shows that this process is workable in either system.

23. Most students fail to comprehend the full utility of a Citator. They have the misconception that a Citator is for the sole purpose of verify the law. Accordingly, I make it a point to emphasize that a Citator is a useful research tool to get additional relevant law, whether that be secondary sources, statutes, or cases.

When Your Legal Writing Professor Isn't Monogamous: How Your Law School Can Survive and Thrive in a Relationship with an Adjunct



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I have a confession to make. I was an adjunct legal writing professor. I would sneak out of my high-rise, downtown office at lunch, whisper to my assistant to field my phone calls and only disturb me if there was a real emergency, and quietly steal away to a place I loved—teaching 1L law students the basics of legal reasoning, research, and writing. I didn't mean to fall in love. But I knew it was a possibility when I sent my resume to Arizona State University and proposed to fill an unexpected shortage in its program as an adjunct legal writing professor.

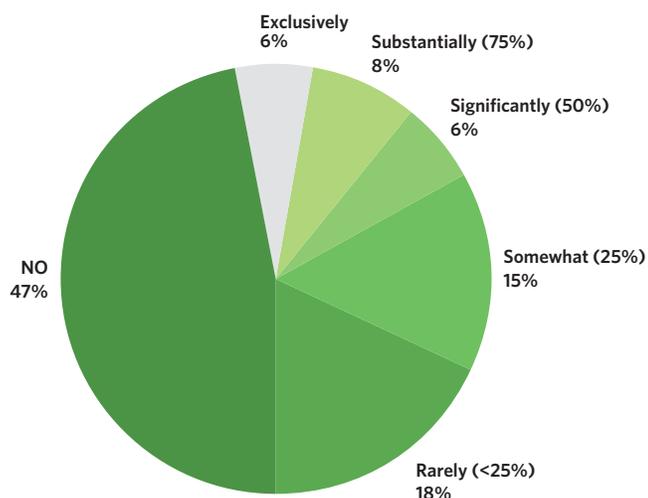
What I didn't know was how hard juggling teaching and a full-time practice in "big law" would be. This was a new experience for both me and those at ASU, because this program had not had an adjunct legal writing professor for over a decade. Although I had experience managing my time while billing 2000+ hours a year, the tools that helped me save time as an adjunct were different than those in law practice. Luckily, I had an amazing support system,¹ and I soon learned how to navigate between two worlds without failing in my

obligations to either. Here, I share some ideas with those who want to maximize the experience for legal writing adjuncts, the other legal writing faculty, and most importantly, the students.

The time needed to prepare for and teach class, conduct conferences with students, and grade will always be an issue for a legal writing adjunct, because ethically, her first concern must be to her clients and another employer.² You—legal writing faculty, directors, or law school administration—can help alleviate this time crunch so adjuncts can thrive as part of your legal writing program.³ Many of these suggestions have the added bonus of helping the adjunct adapt to a legal writing program's culture and norms, which in turn promotes consistency throughout the program. As I explain below, you can begin by learning and communicating the time commitment involved to adjuncts who have no frame of reference (or have a skewed perspective picked up in law school as a student!). Then, make sure to offer a full-time faculty mentor and volunteer teaching materials to the adjunct. And finally, although it may seem counter-intuitive at first, extend invitations to law school events.

I direct my suggestions to law schools that do not rely on adjuncts to teach most of the basic legal writing courses, but who hire adjuncts rarely or only out of necessity to fill an unexpected gap. In the most recent annual report of the national survey of legal writing

Do You use Adjunct Faculty in Your Required Legal Writing Program?



programs, the Association of Legal Writing Directors and the Legal Writing Institute asked law schools “Do you use adjunct faculty in your required [legal writing] program?”⁴ The vast majority—80% of law schools surveyed—responded that they used adjuncts to teach basic legal writing classes to less than 25% of their students or not at all.⁵ Unlike schools who regularly employ legal writing adjuncts, the law schools that comprise that 80% likely have not developed a system or process for hiring, training, and supervising adjunct legal writing faculty. And processes that adjunct-heavy programs use may not be as easily adaptable or as practical for those law schools that hire only one or two legal writing adjuncts every year or so. Thus, my tips will be most useful for law schools that seldom or hardly ever hire legal writing adjuncts. Additionally, I do not focus here on answering whether or not law schools should hire adjunct legal writing faculty. Scholars have already studied and written extensively on the many angles of that debate.⁶

THE TIME DILEMMA

From both the perspective of the law school and the adjunct, the adjunct’s lack, or perceived lack, of time is often the number one concern.⁷ A legal writing adjunct may not have as much time as full-time faculty members to devote to the design, organization, and preparation of lessons or to critique assignments. A law school might find an adjunct who is retired or who has no other job at the moment, but typically an

adjunct has other full-time employment—even if she works for herself—and that job probably takes up more than 40 hours of her work week.⁸ Moreover, an adjunct owes her primary allegiance to another employer and her clients.⁹ As a result, an adjunct’s office hours may be less flexible, and she may need to cancel class more often than a full-time faculty member would. This is particularly concerning for legal writing adjuncts because “[l]egal writing courses are more akin to apprenticeships and require individual mentoring,” including many hours of conferencing one-on-one outside of class time.¹⁰

At first, a legal writing adjunct may not appreciate the time commitment involved. Teaching legal reasoning, research, and writing is time-consuming—“one of the most labor intensive jobs in law school.”¹¹ Legal writing professors review and critique multiple assignments and re-writes through detailed written comments and one-on-one and small group conferences.¹² Additionally, they teach more than just writing; they teach legal analysis and reasoning, written communication, legal research, and oral communications, just to name a few.¹³ All this can be exacerbated by the fact that your legal writing program—and thus the work you expect the adjunct to put in—may be drastically different from the writing instruction the adjunct remembers from law school.

Additionally, because an adjunct’s other obligations keep her off-campus more than full-time faculty, she may be less integrated into law school life. All the small ways that full-time faculty see and interact with students—while eating lunch, grabbing a coffee, walking to their mailbox, or visiting the law library—do not occur with adjuncts. Adjuncts may also miss out on more formal school-wide events where other faculty members rub shoulders with students.

These concerns probably cannot be “overcome” because the tension between the attorney’s primary love (the job that pays her bills) and her secondary love (teaching students, where her passion lies) will always exist. However, there are ways legal writing professors, directors, and law school administrators can minimize that tension.



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HOW TO MAKE THE MOST OF YOUR TIME TOGETHER

1. Learn and communicate the specific time commitment involved.

In private practice, attorneys' lives revolve around six minute increments. Consequently, they get very good at knowing how long it takes them to do everything in their life. Not only do they have a sixth sense of how long it takes to draft a demand letter or an email, but they know exactly how long it takes them to get to the restroom and back to their desk, how long it takes to get their lunch from the fridge, and how long someone has been standing in their doorway making small talk. Time is money, and they measure it carefully.

Accordingly, telling an adjunct legal writing professor "it takes longer than you think to prepare for class" is unhelpful. Instead, be as specific as you can with the time needed for all the tasks you expect her to complete, including the following: 1) how long classes are; 2) how long it takes on average to develop problems for writing assignments if she needs to come up with them from scratch; 3) how long it takes on average to prepare for class; 4) how long required activities outside of normal class time usually take (for example, individual or group conferences or oral arguments); 5) the minimum length of office hours she will need to hold every week and whether those office hours need to be in one chunk or spread out through the week; 6) whether she is required to increase office hours on weeks papers are due; 7) how long it takes on average to grade the various assignments; 8) how many department or faculty meetings (if any) she will be expected to attend and when those are; and 9) any other school-wide events that the adjunct is expected to attend. To get an idea of the length of time needed to

complete various tasks, ask a less experienced full-time legal writing professor or brainstorm with a group of full-time faculty about it. Because teaching legal writing is so much more time consuming than teaching an upper-level doctrinal course in which an adjunct may be an expert, having a legal writing adjunct rely on another adjunct's time estimates would mislead her.

If an adjunct knows the estimated time for required tasks before taking the position, she can better assess whether she really does have the time to spare from her primary job. Even if the adjunct was a teaching assistant for a legal writing program in the past, she probably still did not get a good enough look at the scope of work a full-time professor does behind the scenes to assess the time commitment herself. Communicating the specific time commitments upfront also highlights how your program may differ from what the adjunct had in mind. The legal writing program at the law school the adjunct attended may not have looked like yours, especially if the adjunct graduated many years ago. Conveying specific times for tasks also addresses the problem of whether a legal writing adjunct can be available to the students at the same level (or close to it) as full-time faculty outside of class.

In addition, legal writing adjuncts should have a "back-up" plan to deal with the unexpected. Let them know if there is someone available to fill in should an emergency arise, and make sure the back-up is aware of the lesson plan. If there is no one who can fill in, make sure to clarify the circumstances under which cancellation is appropriate. The legal writing adjunct should understand the law school's cancellation policy; the process for cancelling classes, including notifying a full-time faculty member or designated administrator if necessary; any procedures for rescheduling classes;

and the requirements for conducting make-up classes. This will save her time when the inevitable emergency arises.

