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Diversity

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Legal Writing as A Civil Rights Imperative

If you ask a random pre-law student why they want to enroll in law school, many of them will tell you that they want to make a difference. If pressed further, some of them may talk about *Brown v. Board of Education*[1] or the recent cases securing same-sex marriage equality.[2] However, none of them will discuss rapturously how the lawyers in those cases researched the issues, made a plan to craftily deal with adverse precedent, communicated that plan in the form of briefs to the court, and advocated orally for their clients. Our students miss the connection between social change and effective legal research, writing, and advocacy.

As professors of legal analysis, writing, and communication, we have the ability to give our students a tremendous gift. That gift is to help our students use the tools that we teach to make their corner of the world a better place. Charles Hamilton Houston's example is instructive. Before taking the helm as the Dean of Howard University School of Law in 1929, Houston began teaching at Howard in 1924 as a new member of the law faculty.[3] A true interdisciplinarian, Houston constructed a plan of legal education that encouraged students to make connections over a wide range of subjects to cure societal ills. This plan would later guide the formation of Howard's law curriculum under Houston's deanship and solidify his legal strategy of social engineering.

One of the first classes that Houston taught at Howard was "Jurisprudence."[4] Shortly after the semester began, Houston gave an examination (formative assessment!) on the material he had covered. Several of the questions asked students to "Compare the doctrine held and set forth by the nineteenth century history school with those set forth by the nineteenth century analytical school;" and to "Sketch the philosophy of Kant."[5] For his final exam in the course he asked: "Which nineteenth century school of jurisprudence emphatically denied the power of conscious effort to change or modify the course of law, and why?;" Contrast the principles common to the various schools of sociological jurisprudence of the twentieth century with the principles common to the various school of jurisprudence of the nineteenth century," and "Write a short discussion of the sociological aspect of capital punishment as applied under our present form of the administration of justice in criminal cases."[6] It was under such rigorous instruction that Thurgood Marshall's legal mind was shaped. Marshall later would draft the brief and make the oral arguments before the U.S. Supreme Court in *Brown* based on the legal strategies that he developed with Houston, namely social engineering.

Charles Hamilton Houston's goal as a law professor and Dean was a simple one. He encouraged his students to not only think deeply about and understand what the law was, but also dream about and bring to fruition what they wanted the law to be. We hope this issue of the Second Draft encourages you and your students so to dream, because legal writing is a civil rights imperative. Viva diversity! ■

1 347 U.S. 483 (1954).

2 See *Perry v. Schwarzenegger, 704 F. Supp. 2d 921 (N.D. Cal. 2010); Varnum v. Brien, 763 N.W. 2d 862 (Iowa 2009).*

3 Genna rae mcneil, charles hamilton houston and the struggle for civil rights 65 (University of Pennsylvania Press 1983).

4 *Id.*

5 *Id. at 66.*

6 *Id. at 66-67.*

The President's Column

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It is an interesting time to be a legal writing professor.

Law school pedagogy generally has become controversial. Hardly a month goes by without another op-ed piece in the New York Times, or in the blogosphere, about how law schools are not serving the needs of their students very well. Critics decry the focus of many law schools on theoretical, abstract legal principles and the relative lack of teaching students how best to deploy their theoretical knowledge in the real world of law practice.

Some of the criticism is not deserved. Certainly, students need to learn the theory before they graduate and attempt to practice law; and many schools are doing much more than their critics acknowledge. But some of the criticism is deserved. The ratio of theory-teaching to practice-teaching in many law schools is heavily skewed toward theory. More balance is needed. But this does not mean that theory teaching needs to suffer in order to increase the teaching of practical skills. Law teaching is not a zero-sum game; integrating some skills training into theoretical courses can enhance the learning of the theory while teaching the skills needed to apply that theory to assist clients. This is a plus-sum game.

Legal writing professors generally, and the Legal Writing Institute specifically, are well-positioned to assist schools in adjusting to the evolving needs of students. As the American Bar Association approaches the adoption of new accreditation standards that will mandate that schools define desired outcomes for students, then take steps to measure whether graduates have achieved those outcomes, we can become very valuable assets to our schools. After all, it is the legal writing faculty (often in tandem with the clinical faculty) at many schools who have systematically studied law teaching and who have devised new and highly effective ways to teach. LRW and clinical faculty already focus on preparing students to represent clients; the casebook faculty have much they can learn from us.