2. Offer a full-time faculty mentor.

Assigning a faculty mentor to a legal writing adjunct addresses the problem of the adjunct being less integrated into the culture and social atmosphere of the law school. Issues with students will inevitably come up and the adjunct needs someone who has a better sense of the law school culture and experience dealing with the same issues. A practicing attorney may be adept at managing client expectations, but handling students is different. How do other legal writing professors handle a student who demands to see the professor outside of office hours? Who consistently turns in ungraded assignments late? Who wants to reschedule an oral argument? Understanding the culture of the law school may help the adjunct decide how to approach these problems. A mentor can also be a liaison between the legal writing adjunct and other legal writing faculty and can give the law school an opportunity for informal oversight.

A mentor can also streamline the time an adjunct needs to design problems and prepare lessons by serving as an informational resource for the adjunct. The two can discuss and share course syllabi, teaching materials, and other curriculum-related information. This collaboration promotes continuity among the courses. A mentor can answer questions like what the typical volume of reading assignments is or what the difference is between using various web-based course management systems. Having a designated person to answer these types of questions helps a new adjunct feel more confident in her decisions.

I know from personal experience how invaluable a mentor can be. My faculty mentor¹⁴ gave me input when I reviewed applications and decided on a teaching assistant for the first time. She explained how she used her teaching assistant and what tasks were “non-delegable” to him. She answered questions the employee handbook could not, like how formally the faculty expected each other to dress for class and office hours. My faculty mentor told me whether the faculty would expect to see me at faculty meetings and how she would counsel a student who struggled to spot issues. When I had surgery unexpectedly in the middle of a semester, she was able to step in and teach a class for me one day because we shared

a syllabus and had assigned the same problem. She answered my silly questions, too, such as where I could find a highlighter, how to navigate the university’s system for trip reimbursement, and where the copy center was. Because my faculty mentor had been an adjunct years before, she gave me tips that I would not have even known to ask for, such as telling me that I needed to enroll in the Legal Writing Institute’s listserv. She also provided me with class syllabi, lesson plans, rubrics, and assignments, which is my next suggestion.

I used my faculty mentor to ensure that my lessons and assignments were on par with the other legal writing faculty. Her oversight assured the administration that my students were getting an experience equal to their peers. And the knowledge she shared allowed me to economize my time.

3. Volunteer class materials.

If one of your concerns is that adjuncts may not have enough time to prepare for classes, volunteer examples of class syllabi, lesson plans, rubrics, and writing problems. Some writing programs may require their faculty to follow the same curriculum, teach from the same book, or use the same brief or memo assignments. If so, this does not apply to your school with the same force. If your school has a director-less legal writing program or has more faculty autonomy, however, a legal writing adjunct will be overwhelmed creating all of these materials for the first time with no guidance.

Legal writing adjuncts may have taught CLEs and junior associates, but it has likely been many years since they have been in the classroom. Since most legal writing faculty are expected to teach the fundamentals of legal reasoning to students, it is especially important for those adjuncts to remember just how far back to the basics they need to reach for their first year classes. Sharing examples of syllabi and lesson plans will help orient an adjunct to this new reality. If your legal writing program has written goals and objectives for the first year required classes, share these with the adjunct as well.

Examples of lesson plans are extremely helpful. Unlike adjuncts who may teach a niche practice area as an expert, the full-time legal writing faculty has more expertise teaching legal writing than an incoming adjunct, and thus examples of lesson plans,

particularly for first year classes, are beneficial. Legal writing adjuncts, like any other professor, have their own sense of what they wish to emphasize in class. But creating lesson plans from scratch while providing services to their clients can take more time than they have to give. Sharing lesson plans provides the adjunct with “bare bones” that the adjunct can then flesh out with her own experiences, research, and personality.

The same goes for any teaching materials, such as handouts, writing problems, or rubrics. If your law school has a bank of ideas for writing problems, make sure to communicate that to the adjunct. Tell new adjuncts about any collections of problem ideas that legal writing organizations maintain.¹⁵ If the adjunct and her mentor assign the same writing assignments, they can work together to develop the facts, research project, model answers, grading rubrics, etc. Not only will sharing materials save the adjunct time, but even if she doesn't use each one, they will acculturate her to the norms and expectations of your particular legal writing program.

The director or other legal writing faculty can also suggest academic articles about teaching law students. Although new adjuncts may understand the complexities of the changes suggested to rules of procedure in their state or the cutting-edge issues in their practice area, they are not as in tune with the various pedagogies of legal writing, so these types of resources are helpful. Adjuncts may need advice on successful class presentations, student motivations, or the implementation of problems and hypotheticals.¹⁶ They will almost certainly need guidance on how to grade students' written work.¹⁷

Having good examples of teaching materials saves the legal writing adjunct time, even if she revises them to fit her teaching style. And in addition to saving an adjunct from lengthy trial and error periods, sharing academic articles familiarizes the adjunct with the culture of the larger legal writing community so she can better fit in with other professors in your legal writing program.

4. Extend invitations to attend events.

To integrate them more into law school life, invite legal writing adjuncts to law school events such as faculty colloquiums or workshops, informal faculty gatherings (especially gatherings of the legal writing faculty), moot court arguments, and commencement. Make

sure adjuncts know that their presence is welcome, but not expected.

I can hear you asking, “But doesn't this take up more of the adjunct's time?” At first, maybe. But informal faculty gatherings give the adjunct a chance to mingle with other professors whom the adjunct can ask for help or advice later, which may save her a headache down the road. The information gathered at a faculty workshop or retreat may give the adjunct new teaching ideas and different perspectives on how to solve problems with students. This is especially helpful for an adjunct who most likely has no time to travel to legal writing conferences in between servicing clients, taking continuing legal education classes required by the bar, and engaging in client development. By participating in faculty meetings and school-wide events, the adjunct also gains a better idea of what you expect of her and what the norms for the law school are.

Making these invitations is a good practice for any adjunct. However, for legal writing professors who develop strong mentoring relationships with many of their students and give formative assessments almost weekly, it is especially important. Interacting with students outside of the classroom setting strengthens students' feeling that the professor cares about them as a person. That in turn makes it easier for the students to accept the inevitable critiques from the legal writing adjunct on their papers as collegial and supportive instead of harsh and personal.

IN OTHER WORDS, LOVE YOUR ADJUNCT

Learning and communicating the time commitment involved, offering a full-time faculty mentor, volunteering materials, and extending invitations to events all set a legal writing adjunct up for success. Adjuncts that teach legal writing are there for one reason: they love it. Show your love back with these simple tips.

NOTES

1. A huge thank you all the legal writing professors at Arizona State University, Sandra Day O'Connor College of Law for their willingness to share advice, materials, and friendship with me. And an even bigger thank you to my husband Gary who has never tried to talk sense into me when I am pursuing what are most accurately described as impractical dreams, but instead cheerfully picks up the slack.
2. See Model Rules of Prof'l Conduct r. 1.3 and 1.7 cmt. 1 (Am. Bar Ass'n 1983); *Matter of Estate of Shano*, 869 P.2d 1203, 1210 (Ariz. Ct. App. 1993) ("A lawyer's overriding duty of loyalty to a client is a basic tenet of the attorney-client relationship. Inherent in this principle is the concept that no other interest or consideration should be permitted to interfere with the lawyer's loyalty to his client.").
3. There are a handful of legal scholarship articles regarding items to think about when hiring adjunct faculty to teach at a law school generally, but they are not focused on the unique concerns of adjunct *legal writing* faculty. See American Bar Association, *Adjunct Faculty Handbook* (2005) available at 2005_adjunct_faculty_handbook.authcheckdam.pdf (comprehensive handbook covering items from corresponding with potential adjuncts to drafting exams); Marcia Gelpe, *Professional Training, Diversity in Legal Education, and Cost Control: Selection, Training and Peer Review for Adjunct Professors*, 25 Wm. Mitchell L. Rev. 193, 194 (1999) (discussing specific problems law schools face, how adjuncts can help alleviate those problems, and suggestions for hiring, training, and supervising adjuncts in a law school setting); David A. Lander, *Are Adjuncts a Benefit or a Detriment?*, 33 U. Dayton L. Rev. 285 (2008) (despite the name, section VII "How to Make Certain that the Adjunct Is an Asset and Not a Liability" has good suggestions that could be adapted to legal writing professors in particular); Karen L. Tokarz, *A Manual for Law Schools on Adjunct Faculty*, 76 Wash. U. L.Q. 293 (1998) (focusing on information to provide to general adjunct faculty and how to integrate them into the law school).
4. Association of Legal Writing Directors & Legal Writing Institute, 2014 Report of the Annual Legal Writing Survey 85, available at <http://lwionline.org/uploads/FileUpload/2014SurveyReportFinal.pdf>.
5. See *id.* If the historical trend continues, the number of schools that do not regularly utilize legal writing adjuncts will rise in the coming years. The data from 2009 to 2014 shows a trend towards less reliance on legal writing adjuncts. See *id.* The sheer number of law schools who reported using adjuncts to teach 50% or more of their students has steadily decreased every year to the now minority 20%; in 2009, 27% of responding law schools were in that minority. *Id.* Conversely, the number of law schools who hire adjuncts to teach legal writing to 25% or less of their student population has steadily increased since 2009. *Id.*
6. See generally S. Scott Gaille, *The ABA Task Force Report on the Future of Legal Education: The Role of Adjunct Professors and Practical Teaching in the Energy Sector*, 35 Energy L.J. 99, 206-07 (2014); Gelpe, *supra* note 3, at 194-95; Lander, *supra* note 3; Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. Legal Educ. 598 (2010).
7. See Bonnie L. Tavares and Rebecca L. Scalio, *Teaching After Dark: Part-time Evening Students and the First Year Legal Research and Writing Classroom*, 17 Legal Writing: J. Legal Writing Inst. 65, 92-94 (2011); see also Lander, *supra* note 3, at 291; Thies, *supra* note 6, at 620.
8. See Gelpe, *supra* note 3, at 209 (noting that being an adjunct in a law school does not pay particularly well and that an adjunct's first obligation is to "paying clients" and those who "pay [] the most").
9. See Model Rules of Prof'l Conduct r. 1.1-1.18 (Am. Bar Ass'n 1983) (discussing the lawyer-client relationship); Comm'n Skills Comm., Sec. of Legal Educ. & Admission to Bar, *Sourcebook on Legal Writing Programs* 110 (Eric B. Easton ed., 2d ed. 2006); Gelpe, *supra* note 3, at 209.
10. Kathryn M. Stanchi and Jan M. Levine, *Gender and Legal Writing: Law Schools' Dirty Little Secrets*, 16 Berkeley Women's L.J. 3, 20-21 and n. 91 (2001).
11. Jo Anne Durako, *A Snapshot of Legal Writing Programs at the Millennium*, 6 Legal Writing: J. Legal Writing Inst. 95, 107 (2000); Stanchi and Levine, *supra* n. 10, at 9.
12. Durako, *supra* note 11, at 108; Stanchi and Levine, *supra* note 10, at 20 n. 91.
13. Stanchi and Levine, *supra* note 10, at 20 n. 91.
14. Thank you to my faculty mentor, Susan Chesler, for the hours she spent answering my questions and for creating syllabi and wonderful problems she allowed me to use. Her guidance kept me sane.
15. For example, LWI maintains an Idea Bank at http://lwionline.org/idea_bank.html. To obtain a password, a legal writing professor must normally submit a teaching document to the idea bank. But professors new to legal writing—those who have taught two years or less—are exempt from that requirement and can get the password by emailing an LWI committee member. Although this may be common knowledge in the profession, new legal writing adjuncts may not know this information exists.
16. Although there is a plethora of materials one could offer a new legal writing adjunct, a couple that were particularly helpful to me were Miriam E. Felsenburg and Laura P. Graham, *Beginning Legal Writers in Their Own Words: Why the First Weeks of Legal Writing Are so Tough and What We Can Do About It*, 16 Legal Writing: J. Legal Writing Inst. 223 (2010) (discussing results from surveys of 1Ls regarding the struggles they encountered in the first 8 weeks of law school and giving strategies for recasting students' expectations); Emily Grant, *Beyond Best Practices: Lessons from Tina Stark About the First Day of Class*, 95 Or. L. Rev. (forthcoming 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2808808 (examining the goals and opportunities to be had on the first day of class and giving specific tips on how to set the tone for the rest of the semester).
17. A few of my favorites are Daniel Barnett, *Triage in the Trenches of the Legal Writing Course: The Theory and Methodology of Analytical Critique*, 38 U. Toledo L. Rev. 651 (2007) (exploring the skills necessary to effectively comment on student's work in legal writing classes); Jessie C. Grearson, *From Editor to Mentor: Considering the Effect of Your Commenting Style*, 8 Legal Writing: J. Legal Writing Inst. 147 (2002) (discussing the goals of written feedback and analyzing different commenting styles); Paula J. Manning, *Understanding the Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Stress, Increase Motivation, and Improve Learning Outcomes*, 43 Cumberland L. Rev. 325 (2013) (applying self-determination theory, the science of positive psychology, and mindset theory to common law school feedback statements and suggesting strategies for changing feedback statements to reduce psychological stress, increase motivation, and improve student learning).

Presentations as Professional Advocacy



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In her book *Grit*, psychologist Author Angela Duckworth devotes several pages to the process of preparing for her TED talk.¹ Initially elated with the invitation, she soon realized that her six short minutes on the TED stage were going to require hours of preparation to meet professional expectations.² Even for those of us not invited to the TED stage, presentations are important forms of professional advocacy and deserve extensive preparation. Legal writing faculty have multiple venues for making professional presentations, and remembering the lessons we teach our students about presenting can make us stronger advocates ourselves.

Legal writing faculty have opportunities to make presentations at regional, national, and international conferences and workshops. As scholars and teachers, we present to fulfill our duty to expand knowledge and share insights in our areas of expertise. Beyond fulfilling this fundamental role, presentations enhance the reputation of our schools and can affect the national ranking of our legal writing programs. On an individual level, presentations are important venues for getting to know national colleagues who might write reviews for promotion files, appoint committee members for national organizations, or become future colleagues by participating in hiring decisions.

Fortunately, legal writing faculty are experts in teaching how to make presentations.³ We teach students to present appellate arguments, to argue pretrial and trial motions, to present research and analysis to supervising attorneys, and to make in-class presentations.⁴ But when we make our own presentations to professional colleagues at conferences and workshops, we sometimes forget to apply the fundamental lessons that we have so successfully taught. This article draws parallels between one type of presentation we teach—appellate argument—and the professional presentations we make to colleagues. New members of our discipline

can especially benefit from applying essential techniques of appellate oral arguments to their first presentations. By practicing what we teach, we can all enhance our presentations at the many conferences and workshops where we gather to discuss teaching, scholarship, leadership, and service.⁵

To be clear, legal writing faculty are often dynamic speakers, and they especially shine at conferences that include both writing faculty and casebook faculty. Rarely does a legal writing professor simply sit and read a paper, and most presentations attempt to include some form of audience participation. Our presentations can, however, be even more effective and more professional if we view them as forms of professional advocacy—for our ideas, our schools, and our national reputations.

STATE YOUR THESIS

In appellate oral argument, the thesis is what the advocate wants the court to do. In a presentation at a professional conference, the thesis is a one-sentence statement of your key point. Professor Sue Liemer suggests that the thesis is your Madison Avenue advertising line.⁶ It might be the first thing you say, or it might come after a brief hook—a scenario or question that engages the audience. Either way, stating your thesis early in your presentation ensures that your colleagues in the audience know where you are going. Of course, stating your thesis ensures that you know your destination, too.

MAP YOUR POINTS

We teach students to tell the court the two or three key reasons for granting their client's request. That structure helps the court understand the principal arguments supporting the request. It also provides a map of the argument. Combined with effective use of transitions (as simple as "Next" and "Third"), the map also keeps the judges aware of where they are in the arguments at any time.⁷ Professional audiences similarly benefit from a map. How will you support your thesis? How many points do you have? What steps should the audience expect to hear, and in what order? Your colleagues will appreciate this map whether they are sequential thinkers listening for logical steps or global thinkers absorbing chunks of information.⁸ Take care not to let the map become so detailed that it preempts your argument. Your goal is to foreshadow, not tell.



Mapping your principal points is especially important at multi-day conferences where participants are deluged with information in back-to-back presentations. The map focuses your audience's attention on your specific ideas. Moreover, capturing your audience with a clear outline of your points can ensure that no one wanders away—either to the ever-present lure of the iPhone or to another concurrent session next door.

USE AN OUTLINE

Effective advocates often use written bullet points to keep themselves on track during oral argument. We urge our students to reduce their key ideas to a short outline so that they can simultaneously present an organized argument and engage in a conversation with the bench. Advocates who try to read long excerpts from their briefs are rarely persuasive.⁹

Again, we should practice what we teach. Our professional audiences deserve a carefully thought out presentation of essential ideas. A rambling discussion of what crosses the speaker's mind is unlikely to be persuasive. Similarly, reading verbatim from a carefully scripted text is unlikely to engage the crowd. Remember your goals: to persuade the audience that your thesis is valid and valuable, and to engage each person with your ideas.

The detail of your outline will be personal to you. Some speakers are comfortable with four bullet points on a yellow pad, while others prefer to write out large segments of major ideas. Either way, avoid the opposing pitfalls of not preparing enough and

reading too much. I've seen this scenario unfold on too many panels: one presenter tells seemingly unrelated anecdotes for 15 minutes, the next reads dense text from a PowerPoint, and finally one uses an outline that keeps her on task but allows her to have an engaging conversation with the audience.

PROVIDE SUPPORT

Just as our students must use cases, statutes, and other authorities to support their appellate arguments, we should have research to support our presentations. Just as judges are unlikely to be persuaded by an advocate's personal views, no matter how strongly held, our audience deserves more than mere anecdotes. Certainly, many excellent presentations and scholarly articles have been born from an author's personal experience, but the presentation becomes professional when it is supported by the vast literature that exists on countless topics. Relying on that literature can show why your teaching idea worked in your class; it can also show your audience how your idea might work in their very different classrooms.

A professional presentation about a scholarly paper will obviously include support; the authorities that support the author/presenter's arguments are right there in the footnotes. Just as an advocate will be able to engage the court with the most important authorities supporting his case, a presenter at an ALWD Scholars Forum or an LWI Writers Workshop should be intimately familiar with the most important primary and secondary authorities supporting her thesis.