These thoughts occurred to me as I sat down to write this column because of several recent LWI activities. First, thanks to the hard work of LWI Board members Mark Wojcik, Robin Boyle, and Tracy McGaugh, along with thirteen site chairmen around the country, in early December LWI put on a series of highly successful One-Day Workshops for new LRW teachers or people interested in a career in teaching legal writing. Literally dozens of LWI members volunteered their valuable time to make presentations about teaching legal writing at these thirteen simultaneous conferences. A hearty thank-you to all of the site chairs and program speakers, too numerous to mention here, who made this program a huge success!

Also this month, the newest issue of ***Legal Writing: The Journal of the Legal Writing Institute*** arrived on our desks. It is chock-full of outstanding scholarship about the future of law schools, and the large role that legal writing can, and should, play in that future. The second half of this hefty volume records the proceedings of an outstanding seminar held at The John Marshall Law School in Chicago about new directions for the teaching of law throughout the curriculum after the publication of the well-known Carnegie Report. I highly recommend reading this entire volume.

Finally, last summer LWI and the Clinical Legal Education Association co-sponsored the Third Applied Legal Storytelling Conference at the University of Denver Sturm College of Law. There, numerous scholars, including legal writing professors, clinical professors, and traditional casebook professors shared great ideas about how narrative shapes the law, and how practicing attorneys can use narrative theory to better represent their clients. There is a "doctrine" to legal writing, and the Applied Legal Storytelling movement is one of the ways in which we are helping to define it.

All of this is important work. We are making connections, as we should, with our colleagues in the wider faculty. I urge all legal writing professors to engage your colleagues in discussions of innovative teaching methods and assessment, as schools prepare to enter the new outcome-measures world. Let's demonstrate how the marriage of theory and skills teaching enhances both and helps prepare our students to meet their new clients when they enter the real world of law practice. ■

Diversity in the Legal Writing Curriculum, Fostered by Faculty *With* Color

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Diversity has been a strong theme within the legal writing community over the past year or so. Legal Writing faculty of color gathered at two meetings at the 2010 LWI Biennial Conference, revealing a critical mass of minority faculty and leading to new friendships, mentoring relationships, and collegial contacts.

A few months later, California Western School of Law was one of many that hosted a one-day LWI conference, further cementing friendships and exposing me to a wonderfully expansive view of diversity. At the Cal Western conference, I chatted with Mark Wojcik about a National Professor of Color Conference hosted by his school years earlier. Mark responded: "I like to think of myself as a professor *with* color."

Although Mark has long helped to raise the profile of gay faculty,[1] his comment reminded me that diversity in the academy, broadly viewed, is defined by more than the facets of personal identity frequently listed – it's also a matter of spirit, attitude, and commitment. Applying that definition, the legal writing community – perhaps more than any other academic community with which I travel – is teeming with faculty *with* color.

I have written before of the benefits of diversity in the classroom,[2] and I hope that a brief recap here will be useful. Although many of my points may state the obvious, the benefits and challenges of introducing diversity into the classroom are sufficiently substantial to warrant continuing discussion.

The Benefits of Curricular Content that Raises Issues of Diversity

Examples, exercises, and assignments that raise issues relating to race, sex, sexual orientation, age, physical or mental abilities, economic class, immigration or foreign national status, medical conditions, and similar characteristics can enrich the classroom in a variety of ways. Issues such as these can:

- be particularly vivid, concrete, and engaging, if not provocative, thus stimulating student interest;
- promote critical thinking skills by inviting students to challenge long-held assumptions and to argue both sides of an issue on which each student may have previously formed an opinion;
- provide opportunities for members of a diverse student body to educate each other by sharing various perspectives and experiences during class discussion, while also revealing that members of any single group do not necessarily share a monolithic view, perspective, or set of experiences;
- reduce the elevated alienation often felt by "outsider" students in a sometimes oppressive environment, by providing subject matter that puts some of them in the position of "insiders" and that validates issues on which they place importance;
- help prepare students to represent a diverse clientele in practice; and
- better prepare students for reasoned political discourse on some of the more burning issues of the day.