Presentations about teaching, leadership, mentorship, and service can also be supported with the ideas of previous writers.¹⁰ The support might be in classic legal writing publications, including textbooks, law review articles, and professional essays. A unique source for legal writing topics is the LWI Monograph Series, which gathers the most influential articles on a wide range of topics and thus provides support for foundational concepts.¹¹ The best support, however, might not be traditional or specific to legal writing. A magazine article, a podcast, or an exercise from LWI's Teaching Bank could offer valuable background for a new idea.¹²

ANTICIPATE QUESTIONS

One of the most challenging parts of oral argument for students is answering questions from the bench. With preparation, however, students find that they are

able to answer all reasonable questions (and navigate around unreasonable ones). Preparation makes students look and feel confident the very first time they say, "May it please the court?"

Anticipating questions can make new professors/presenters feel more confident, too. Questions allow you to see your topic from a new angle or to think through a statement that you need to clarify. Questions are meant not to trip you up but to help move your argument forward. To see what types of questions your professional colleagues might ask, invite a friend on your faculty to lunch and explain your idea. Ask what that friend finds interesting, curious, or incomplete about your idea. Similar questions are likely to come up after your presentation, too.

Because you will be making your presentation to professional equals, not to judges in robes, you can ask questions of your audience, too. Sometimes, the question can be as open as, "Where should my scholarship go next?" Sometimes, you may ask for specific examples of how issues have played out in other classrooms.

BE FLEXIBLE

Advocates have three arguments: the one they plan, the one they give, and the one they wish they'd given.¹³ The flexible advocate acknowledges this truth and prepares for it. As much as you prepare for your presentation, it will not go precisely as rehearsed. Prior speakers on your panel might go over time, forcing you to cut your comments by half. In a workshop, one person might dominate the conversation, again leaving you with less time than you'd expected, or two small groups might become one medium-sized group if someone cancels at the last minute.

Being flexible also includes listening to other speakers at your conference and on your panel, and then weaving your ideas into theirs. Just as an appellee can engage the bench more fully by listening to the judges' prior conversation with the appellant, we can engage our audiences more by highlighting connections to prior speakers. (A word of caution: The audience truly wants to hear each speaker's unique contributions, so don't spend too much time repeating what a prior speaker has said, no matter how fascinating you found it.)

Flexibility is important, too, with technology. Even if you befriend the tech gurus of a conference and do a

trial run in the very room where you'll be presenting, glitches happen. The projector might freeze, or your text-voting app might not work in the bowels of a large conference hotel. I recently made a presentation in which an electronic beep emitted from the ceiling every 30 seconds. Your audience is likely to be forgiving, especially if you focus on your ideas and not the technological device that has gone haywire. To be prepared for all events, print out your notes or PowerPoint slides, and practice at least once using only those. Make handouts of any questions or group activities you had planned for the audience. If you expect to write on a white board, bring your own markers. You might even bring along a few poster-sized post-it notes to hang on the walls, in case there's no white board available. Once, when my PowerPoint slides refused to advance (when they had just two minutes prior), I asked the audience to discuss a question in small groups while the computer expert coaxed my computer back to life.

AVOID NARRATING

A professional advocate avoids wasting words in narration. Each sentence is focused on the substantive content of the argument. Too often, though, conference presenters begin narrating whenever they get nervous, especially when they are running short of time. Instead of wasting several sentences explaining that you've just been handed a time card showing that you have only two minutes left, but you have several points you want to make, so, gee, maybe you'll just jump to your conclusion, but you'll be available after the session, and...just do it. Take a breath, decide what to do, then do it. Finish the point you are speaking about or move to your conclusion, but don't narrate that decision.

SCRIPT YOUR CONCLUSION

A crisp conclusion can leave the bench (and the professor) with a good impression, regardless of a student's performance during the bulk of the argument. Perhaps the judges were too hot or too cold, or perhaps a line of questions dragged the student advocate away from her key arguments. The student should have a clear, brief conclusion that restates the thesis and asks for a particular outcome.

.....
Our presentations can, however, be even more effective and more professional if we view them as forms of professional advocacy—for our ideas, our schools, and our national reputations.
.....

A presentation also needs a crisp conclusion to ensure that the audience remembers the key points, regardless of what happened in the minutes before. Provide a condensed version of the thesis and map that began your presentation, perhaps with a final question that you want the audience to consider.

If you are part of a panel, the moderator is likely to move from presentations to interaction with the audience, whether through a planned exercise, small group engagement, or a question/answer period. If you are the sole speaker, make clear when you have finished your remarks and are ready for interaction. Be wary of inviting questions throughout your presentation: I've seen a speaker get stuck defending a minor point on the first Prezi slide.

PRACTICE

We would not allow our students to stand before an appellate bench without at least one practice experience. We also need to practice before our conference and workshop presentations. I asked a colleague from Seattle University years ago why every presentation I'd ever seen from that school was polished, organized, and insightful. The answer was, "We practice."

Reserve a room and invite a few colleagues from your school to serve as your moot audience. Run through your presentation in real time, perhaps pausing to take quick notes. Then ask for honest feedback from your colleagues. Did they hear your thesis? Could they follow your argument? Which points do you need to shore up, either with clearer explanations or more support? Have you missed an analytical angle? Did you have time to cover your key ideas without seeming rushed, or do you need more content to fill the allotted time? Were your PowerPoint slides helpful or distracting? Did the embedded video link work, and was it worth the wait to connect? What questions should you anticipate from the audience? Do your colleagues have any other suggestions?

If you are a new teacher or if you are the sole person at your school who finds your topic interesting, don't settle for practicing in an empty room or in front of

infants and pets. Call on members of the national legal writing community. I'd happily listen to someone's presentation and offer feedback. What a treat that would be!

ENJOY

Many students are surprised at how much they enjoy oral argument. By remembering the lessons we teach our students about advocacy, we can enjoy making presentations to professional colleagues that advance our ideas and enhance our national reputations.¹⁴ One of us might even end up on the TED stage.

NOTES

1. Angela Duckworth, *GRIT: THE POWER OF PASSION AND PERSUASION* 133-35 (2016).
2. *Id.* ("Nobody wants to show you the hours and hours of becoming. They'd rather show you the highlights of what they've become.")
3. Many excellent textbooks address fundamentals of appellate advocacy. See, e.g., Mary Beth Beazley, *A PRACTICAL GUIDE TO APPELLATE ADVOCACY* (4th ed. 2014) (Chapter 13, Oral Argument); Joan M. Rocklin et al., *AN ADVOCATE PERSUADES* (2016) (Chapter 14, Oral Argument).
4. According to the most recent national survey of the Association of Legal Writing Directors and the Legal Writing Institute, over 70% of respondents included appellate oral arguments as part of the required legal research and writing course. See Question20, <http://www.alwd.org/wp-content/uploads/2014/07/2014-Survey-Report-Final.pdf>. The next most commonly taught presentations are pretrial motions and reports to supervisors, each at almost 50%. *Id.*
5. For ideas on writing a successful proposal to present at a conference, see Suzanne E. Rowe, *Writing a Winning Conference Proposal* 17 Second Draft: Bulletin of the Legal Writing Institute 15 (July 2003).
6. Susan P. Liemer, *Advocacy Lessons from Madison Avenue* 16 Second Draft: Bulletin of the Legal Writing Institute 6 (Dec. 2001).
7. For an exhaustive list of transition words and phrases, see Anne Enquist & Laurel Currie Oates, *JUST WRITING: GRAMMAR, PUNCTUATION, AND STYLE FOR THE LEGAL WRITER* 56-58 (4th ed. 2013). For using substantive transitions to create coherence, see Megan McAlpin, *BEYOND THE FIRST DRAFT* 26-27 (2014).
8. For a brief explanation of sequential learners and global learners, see (<http://www4.ncsu.edu/unity/lockers/users/f/felder/public/ILSdir/styles.htm>) ("Sequential learners tend to gain understanding in linear steps, with each step following logically from the previous one. Global learners tend to learn in large jumps, absorbing material almost randomly without seeing connections, and then suddenly "getting it."").
9. Suzanne E. Rowe, *Beyond Writing: Conversations with the Bench*, Oregon State Bar Bulletin 13 (Dec. 2016), available at <http://www.osbar.org/bulletin/issues/2016/2016December/html5/index.html?page=13>.
10. I cringe thinking of a few early presentations, in which I brightly chirped about a "new" idea that someone in the audience had previously spoken about or, even worse, written about.
11. The Monograph Series has four volumes available at <http://lwionline.org/monograph.html>. Volume 1 addresses "The Art of Critiquing Written Work"; Volume 2 is "The New Teacher's Deskbook"; Volume 3 concerns the theory of teaching legal writing; and Volume 4 includes articles on advanced legal writing courses.
12. As an example, to prepare for this short article, I reviewed not only textbooks on oral argument but also the American Bar Association's website and YouTube videos. See, e.g., Jacob Z. Goldstein, *May It Please the Court: Approaching Your First Appellate Argument* at http://www.americanbar.org/groups/young_lawyers/publications/the_101_201_practice_series/may_it_please_the_court_approaching_your_first_appellate_oral_argument.html (last visited Oct. 14, 2016); Virginia Supreme Court, *Art of Appellate Advocacy: Tips for Oral Arguments* (July 23, 2015) at <https://www.youtube.com/watch?v=JzKExC2MJsQ> (last visited Oct. 14, 2016).
13. *Supra* note 5, Virginia Supreme Court at <https://www.youtube.com/watch?v=JzKExC2MJsQ> (Chief Justice Donald Wayne Lemons at 9:50).
14. I am grateful for conversations with Professor Erin Carroll (Georgetown) that provided the inspiration for this essay and for her comments on a draft. And I am grateful to mentors who have offered gentle guidance for my presentations over the years, in particular Anne Enquist, Jan Levine, and Richard Neumann.

How LRW Faculty Can Best Position Themselves for Law School Administration¹



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Law school administrators are increasingly coming from the ranks of those who teach legal writing. For those legal writing faculty who are interested in law school administration, this paper is designed to help you land that position.

This paper focuses on a particular type of law school administrative position—generally an Associate Dean or Vice Dean that is: 1) a central part of the law school's administration; and 2) deals primarily with faculty and staff, not students. The titles for these types of positions vary greatly, but common titles include Vice Dean, and Associate Dean for a variety of things, including: Academic Affairs; Academic Programming; Centers; Curriculum; Experiential Education/Programs; Faculty; Faculty Affairs; Faculty Development; Intellectual Life; Programs; Research; Strategic Initiatives/Planning; and Teaching. Perhaps most common are Associate Dean for Academic Affairs and Associate Dean for Faculty Research, but this paper relates to any position that meets the criteria above. In addition, this paper does not distinguish between seeking a promotion to a position like this at your own institution versus seeking a lateral move to another law school to take on a position like this, although the latter tends to be less

common, as law school deans often want people they know in these positions.

There are many reasons why legal writing faculty may be especially well suited to administrative roles within law schools.³ In addition, there are many reasons why writing faculty may wish to seek such positions, including potential pay increases, prestige, broadening future opportunities, being a “team player,” and having a bigger impact on the institution as a whole. Administrative work can be incredibly rewarding.

There are potential drawbacks, of course; first, the time commitment is significant. Anecdotally, it seems many law school administrators work sixty or more hours per week, which will necessarily reduce the amount of time available to do other things, like scholarship and teaching (especially teaching legal research and writing). It also becomes more difficult to schedule true “away” time, when you aren't having to actively work or at least think about work.

In addition, administrative jobs are generally much less flexible than more traditional academic jobs; many of these positions include evening or weekend commitments and often the jobs are on 12-month contracts, meaning you are expected to work all year without the benefit of the academic calendar (which includes semester breaks, fall break, spring break, and summers). And even day-to-day flexibility is significantly reduced, because most of these positions

require a sizable number of hours in meetings—the scheduling of which is often beyond your control and often happens on short notice.⁴

Presuming you still think that a law school administrative position, as defined above, is a good idea, what can you do to get that job?

First, it helps to understand the skill set needed for law school senior administrative positions.⁵ Section 1 of this paper discusses that skills set. At its core, though, most administrative jobs are about one thing: problem solving. Hence, if you like puzzles and challenges, administration may be for you. On the other hand, if you tend to shy away from problems, conflicts, grey-areas, and decision-making, seeking a law school administrative position is probably not wise.

Second, there are concrete steps you can take to gain (or improve upon) those skills and demonstrate to the school's leadership that you have what it takes to be successful in that role. Section 2 outlines those steps.

SKILLS NEEDED IN SENIOR ADMINISTRATIVE POSITIONS

For most administrative positions, there are four primary skills needed for success: hard work, organization, collegiality, and open-mindedness.

1. Hard Work

First, as noted above, administration generally requires a lot of hard work. It is difficult to be successful (anecdotally at least) if you work substantially less than 60 hours per week or so in a senior administrative job. There is, quite simply put, a lot of work to be done. Administrators are also expected to be highly productive. Good time management will help you be more productive and reduce (somewhat) the number of hours you have to put in to be a successful administrator, but the job still requires a significant time commitment.

In addition to requiring a lot of hours, hard work also requires “presence”—working from the office most days and for most of the day. Presence is needed because problems and questions pop up all the time, and many require a quick solution/response. Ad hoc brainstorming sessions are common among the senior administration in many places, and that requires you be there to participate and share your expertise. Unfortunately, many of these issues come up late

afternoons (often on Fridays!). As the saying goes, “showing up is half the battle.”

2. Organizational Skills

Second, administrative jobs require organization. Developing a system to store and retrieve information quickly is key. Creating a decent filing system, for paper files if needed but especially electronically, can save a tremendous amount of time. Reinventing the wheel is inefficient; being able to quickly find and modify previous documents can save hours and even days of work in a job where hours may make the difference between a job getting done and something slipping through the cracks. Knowing where to find governing rules (policy manuals, university regulations, ABA Standards, etc.) is also essential.

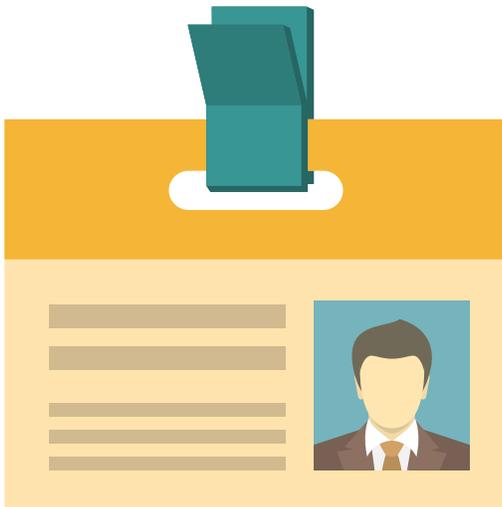
In addition, being able to create charts/schedules/tables makes administrative jobs much easier. It's one thing to have a big-picture sense of the institution, but being able to break things down into their component parts—and represent those parts visually in a quick, easily digested format—is critical for most administrators. These charts can be used for comparison purposes over time and help others, including your boss and your many constituencies, understand nuanced issues and potential solutions relatively quickly.

3. Collegiality

Third, most administrative positions require collegiality. Even though administrative jobs require a fair amount of paper pushing, as noted earlier the job is really about problem solving. And problem solving involves people. Being able to get along with people and being thought of as “one of the gang” will make potentially difficult interactions more enjoyable (or at least less unenjoyable). The “presence” required as part of hard work helps in this regard, but it's important for administrators to know the people they are working with, and that group expands considerably when you move from being a member of the faculty to being a part of the law school's administration.

4. Open-Mindedness

Finally, administrative jobs require open-mindedness. Whether thinking about people, ideas, or even “facts,” avoid jumping to conclusions and expect the unexpected. With regard to people, an administrator's job is much easier when the underlying assumption



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Most administrative jobs are about one thing: problem solving. Hence, if you like puzzles and challenges, administration may be for you.

.....

is that people have good intentions. Rather than assuming evil motives, presume the opposite: the person who did something that is creating a problem wasn't trying to create a problem; he or she was trying to do something benign or even positive, but it backfired in unanticipated ways (even if you could, after the fact, easily anticipate the ultimate result).

Similarly, with ideas, many good ideas sound a bit (if not a lot) silly at first and many bad ideas sound appealing at first. Avoid making snap judgments. Let the information marinate a bit, think about it from different perspectives, gather additional relevant information, and give yourself time to weigh the pros and cons. Although administrators rarely have the luxury of prolonged indecision, they won't last long if they routinely make uninformed or unwise snap decisions.

Facts are no different; the story you hear is most often only one person's perspective on what happened, and there are often additional, at least slightly different, perspectives. Furthermore, most often by the time the story is told to an administrator, it is being told third or fourth (or seventeenth?) hand and parts of the story may be lost or changed in that transition.

Perhaps most important, be open-minded about change. It *will* happen. The only question is how things will change and how you will deal with it.

GAINING AND DEMONSTRATING THESE SKILLS

The easiest way to demonstrate that you are qualified for an administrative position is to perform well on administrative tasks. Yes, there is a chicken-and-egg problem here. It's also true that legal writing faculty come in a wide variety of "shapes and sizes"—the field is broad and some faculty are on a tenure-track or are tenured (with significant teaching and scholarship experience and sizeable scholarship expectations each year); some are on short- or long-term contracts (with a wide variety of expected outputs, and some with high teaching loads); some are adjuncts (generally, but not always, with fewer expectations including only teaching); and some are in hybrid positions. Some legal writing faculty also fulfill other roles at their law school, whether they teach in a clinic, help with academic support, or work with moot court. And many legal writing faculty—as a by-product of being part of a "program"—already have significant administrative experience because they have served as a program director, assistant director, coordinator, or some other "director-like" position.

Even if a legal writing faculty member has not served as a program director, though, writing faculty often obtain more administrative experience than other faculty by virtue of the differences in the positions. For example, writing faculty often schedule conferences and oral arguments. They may supervise teaching assistants and engage in other administrative tasks, such as coordinating trainings with librarians or research providers. In short, teaching legal writing often includes some facet of administration.

The position you are in will, of course, affect the opportunities you may have as well as the ways you can gain and demonstrate administrative skills. For some, the legal writing director position will have already equipped you with the skills needed above; your main task is to make that clear and to excel in your position. For others, it may take more time and ingenuity to gain this experience. Regardless of the position, though, keeping the following tips in mind ought to help prepare you to get—and succeed in—a law school administrative position.

1. Hard Work

Most people work hard, and no one wants to toot his or her own horn. But you have to show that you aren't afraid of hard work—by being present, excelling at your job, and volunteering to take on extra tasks and projects.