More than a decade ago, Nancy Wright collected "Problems Raising Issues of Diversity or Social Concern,"[3] and many more are in use today. I can relate a few of my own experiences to illustrate some of the benefits of exposing students to issues of diversity.

1 *See* Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 La Raza L.J. 140, 140 & n.2 (1995) (hereafter, "*Training a Diverse Student Body*") (referring to a phrase borrowed from Mark: "out, loud and proud").

2 Charles R. Calleros, In the Spirit of Regina Austin's Contextual Analysis: Exploring Racial Context in Legal Method, Writing Assignments, and Scholarship, 34 J. Marshall L. Rev. 281 (2000) (hereafter, "*Exploring Racial Context*"; *Training a Diverse Student Body*, *supra* note 1.

3 Nancy Wright, *Summary of Problems Raising Issues of Diversity or Social Concern*, (reprinted in *Exploring Racial Context*, supra note 2, Appendix, at 298-319); *see also Exploring Racial Context* at 283 nn. 7-8, 284-92 (summarizing other problems).

Many years ago, I assumed pro bono representation of a number of young women and their parents in an arbitration proceeding on their claim that a tailor – out of personal spite – managed to ruin the lead plaintiff's Quinceanera ceremony by misrepresenting the state of readiness of the gowns and providing unfinished ones. If the arbitrator granted relief only for breach of contract, he could grant damages for emotional distress under Arizona law only if the contract was designed partly to protect emotional sensibilities so that emotional distress would be a particularly foreseeable consequence of the breach. The arbitrator, a white male, was unfamiliar with the cultural and religious significance of this "coming out" ceremony of a 15-year-old woman in the Mexican-American community. Consequently, one of the most important witnesses of the hearing was an expert witness, a graduate student from Mexico, who educated the arbitrator about the social and emotional import of the Catholic mass, reception, and performance of a carefully rehearsed dance by the Quinceanera and attendants in formal dress.

I later based an office memo problem on the Quinceanera arbitration, a problem that allowed Latino students to be "insiders" for a small slice of their law school studies and that provided all students with some intercultural education and an appreciation for the possible need to educate an adjudicator about a cultural event or cultural values.[4] A student from Mark Wojcik's class, who had been assigned the problem, described at a conference how she had asked her Hispanic co-workers about Quinceaneras and was met with photo albums, animated stories, and faces marked with emotion; the student had gained both new intercultural knowledge and a new level of rapport with her co-workers.[5]

Issues of diversity can be profitably raised in examples and exercises short of full legal memo or brief assignments. For example, Diana Pratt has offered another example of an opportunity to educate an adjudicator about cultural values or phenomenon, which could serve as a fascinating exercise in case briefing. Using the case of *Frank v. Alaska*,[6] she has shown how evidence of the necessity of moose meat in a Central Alaskan Athabascan tribe's funeral potlatch supported invocation of the Free Exercise clause to reverse a tribal member's conviction for hunting moose out of season.[7] Even our working issues or examples of diversity into classroom lectures can secure educational benefits. Samantha Moppett, for example, reminds us to include tribal court systems in our presentations of courts systems in the United States.[8]

As I write this article, I am tweaking the facts for my main legal memo assignment for the fall, an assignment that I expect to bring the educational benefits of confronting issues of diversity. This one originates with Lisa Black, who shared the problem at the one-day legal writing conference in San Diego last December. The assignment tells the story of a same-sex couple that for two decades has enjoyed the equivalent of a loving, committed marriage. Alberto and Ben, however, are not married – indeed, they cannot marry in their home state of Arizona. One issue raised in the assignment is whether Alberto and Ben have the requisite relationship to support Alberto's claim for negligent infliction of emotional distress when he witnessed a driver strike Ben with his car, causing Ben to suffer serious injuries.

Lisa sets her problem in Florida, where the case law supports arguments and counter-arguments on several interesting issues. I have adapted the problem, however, to be set in Arizona, and was grateful to discover that Arizona case law appears to leave the door open (if only slightly ajar) for recognizing that a committed same-sex relationship can trigger liability for IIED, even though a state constitutional amendment specifically limits marriage to a man and a woman, and though the requisite connection between injured party and witness most commonly is a relationship of blood or marriage.

I'm hoping that the assignment not only is an excellent vehicle for case analysis and synthesis but also stimulates

4 The latest publication of this closed universe problem is found in Charles R. Calleros, Legal Method and Writing app. IV at 578-85 (6th ed. Aspen 2011).

5 *Exploring Racial Context*, *supra* note 2, at 291 n. 32.

6 604 P.2d 1068 (Alaska 1979).

7 Diana Pratt, *Representing Non-Mainstream Clients to Mainstream Judges: A Challenge of Persuasion*, 4 Legal Writing 79 (1998).

8 Samantha A. Moppett, *Acknowledging American's First Sovereign: Incorporating Tribal Justice Systems into the Legal Research and Writing Curriculum*, 35 Okla. City L. Rev. 267 (2010). I accomplish this not only with an excellent chart provided by my colleague, Robert Clinton, but also by showing the website of the Navajo Nation judicial system, http://www.navajocourts.org/.

unusual student interest at a time when the debate about same-sex marriage has stirred passions. It should also develop skills of critical thinking as students grapple with the question of whether the policies underlying limitations on the tort are distinct from the justifications advanced for the constitutional amendment, and whether a committed same-sex relationship is different from an opposite-sex marriage for purposes of application of the tort standards. To present the last question in sharpest detail, I have attemped to describe the couple as one that has all the substantive features of a successful opposite-sex marriage, the kind of permanent, committed relationship that I foresee for my son, Alex, and his partner of several years, Alek.

The Challenges of Introducing Diversity in the Classroom

Precisely because issues of diversity can engage students intensely, they can also raise some challenges.[9] They can:

- elicit student comments that expose conflicting values within the class;
- spark resistance in students who balk at developing an argument or counter-argument that runs counter to the student's deeply held values; and
- run the risk of stereotyping a group whose diversity is represented in the problem.

Although these challenges are real, the benefits of introducing diversity into the curriculum outweigh the risks. Sensitive faculty moderation of provocative classroom discussions provides good modeling for dealing with highly charged meetings in practice. Moreover, explicit classroom rules requiring civility and mutual respect in discussions will help prepare students for proper courtroom decorum, as well as success in negotiations and similar functions.

Moreover, although faculty should avoid assigning problems that will visit emotional trauma on some students, students learn a valuable lesson when invited to recognize arguments that conflict with their own beliefs and values. In practice, they inevitably will represent clients whose causes and claims are not entirely consonant with their own. And even when their clients' claims coincide with their own values, they will represent those clients best by fully understanding the counter-arguments. On the issue of same-sex marriage, for example, I admit that I do not fully understand the argument that same-sex marriage will somehow adversely affect my own opposite-sex marriage, but I know that I will improve my ability to debate and deliberate if I can understand that argument or understand the real objection for which it stands as a marker.

Finally, if our attempts to introduce diversity sometimes sound inauthentic, it is likely that diverse students nonetheless will applaud our goals, forgive minor imperfections in our examples and assignments, and – best of all – educate us so that we can improve the problem for future use.

Diversity in the Academy

It may be true that a perfectly homogeneous classroom, lacking any diversity in its composition, is most in need of diversity in the curriculum, to challenge conventional assumptions and help prepare the students for practice in a diverse society. However, the educational benefits are exponentially increased in a diverse student body, where students can learn from – and be challenged by – different perspectives and experiences, and can enjoy the beneficial experience of collaborating with students from different backgrounds.

Similarly, diversity within the faculty instantly signals students that expertise in legal analysis and writing is not correlated with personal characteristics other than intellect and hard work. Moreover, a diverse team of writing faculty provides the same opportunities for enriched collaboration and group intelligence that a diverse student body brings to the classroom.

But I return to my opening theme, that diversity can be found not just in diverse personal characteristics, perspectives, and experiences, but also in spirit, attitude, and commitment. As we applaud gains in more traditional forms of diversity – such as the critical mass of faculty of color meeting at the 2010 Biennial – and as we strive for further gains in that diversity, we can also acknowledge that, broadly defined, our academy can boast a multitude of faculty *with* color. ■

9 *Exploring Racial Context*, *supra* note 2, at 292-95; *Training a Diverse Student Body*, *supra* note 1, at 156-64.