Show your commitment to the institution by being present—attending committee meetings, faculty meetings, and events, even after normal business hours if they interest you or when it's important to have a strong faculty showing. At least on occasion, arrive at the office early. Stay late sometimes. This doesn't mean you should sit in your office playing solitaire so your colleagues think you are busy. But when you have work that needs to be done, don't resist finishing it at the office unless there is a good reason to leave.

Yes, you can generally get more done working at home. For some, it's difficult to grade in the office, and grading is a big part of the legal writing job. Similarly, some people write better in a coffee shop or at their dining room table. But if you aren't in the office, it's difficult for others to know if you are really working (or willing to work hard, and willing to be present). So make an effort to spend more time in the office than you might otherwise spend, and when you are working on scholarly projects or grading, consider doing so with a group of other faculty—that way, others know you are, in fact, working hard. Of course, the trick is to stay on task and actually work when you are in a group. But if you set ground rules and five or six of you get together at a local coffee shop every other Friday morning to work on scholarship, others will know you are working.

You can also show your willingness to work hard by volunteering to take on extra tasks. Volunteering is generally easy; there is always more work to be done than people to do the work. Even if you are not the program Director, ask if you can help with a task or two. Perhaps scheduling a training, organizing faculty syllabi, or some other project would be interesting and give you some experience (and would lessen the workload for others a bit, which is often appreciated). Even broader than within the writing program, if you are eligible to do so at your institution, volunteer to be on law school committees or run a task force. If committees are not an option, volunteer to handle some other administrative project that needs to be completed. And outside of your law

school, there are a variety of opportunities, including university committees or other university service options. Perhaps most obvious, the national legal writing organizations are always in need of help, and committees and leadership positions can help you build your “administrative” resume. You can also look for a good administrative position where you can volunteer in your community (outside of academia). And these opportunities don't have to already exist; you can create them. For example, you can start a regional conference, create a workgroup to address an issue you are concerned about, or come up with some other project that provides administrative experience.

Of course every hour you spend volunteering for administrative tasks (unless they are already part of your assigned job) will limit, to some extent, the time you have to complete your other duties. You can (and probably should) work a bit more; that will be good training for the job you are ultimately preparing yourself for (whether that extra time is a bit each week, some over breaks, or working more consistently over the summer). Legal writing faculty have busy jobs, no doubt. But without demonstrating some of the skills needed for senior administrative positions, it will be difficult to convince a dean you should be put in that position.

On the other hand, be careful not to do too much. Yes, it's difficult to do all of the parts of your job (plus some) and not “do too much.” But learning where to draw that line is key. If you are overcommitted, it will be difficult to succeed—and nothing will kill your chances for a senior leadership position like a demonstrated lack of competence. If you work more hours than any person should and somehow manage to succeed, you create the expectation that you can always work that much and get that much done; but that's not sustainable in the long run. It's like the old adage: you're in a pie-eating contest, and you discover that the reward for eating the most pie is, of course, more pie.

How should you choose your service/make the most of those opportunities? First, service often comes from three places: 1) your boss (or someone with authority over you, or the ability to serve as a positive—or negative—reference when you apply for an administrative position); 2) student-centered requests; and 3) the opportunities you seek out or respond to on your own.

If you are asked to take on a project (chair a committee, work on a report, edit a document, etc.)

from your boss or someone who likely can affect your future opportunities, it's probably wise to say "yes" if you can realistically fit it in and do a good job. True, this isn't really volunteering. It's actually being "voluntold." But you can gain helpful experience this way, so don't shy away from these opportunities (and saying no to your boss is not a good way to earn a promotion). And remember: this is, after all, a job, and there is a reason we get paid to do it; sometimes you have to work on service projects that you wouldn't actually "volunteer" for if they weren't assigned.

If the request is from students or those asking on behalf of students, it's natural to want to help. But you have a limited amount of time you can spend on service, and keep in mind that you get the key experience with the first few projects of any type. So it doesn't help much to coach eight moot court teams, to take on fourteen independent study papers in one year, or to be the faculty advisor for seven student organizations. Feel free to set a (reasonable) limit on the number of these activities up front and when the requests exceed that amount, say no—which is much easier than saying no on a case-by-case basis, because students can always figure out why you ought to say yes. It might help to practice your response: "I'd love to help but I've found if I do more than X a semester, they all suffer and I do a lousy job. So I have a firm limit. Thanks for thinking of me, though; maybe next time!"⁶

Finally, when selecting your own volunteer opportunities, have an end goal in mind. Work on projects you enjoy; this will make it easier to spend the time and you will likely do a better job. In addition, think about spreading your volunteer time so you get a variety of experiences. Some should be interactive opportunities where you deal a lot with people, especially staff; the better you understand how staff and the law school work, the more valuable you become as a faculty member and potential administrator.⁷ Some should be more structural/ programmatic/policy oriented, so there are concrete outputs (reports, charts, recommendations, etc.). Finally, avoid political hot-potatoes—or at least avoid always being involved in them. Deans spend their days trying to minimize problems, and if you always seem to be stirring them up, that won't bode well for an administrative future.

The bottom line is this: be thoughtful about the service you perform and consider how each activity will—or won't—help you gain administrative experience that might be helpful in the future.

2. Organizational Skills

Although it may be true that some people are naturally more organized (at least in a traditional sense) than others, organizational skills can be learned. There are a number of books and articles on this topic,⁸ and seminars are usually easy to find either through local bar associations or through business or trade organizations.⁹ In addition, as with most things, the more you practice, the better you become.

In addition, most legal writing faculty have already practiced their organizational skills. For example, scheduling and coordinating oral arguments, computer trainings, and library tours takes organizational abilities. Coordinating applications for teaching assistants and training them also takes these skills; recognizing this and being able to sell those points can help. The organizational projects that land on an associate dean's desk may be more complex, but that's just a matter of scale. Most legal writing faculty, by virtue of the position, are already gaining some administrative experience.

Much of an associate dean's organizational task involves being able to quickly locate relevant information. Developing a good filing and retrieval system before you have massive amounts of information to keep track of is wise. Being the person who can find that memo, those meeting minutes, or that chart shows others you know how to keep track of information. For some, a color-coded system works; for others, simply creating folders (electronically especially) with helpful titles and sub-folders can help you find information quickly.

Similarly, adding "favorites" tabs for websites you visit often and being able to navigate through policy manuals, university regulations, ABA Standards, and other controlling rules is quite helpful. Finally, as with most things, even if you are not yet comfortable creating charts or schedules or tables, don't let that be an excuse to avoid creating them. Take the time now to learn; with practice, you'll become more efficient. And if you follow advice above about volunteering, by necessity you'll have opportunities to work on all of these skills.

3. Collegiality

Because administrative jobs require working with people, get to know a lot of people within your law school, including a broad section of the faculty and students—and, as noted above, especially staff. When you are an administrator, you spend a lot of time working with staff; the Dean wants to be sure you can work well with them before selecting you.

It's easier to learn more about the people at your law school if you serve on committees together, attend events together, and otherwise have reason to interact. And if you aren't eligible to serve on committees or don't have other existing reasons to interact, you can create those opportunities by reaching out in other ways to get to know your colleagues. Offer to read people's papers, ask them to lunch, or just stop by to say hello. Ask them how they are doing when you are in line for a cup of coffee or crossing paths at the mailboxes or on the way to the elevator. In addition to making your work days much more enjoyable, finding points of common interest with the people you work with will help demonstrate your collegiality.¹⁰

At most law schools, it is also helpful if you “walk the walk.” Even if you are not required to publish, for example, writing scholarly articles (while also, of course, continuing to excel in teaching and perform useful service) will help demonstrate your commitment to the academic mission of the institution and to the people—your colleagues—who make up that institution.

4. Be Open-Minded

As noted above, administrative positions require you to rethink a number of assumptions about people, ideas, and facts.¹¹ When you are in the position of making a decision, demonstrate your ability to be open-minded by listening more than talking and by seeking advice from others—again, especially staff. At most law schools, the staff have a lot of experience and many of them have been actively involved in law school decisions for a long time. You should also reach out to people you trust at other schools. Of course you have to be careful to not share confidential information, but often your professional mentors can help most with perspective and decision-making processes (even if you can't seek guidance on the outcome).

And even though you may have particular goals for a position (whether you are serving as program director,

chairing a committee, or later as a law school senior administrator), generally avoid having an “agenda.” Agendas can be controversial, and that likely won't make for a comfortable working environment. Deal with problems as they arise, rather than operating with an underlying plan to overthrow the world. Ambition is good, but recognize that plans and goals might—and probably should—change over time.

In addition, realize that you rarely have all of the relevant information, especially when first presented with a problem. Listen, ask questions, think about it, and find out the whole story. You'll often discover that the problem isn't as big as it was portrayed, and maybe no action is needed at all (even though initially you thought the sky was falling). There are always two (or more) sides; be as calm and fair as you can be, and realize that although it's more efficient to deal with problems quickly, you often come up with a better solution if you give yourself a little time to reflect. And you often need more information to determine how various actions will affect the institution overall.

CONCLUSION

In short, make the time to become a good administrator before you apply for that senior-level job. When that position opens, you'll be a strong candidate. Others will see you as a strong candidate. And the job will likely be one of the most rewarding positions you've ever had.