Taking the Journey!

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In July, I visited the Reginald F. Lewis Museum of Maryland African American History and Culture, though my trip to Baltimore was a cross-cultural mission of a different sort -- to experience baseball between the Red Sox and Orioles in Camden Yards rather than in Boston's Fenway Park. I do not mean to trivialize Peter Elbow's theory of "methodological believing" by claiming that my mission was partly an effort to "inhabit a different way of thinking" by seeing the game from a different perspective.[1] Although my team did not win that night, I learned about Oriole pride, atmosphere, ingenuity, loyalty, playfulness, food culture, and anger. In a rainbow, orange and red are harmonious colors, but not in a major league ballpark. In the future, I can expect to conjure-up "orangeness" when I watch the teams play against each other because I have come to understand something concrete and emotional about the Oriole ways.

The next day, when contemplating what to do with the few hours I had before getting on the train, I chose to visit the newly constructed Lewis museum. Its focus was Maryland African American history, and promotional material persuaded effectively with the words "Take the Journey!" The building, asymmetrically balanced, had a front façade of black, white, gray, yellow, and an orangey red. Inside, the museum space was perfect. Among the many admirable features, there was a wide, inviting staircase that connected the energetic and powerful special exhibit of the work of eight contemporary black women artists with a multi-faceted, scholarly, and visually compelling permanent installation on Maryland African American history.

Thus, the Lewis belongs to a museum culture that is "experience-based" and not one geared to provide only a structured, systematic presentation of collected material. The lessons from history set amidst contemporary visions and artistic interpretations reminded me of what Justice Holmes wrote about the life of the law, that it is also experience-based.[2] As he stated, "The felt necessities of the time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed."[3] In its description of the museum, the architectural firm that was awarded the project noted that the Lewis exudes "celebration and disappointment, flight and perseverance, joy and pain."[4] These are characteristics of the life of a lawyer as well as the life of the law. While I meandered through the museum, the validity and co-existence of the dichotomies and differing viewpoints also brought to mind law students who might aspire to work on behalf of social causes in the future. They would do well to learn how to effectively engage with and communicate diverse perspectives without evading or diluting contradictions and tensions, much as the museum does.

I say this because the summer had also brought forth several sobering reports about disparity, discrepancy, and gaps as applied to racial progress. The Pew Research Center revealed one instance of a widening gap in the form of data from 2009 indicating that the median income of whites was twenty times that of blacks and eighteen times that of Hispanics.[5] Another disappointment–or at least surprise–was a National Institutes of Health study that showed, after rigorous analysis, that in spite of a race-blind application process for scientists seeking grant awards, black scientists who applied were one-third less likely to receive grants than white scientists, which indicates bias in the selection process.[6] There was also data

1 Peter Elbow, *Methodological Doubting and Believing: Contraries in Inquiry, in* Embracing Contraries 253-300 (1986). *See also* The Believing Game – Methodological Believing, Draft of Paper presented at CCCC, New Orleans, April, 2008, included in SelectedWorks of Peter Elbow, http://works.bepress.com/peter_elbow/ (last visited Oct. 24, 2011).

2 O.W. Holmes, Jr., The Common Law 1 (1881) ("The Life of the law has not been logic; it has been experience.").

3 *Id.*

4 Freelon Design X Technology architectural firm description of cultural projects, http://www.freelon.com/portfolio/print/249 (last visited Oct. 24, 2011).

5 Paul Taylor, Richard Fry & Rakesh Kochhar *Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics,* Executive Summary, Pew Research Center (July 26, 2011) http://pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/ (last visited Oct. 24, 2011).

6 Kenneth Chang, *Black Scientists Less Likely to Win Federal Research Grants*, Study Reports (Aug. 18, 2011), http://www.

from the census aggregation confirming that financially successful minorities live in much poorer neighborhoods than their white counterparts.[7] The underlying reasons for these findings are multi-layered and interdisciplinary. Future lawyers who hope to work on behalf of complex political, social, and environmental issues will need a clear sense of history and of the history of the problems they are trying to solve, similar to the deep and broad-based approach to litigation and dispute resolution taken by the early civil rights lawyers. As Dr. Harold Carter, a minister and leader of the Baltimore Chapter of the Poor People's Campaign said, "You've got to embrace your past in order to have a foundation for the future."[8]

The Lewis aptly conveys the significance of entering into the poignant stories of others in order to reflect on what is attainable with a purposeful legal education. This is especially true of the moving exhibit on the life and work of Charles Hamilton Houston, one of Thurgood Marshall's teachers at Howard University Law School. Marshall had hoped to attend the University of Maryland School of Law but could not because of the university's segregation policy.[9] Houston was deeply aware of injustice and exclusion, notwithstanding his relatively privileged background. He had grown up in nearby Washington, DC, the son of a lawyer and seamstress. After he graduated from Amherst College, Houston served as an officer in the army during World War I. His experiences with the racist practices and policies in the army, witnessing and being subjected to indignities and horrifying treatment of black soldiers by white soldiers, left him forever outraged.[10] He decided to attend law school and commit himself to working on behalf of the advancement of African Americans.[11] Houston attended Harvard Law School, was elected to the editorial board of the Law Review, and later became Vice Dean at Howard.[12]

Charles Hamilton Houston's setbacks as well as his accomplishments as a dean, professor, and lawyer set the stage for the demise of school segregation. His students, Thurgood Marshall and many others, received excellent training as law students and were, what we would call, practice-ready because Houston elevated the standards at Howard, revising the curriculum to require rigorous work that included constitutional philosophy, civil rights, and direct professional experience.[13]On a wall of the Lewis museum, one of Houston's oft-quoted comments appears: "Lawyers are either social engineers or parasites on society."[14] Having grown up under Jim Crow laws, he believed that Howard University law students were among those who ought to work on behalf of civil rights and the worst-off in society because of who they were and because of their life experiences.[15] Houston adopted and recommended to his students a realist perspective, relying on social science and empirical studies to demonstrate through evidence that equality would benefit society-at-large, and that the law's purpose was to enhance justice.

Legal philosophy aside, however, Houston apparently understood what Peter Elbow has argued, in part, about critical thinking—that ultimately acceptance and implementation of a feared notion is more likely to emanate from a willingness to scrutinize ideas utilizing the intellectual mode of believing as much as the skill of doubting. While Elbow, in his career-long writing on this topic, acknowledges the importance of prevalent critical thinking skills, specifically, thinking that is rational, logical, and accountable, he has encouraged us to see that, for interpersonal or social progress to occur, genuinely dwelling in the other's story is equally as important to argument as suspicion, rejection, confrontation, and other routine negations.[16] Although the act and process of doubting the hypotheses of others forms the core and the path of critical thinking in the western tradition, much of diversity discourse fails without sojourning in the counterpart of believing. Others in legal education have written about Elbow's theory, alternatively referred to as methodological believing and methodological doubting or the believing game and doubting game.[17] The point here, however, is not the relational benefit of becoming a good listener or showing empathy, but of Elbow's exhortation that we need to rigorously occupy the position of another in order to communicate strong, effective arguments because that experience allows a writer or lawyer to better compare, assess, evaluate, and synthesize before committing to logical constructions.

My summer journey to Baltimore turned out to be not only a baseball trip, but also a revival of spirit. It was a reminder that we ought to educate and graduate law students who are interested in the discrepancies, the disparities, and the gaps that confound and obstruct progress. Charles Hamilton Houston was moved by the disparities of conditions as a result of the indignities he suffered throughout his life, especially while he was serving his country. The indignities many face today are often subtle and not transparent, making them easy to overlook. Whether or not one subscribes to a particular legal philosophy, it is useful to the current and cyclical endeavor of preparing practice-ready lawyers to advance the cause of excellent thinking.[18] Elbow reminds us that we can deepen critical thinking skills not only by working to doubt what is asserted, but also by trying to believe or occupy a different or opposing frame of reference. If we expose our students to these seemingly polarized aspects of critical thinking, we might expand the possible trajectories of their careers and the contributions that they can make to law and to society. And if we do not, our students who have embraced the challenges and consented to the debt of a legal education in order to become social engineers, might not acquire the colorful palette of skills necessary to speak truth to power. ■

nytimes.com/2011/08/19/science/19nih.html (last visited Oct. 24, 2011).