NOTES

1. This paper stems from a session at the 17th Biennial Conference of the Legal Writing Institute. At that session, David Romantz, Associate Dean for Academic Affairs at the University of Memphis, Cecil C. Humphreys School of Law, moderated a panel with a number of legal writing faculty who have taken on administrative roles in law schools. Other panelists included Mary Garvey Algero, Associate Dean of Faculty Development and Academic Affairs at Loyola University New Orleans College of Law; Cindy Archer, Associate Dean for Clinical Programs and Experiential Learning at Loyola Law School Los Angeles; Jean Boylan, former Associate Dean of Experiential Education and Clinics at Loyola Law School Los Angeles; Darby Dickerson, Dean at Texas Tech University School of Law; Anthony Niedwiecki, Associate Dean for Academic Affairs at the John Marshall Law School; and Amy Sloan, Associate Dean for Academic Affairs at the University of Baltimore School of Law. I would like to thank David Romantz for generating the idea for this session and inviting me to join the panel. I also thank LWI for including this session in the conference and my co-presenters for their wisdom and guidance over the years.

2. In addition to teaching legal writing for over 20 years and serving as associate dean since 2011, I have served in other administrative roles including Acting Director, Graduate and International Legal Studies and Assistant Dean for Student Affairs, both at the University of Illinois College of Law, and Director of Legal Method & Writing and Academic

Success Programs at Arizona State. I am grateful to my colleagues at Arizona State University for their encouragement and Susan Chesler, Marnie Hodahkwen, and Terry Pollman for reviewing drafts of this piece. Finally, many thanks to the editors of *The Second Draft*, especially Tammy Oltz, for their guidance and suggestions.

3. Because most legal writing programs have, or had, directors, many legal writing faculty already have administrative roles within their law school. In addition, sheer numbers may have an impact; at many law schools, there are more faculty teaching legal writing than any other single subject.
4. On an average day, I spend approximately half of my day in meetings, a quarter of my day “putting out fires” (dealing with emergencies), and a quarter of my day working on projects/doing my actual “work.”
5. Although this article is about becoming a law school dean, many of the tips are applicable to any senior administrative position within a law school: Michael Coper, *My Top Ten Tips for Good Deaning* 62 J. LEGAL EDUC. 70 (2012).
6. There are good resources for learning how to balance work and life and learning when (and how) to say no. Take advantage of those resources before you become burned out. ⁶See, e.g., WILLIAM URY, *THE POWER OF A POSITIVE NO: SAVE THE DEAL SAVE THE RELATIONSHIP AND STILL SAY NO* (Bantam Books 2008); PATTI BREITMAN, *HOW TO SAY NO WITHOUT FEELING GUILTY: AND SAY YES TO MORE TIME, AND WHAT MATTERS MOST TO YOU* (Broadway Books 2001); Mayo Clinic, *Work-Life Balance: Tips to Reclaim Control*, available at <http://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/work-life-balance/art-20048134>; Deborah Jian Lee, *6 Tips For Better Work-Life Balance*, *Forbes* Oct. 20, 2014, available at <http://www.forbes.com/sites/deborahlee/2014/10/20/6-tips-for-better-work-life-balance/#4dbc0623dbc9>.

7. Working with your faculty is also important, as the dean is likely to seek the counsel of at least some key faculty members before offering you a senior administrative position. Working with university officials (those in the Provost’s Office, for example), can also be helpful, so serving on university committees or volunteering to attend meetings when others cannot is often wise.

8. See, e.g., STEPHEN R. COVEY, *THE 7 HABITS OF HIGHLY EFFECTIVE PEOPLE: POWERFUL LESSONS IN PERSONAL CHANGE* (Simon & Schuster 2004); CHRIS CROUCH, *GETTING ORGANIZED: IMPROVING FOCUS, ORGANIZATION AND PRODUCTIVITY* (Dawson Publishing 2005); Brian Tracy, *6 Time Management Tips To Increase Productivity And Improve Your Organizational Skills*, available at <http://www.briantracy.com/blog/time-management/6-time-management-tips-to-increase-productivity-organizational-skills/>.
9. See, e.g., <http://www.amanet.org/training/seminars.aspx?SelectedSolutionType=Seminars>; http://www.nationalseminarstraining.com/seminarsearchresults/time_management_&_organization_skills/vytim/.
10. Books like Dale Carnegie’s *HOW TO WIN FRIENDS AND INFLUENCE PEOPLE* (Simon & Schuster 2010) can be helpful in this regard, and books and articles about leadership styles and leadership theory, such as Bass’s *HANDBOOK OF LEADERSHIP* (4th edition Free Press 2008), may also be helpful.
11. CAROL S. DWECK, *MINDSET: THE NEW PSYCHOLOGY OF SUCCESS* (Ballantine Books 2008), can be helpful for changing your approach and for overall success.

PROGRAM NEWS

Denver Law Lawyering Process Program

PROGRAM NEWS

Ranked 7th in U.S. News & World Report

PROMOTIONS

Debra Austin: Professor of the Practice

Tanya Bartholomew: Professor of the Practice

John Campbell: Associate Professor of the Practice

Suzanna Moran: Professor of the Practice

PUBLICATIONS

Books

Nantiya Ruan, *The New 1L: First-Year Lawyering With Clients* (with Eduardo R.C. Capulong, Michael A. Millemann, and Sara Rankin), Carolina Academic Press (2015).

Nantiya Ruan & Rachel Arnow-Richman, *Developing Professional Skills: Workplace Law*, West Academic Publishing (Fall 2016).

Book Chapters and Supplements

John Campbell, *Employment Law Update: Dukes, Comcast, and Italian Colors: Three Decisions Dramatically Impacting Employment Class Actions*, Henry Perritt, Chapter (forthcoming 2016).

Nantiya Ruan, Co-Editor in Chief of *Cumulative Supplement to Fair Labor Standards Act* (2nd Ed., BNA Books 2015).

Nantiya Ruan, *Individualized Justice in Class and Collective Actions, Beyond Elite Law: Access To Civil Justice In America* (Samuel Estreicher & Joy Radice eds., Cambridge University Press, 2016).

Nantiya Ruan, *Challenges to Non-Selection Screening Devices: The Disparate Impact of Credit and Criminal Background Checks, Title VII of the Civil Rights Act After 50 Years* (Samuel Estreicher & Anne Marie Lofaso eds., LexisNexis, 2016).

Nantiya Ruan, *Title VII Disparate Impact in Pay Equity Cases, Title VII of the Civil Rights Act After 50 Years* (Samuel Estreicher & Anne Marie Lofaso eds., LexisNexis, 2016).

David Thomson, *How Online Learning will Transform Legal Education*, in *Handbook of Digital Transformation*, Olleros and Zeghu, eds. (Edward Elgar, 2016).

Law Review and Journal Articles

Debra Austin, *Food for Thought: The Neuroscience of Nutrition to Fuel Cognitive Performance*, Or. L. Rev. (forthcoming).

Debra Austin, *Emotion Regulation for Lawyers: A Mind is a Challenging Thing to Tame* (with Rob Durr Northwestern), 16 Wyo. L. Rev. 387 (2016).

Debra Austin, *Drink Like a Lawyer: The Neuroscience of Substance Use and Its Impact on Cognitive Wellness*, 15 Nev. L.J. 826 (2015).

Debra Austin, *Got Stress? You may be Harming your Brain*, *The Coffee House 6*, a Publication of the Wyoming Trial Lawyers Association, (2015).

John Campbell, *Countering the Plaintiff's Anchor: Jury Simulations to Evaluate Damages Arguments*, (with Bernard Chao), 101 Iowa L. Rev. 543 (2016).

John Campbell, *Where Kafka Reigns: A Call for Metamorphosis of Unlawful Detainer Laws*, Univ. Mich. J. of Law Reform (forthcoming 2016).

Nantiya Ruan, *Stabilizing Low-Wage Work: Legal Remedies for Unpredictable Work Hours & Income Stability* (with Charlotte Alexander & Dr. Anna Haley-Lock), 50 HARV. C.R. - C.L. L. REV. (2015).

David Thomson, "Teaching" *Formation of Professional Identity*, 27 Regent U. L. Rev. 303 (2015).

PRESENTATIONS

Robert Anderson

Reaching the Limits of a Policy Argument, and Giving the Client the Bad News, the Fifth Annual Western Regional Legal Writing Conference, Loyola Law School, Los Angeles, August 2015.

Program Leadership, LWI One-Day Workshop, University of Denver, December 2015."

Knowing When No is No: Teaching Students How to Determine When the Answer to a Legal Research Question is No (and How to Tell the Client), 2016 Biennial Conference of the Legal Writing Institute, Portland, Oregon, July 2016.

Debra Austin

Brain Power: The Neuroscience of Cognition, Stress, Self-medication, and Brain Health, Wyoming Trial Lawyers Association Convention, Cody, WY, June 2015.

Don't Forget the Brain: Using Neuroscience Developments to Humanize Legal Education, Association of Legal Writing Directors Conference, University of Memphis Cecil C. Humphreys School of Law, Memphis, TN, June 2015.

Zen and the Artistry of the Emotionally Regulated Advocate, Psychology of Persuasion Conference, University of Wyoming, Laramie, WY, with Rob Durr, PhD, Northwestern University School of Law, September 2015.

Writing Professors as Scholars, LWI One-Day Workshop, (with Ken Chestek and David Thomson) University of Denver, December 2015.