7 John R. Logan, Separate and Unequal: *The Neighborhood Gap for Blacks, Hispanics and Asians in Metropolitan America*, US2010 Project (July 2011), http://www.s4.brown.edu/us2010/Data/Report/report0727.pdf (last visited Oct. 24, 2011).

8 *Black History Month Keynote Address*, Speeches – Office of Lt. Governor, Maryland, (Feb. 22, 2007), http://www.gov.state.md.us/ltgovernor/speeches/070223-blackhistory.html (last visited Oct. 24, 2011).

9 Black History Month (February) Thurgood Marshall, ABA Division of Public Education, http://www.americanbar.org/groups/public_education/initiatives_awards/raising_the_bar_pioneers_in_the_legal_profession/thurgood_marshall.html (last visited Oct. 24, 2011).

10 *NAACP History: Charles Hamilton Houston*, NAACP.org, http://www.naacp.org/pages/naacp-history-charles-hamilton-houston (last visited Oct. 24, 2011).

11 Genna Rae McNeil, Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights 49 (1983).

12 Frank McCoy, Overturning the Court, Howard Magazine 24-30, 28 (Fall 2002)

13 James Rawn, Jr., Root and Branch: Charles Hamilton Houston, Thurgood Marshall, and the Struggle to End Segregation 53 (2010).

14 Reginald F. Lewis Museum of Maryland African American History & Culture, Baltimore, Maryland, Permanent Exhibition, July 20, 2011. See http://www.africanamericanculture.org/ for current museum information.

15 Cf. Kemit A. Mawakana, Historically Black College and University Law Schools: Generating Multitudes Of Effective Social Engineers, 14 J. Gender Race & Just. 679 (2011) (calling for renewed efforts among historically black law schools to prepare students to work for the betterment of the oppressed).

16 Elbow, *The Believing Game -- Methodological Believing, supra* note 1, at 5.

17 *See, e.g.*, Mark Weisberg & Jean Koh Peters, Experiments in Listening, 57 J. Legal Educ. 427, 438 (2007).

18 See Robert Stevens, Law School: Legal Education in America from the 1850s to the 1980s (1983) for a history of the intellectual, social, and political forces influencing legal education.

Incorporating LGBT Issues into Legal Writing and Advocacy Problems

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Most of the legal writing or appellate advocacy problems that we assign to our students involve people. The characters in those problems are usually heterosexual (or, perhaps, asexual). No matter what the subject matter happens to be (torts, family law, contracts, criminal law, or something else entirely), the characters in our writing problem are usually straight—or presumed to be so.

So, it is interesting to watch what happens when we change the sexual orientation of one or more of the characters in writing or advocacy problems. Changing the sexual orientation of a character can often change more than the fact pattern. Sometimes, the legal analysis will change, sometimes arguments about the underlying public policies will change, and, sometimes, the legal issue itself will change.

Consider these scenarios, which might form the basis of a typical legal writing problem:

- A landlord does not want to rent an apartment to a potential tenant because the property has a "no pets" rule and the tenant wants to have a small dog or cat. However, the landlord has not enforced the rule with other tenants.
- An employer has a dispute with an employee over a button or slogan on a t-shirt that the employee wears to work or over the employee's appearance.
- A neighbor complains about "excessive noise" coming from a party.
- A homeowner walks outside to see words spray-painted on his or her garage.
- A woman complains that she is receiving hundreds and perhaps even thousands of email messages intended to annoy her.
- A married couple is injured in a car accident.

The characters in each of these scenarios will likely be heterosexual, and students could research and argue about these cases without ever further considering the sexual orientation of the characters. But these characters could also easily be gay or lesbian. And if they are, something more may change than just the fact pattern. Following are examples of how the analysis and issues would change in each of the above scenarios if the characters are known to be lesbian or gay.

- In the landlord and tenant case, invoking an unenforced rule against pets might suggest a violation of a state statute or local ordinance that prohibits housing discrimination based on someone's sexual orientation, whether actual or perceived. Depending on the fact pattern and controlling law, some statutory exceptions might also apply. Housing discrimination laws vary from state to state and no national law prohibits housing discrimination based on sexual orientation or gender identity.