Brain-Boosting Nutrition at the Southeastern Legal Writing Conference, University of Miami, January 2016.

Panelist, *Lawyer Balance and Wellbeing* at Rhone Brackett Inn of Court, Denver, CO, February 2016.

Reinvigorate your Brain with Neuroscience-Inspired Eating at the Rocky Mountain Legal Writing Conference, University of Arizona, March 2016.

Judicial Wellness. Presentation to the 2016 Kansas Judicial Conference. Wichita, KS, June 2016.

Craving Comfort Food and Cocktails? The Neuroscience of Nutrition for Optimal Brain Health and Agile Aging, Legal Writing Institute Conference, Portland, OR, July 2016.

Teaching (Law) Students to Optimize Cognition via Neuroscience and Positive Psychology, with Peter Huang, CU Law, International Positive Education Network's Festival of Positive Education, Dallas, TX, July 2016.

Job Performance: Steps for Optimizing Cognitive Performance & Effectiveness to the Tenth Circuit Bench & Bar Conference. Colorado Springs, CO., September 2016.

Tanya Bartholomew

Integrating Professional Formation in Writing Courses, Rocky Mountain Legal Writing Conference, University of Arizona, March 2016.

Teresa M. Bruce

A Tragedy in Three Acts: How Screenwriters Tell Compelling Stories, the Fifth Biennial Conference on Applied Legal Storytelling, Seattle University School of Law, July 2015.

John Campbell

Modern Writing, Colorado County Attorney Annual Conference, Breckenridge, CO, June 2015.

Experiential Learning: University of Denver, Moscow State University Partnership, Peterhoff, Russia, June 2015.

Experiential Learning Technique, Moscow State University Partnership, Moscow State University, December 2015.

Measuring Persuasion, Southeast Legal Writing Conference, University of Miami, January 2016.

Recalcitrant Jurors: An Empirical Study, Quantlaw, University of Arizona, February 2016.

Panelist, *Measuring Juries—Emerging Empirical Techniques for Studying Juries* (with Christopher Robertson and Bernard Chao), at The Art and Science of Jury Persuasion Measuring Juries, Sturm College of Law, Denver, February 2016.

Empirical Methods for Studying Juries and Reforming Evidence Law, with Bernard Chao, Inner Circle of Advocates Annual Conference at The Greenbrier, Boulder, CO August 2016.

Nantiya Ruan

Scheduling Shortfalls: A Study of Unstable and Insufficient Hours in Low-Wage Work, at Texas A&M Law School, May 2015.

At the Intersection of Poverty and Employment Law, Law and Society 2015 Annual Meeting, Seattle, Washington, May 2015.

Diversity and Leadership in Legal Writing, Association of Legal Writing Directors, at University of Memphis School of Law, June 2015.

Innovative Teaching Workshop: Mediation in the First Year, Association of Legal Writing Directors, at University of Memphis School of Law, June 2015.

Scholarship Groups: How to Start and Maintain Your Own, at LWI Scholarship & Development Committee Webinar, December 2015.

Program Leadership, at LWI One Day Workshop, University of Denver Sturm College of Law, December 2015.

Employment Discrimination: Key 2015 Developments, 32nd Annual National CLE Conference (LEI), Vail Colorado, January 2016.

The New 1L Year, at AALS Annual Meeting, New York New York, January 2016.

Litigating Collective Action Cases Under the Fair Labor Standards Act, at Wage Justice Day Panel, Denver Colorado, February 2016.

Scholarship Mentoring, Legal Writing Institute Biannual Meeting, Portland, Oregon, July 2016.

Social Justice - Responsible Design of Social Justice Problems in Legal Writing, Legal Writing Institute Biannual Meeting, Portland, Oregon, July 2016.

David Thomson

Negotiation Skills Teaching in American Law Schools, Legal Education Exchange Conference, St. Petersburg, Russia with Jay Finkelstein (DLAPiper), Walter Bardenwerper (Georgetown), and Paul Zwier (Emory), June 2015.

Strategies for Implementing Experiential Learning, Southeastern Association of Law Schools (SEALS) Conference, with Prentiss Cox (Minnesota), Colleen Medill (Nebraska), and Paula Schaefer (Tennessee), July 2015.

Professional Identity Formation, NIFTEP Annual Workshop, Georgia State University, Atlanta, GA, November 2015.

Institutional Assessment in Action, at the Building an Assessment Plan from the Ground Up Conference, Whittier Law School, with Cassandra Hill (Thurgood Marshall) and Susan Keller (Western State), Costa Mesa, CA, November 2015.

Legal Writing Professors as Scholars, LWI One-Day Workshop, (with Ken Chestek and Debra Austin), University of Denver, December 2015.

Learning the Language of Law School Assessment, invited faculty talk, Seton Hall School of Law, February 2016.

Establishing Professional Identity through Teaching, Mentoring, and Coaching, at the Educating Advocates: Teaching Advocacy Skills Annual Conference, Gulfport, FL, May 2016, with Hon. Robert McGahey (Denver District Court).

Learning Outcomes Assessment under the ABA Standards, at the Educating Advocates: Teaching Advocacy Skills Annual Conference, Gulfport, FL, May 2016.

Assessment Tools for Practice Skills, at the Third National Symposium for Experiential Learning, New York, NY, June 2016, with Paul Maharg (Australian National University).

Learning Outcomes and Assessment in American Legal Education, at the Igniting International Law Teaching Conference (LEX), Washington, D.C., July 2016.

Northwestern Pritzker School of Law

PROMOTIONS

Kathleen Dillon Narko, Clinical Professor of Law

Martha Kanter, Clinical Associate Professor of Law

Jim McMasters, Clinical Associate Professor of Law

John Thornton, Clinical Associate Professor of Law

Suffolk University Law School

HIRING AND PROMOTION

Samantha Moppett, Associate Director of Legal Practice Skills

PROGRAM NEWS

Suffolk University Law School hosted the New England Scholarship Circle at Suffolk in September 2016.

Suffolk University Law School was a Ruby Sponsor of the LWI Biennial Conference in Portland, Oregon in July 2016.

PUBLICATION/ACCOMPLISHMENTS

Kathleen Elliott Vinson, *Tips for Law Students During the Summer Daze*, Legal Writing Matters blog (Aug. 12, 2016), http://theroadto1l.blogs.law.suffolk.edu/category/legal_writing_matters/

Kathleen Elliott Vinson was appointed chair of a subcommittee on professionalism of the Massachusetts Supreme Judicial Court Advisory Committee on Professionalism.

University of North Dakota School of Law

PROGRAM NEWS

The UND faculty approved an additional 3 required credits of intensive legal writing during students' second year.

HIRING AND PROMOTION

Denitsa Mavrova Heinrich joined the faculty to teach Lawyering Skills, Trial Advocacy, and Advanced Trial Advocacy.

Tammy R. P. Oltz was appointed Interim Director of the University of North Dakota Thormodsgard Law Library.

PUBLICATIONS AND ACCOMPLISHMENTS

Chad DeVaux & Anne Mostad-Jensen, *Fear and Loathing in Colorado: Invoking the Supreme Court's State Controversy Jurisdiction to Challenge the Marijuana Legalization Experiment*, 56 B.C. L. Rev. 1829 (2015).

Chad Ning Han, Liying Yu & Anne Mostad-Jensen, *Legal Research Instruction and Law Librarianship in China: An Updated View of Current Practices and Comparison with the United States Legal Education System*, 109 Law Libr. J. ___ (2017)

Anne Mullins, *Jedi or Judge: How the Human Mind Redefines Judicial Opinions*, 16 Wy. L. Rev. 325 (2016).

Anne Mullins received the Webb Faculty Achievement Award for scholarship and the Founders Day Award for Outstanding Graduate Teaching.

Anne Mullins and **Tammy R. P. Oltz** published *North Dakota Legal Research*, a new book in the legal research series edited by Suzanne Rowe.

University of Oregon School of Law

PROGRAM NEWS

The University of Oregon School of Law announces the creation of the Galen Distinguished Guest in Legal Writing. Each Galen Guest will visit the law school for several days of engagement with faculty, students, and the bar. The visit will center around the Guest's current research and teaching, with an emphasis on enhancing student writing. The inaugural Galen Distinguished Guests are **Mary Beth Beazley** (Ohio State) and **Melissa Weresh** (Drake). Professor Weresh visited in October 2016 and made presentations to law and university faculty about her threshold concepts article and her work with team-based learning. Professor Beazley will visit in January 2017, speaking with students, faculty, and practitioners.

PUBLICATIONS AND ACCOMPLISHMENTS

Suzanne Rowe (Oregon), editor of the Legal Research Series published by Carolina Academic Press, is delighted to welcome **Tenielle Fordyce-Ruff** (Concordia) as the Associate Series Editor. In 2016, the series added nine new book editions and revisions as well as a new title, *North Dakota Legal Research*.

Aimee Dudovitz (Loyola-LA), **Hether Macfarlane** (McGeorge), and **Suzanne Rowe** (Oregon) published the third edition of *California Legal Research*.

Rebekah Hanley (Oregon) is the 2016-17 Galen Scholar in Legal Writing. Her major project involves incorporating extensive and varied writing, individualized feedback, and rewriting into Legal Profession, a class that historically has required little to no writing at all.



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