- Although an employee handbook might discuss issues of what an employee might wear at work, an employer who disciplines a gay, lesbian, or bisexual employee for wearing a gay pride button or a rainbow ribbon, for example, may be violating a state or local law that prohibits employment discrimination based on sexual orientation.

- A neighbor's complaint about excessive noise may take on additional dimensions if the neighbor's real complaint is about having to live next to a gay or lesbian couple.

- A homeowner who walks outside to see damage to the garage may have a cause of action for trespass to land or intentional infliction of emotional distress. But, if the homeowner is gay and those words spray-painted on the garage are anti-gay, there may be criminal—and civil—actions for hate crimes in jurisdictions that include lesbian and gay persons.

- The woman receiving hundreds of email messages may also be able to press criminal and civil charges under a state hate-crime statute if the facts suggest that she is being targeted because of her actual or perceived sexual orientation.

- Legal issues arising when a married couple is injured in a car crash become more complex when the couple is a same-sex couple, lawfully married, or partnered in a civil union, and the accident happens in another state that does not (yet) recognize same-sex marriages or civil unions.

This short sample is meant to illustrate additional issues or arguments that might arise when a gay or lesbian character is included in a writing or advocacy problem. Because of the possible additional legal issues, altering the sexual orientation of a character in a problem may often change more than the fact pattern. Moreover, including gay or lesbian characters recognizes that our students likely have friends or family who are gay, lesbian, or bisexual, or that they might themselves fall into one of those categories. These students may recognize important nuances in the fact patterns that would not be noticed if all of the characters are heterosexual.

Including gay or lesbian characters in a writing problem can help our students professionally. In many states, it would be a violation of the rules of professional conduct for a lawyer to discriminate against a client based on that client's actual or perceived sexual orientation. Similar non-discrimination rules also apply to judges and their law clerks in some jurisdictions. Therefore, students who write about problems involving gay or lesbian persons while they are law students will have an easier time if called upon to do so later when they are practicing attorneys. Including gay or lesbian characters can also present many interesting opportunities for in-class discussion of legal issues relating to the problem. Students can discuss problems that will arise, for example, when another state refuses to recognize a same-sex couple's lawful marriage or civil union. Discussions may also turn to the patchwork protection of the law as it stands now in the United States, where no national law protects against housing or employment discrimination based on sexual orientation.

Here are three suggestions on how to incorporate sexual orientation issues into a legal writing problem:

First, when you finish drafting a problem, look over the characters and see if one or more of them should be gay or lesbian. You might also decide to add in one or more additional characters, such as an Iraq war veteran who has finally come out after the end of "don't ask, don't tell." Adding a gay or lesbian person may sometimes change the legal issue involved, depending on the underlying facts and substantive law of the jurisdiction.

Second, as an alternative in-class exercise, you might ask students to consider whether anything in a particular writing assignment might change if one or more of the characters were gay or lesbian. There may be no changes at all, but it will encourage students to think about such possibilities. You can also introduce non-discrimination provisions from the rules of professional responsibility.

And third, you might ask your students after they turn in the paper whether anything would have been different if one or more of the characters were gay or lesbian. Students will have an opportunity to re-consider their previous analysis in a new light. Again, they may determine that nothing would change in how they analyzed the problem. But, they may also recognize additional issues that did not previously arise. They will also develop a greater sensitivity to the legal needs of their clients. ■

Demarginalizing Tribal Law in Legal Writing

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Under one government or another, the Anglo-American legal system has been operating in North America for hundreds of years. By way of comparison, American Indian legal systems have been flourishing in North America[1] for ten to twenty thousand years:[2]

> American Indian tribal nations . . . have always governed themselves in accordance with their own ways. . . . The first forms of law and order appeared long before the arrival of the Europeans, and usually involved the resolution of disputes involving hunting, fishing, and gathering rights, privileges and territories. There also was a sophisticated system for dealing with criminal acts, as well as negligent acts. . . . The Anishinaabek often taught each other general rules of behavior for all people by relating stories linked to the landscape. . . . It is the stories, which are easily remembered and can be told again and again down through generations that created the structure of American Indian traditional and customary law.[3]

They have influenced our national constitution[4] and furnished core principles of alternative dispute resolution.[5] They have also provided sustainable, community-based forms of justice that continue to survive and to thrive, serving their people and interacting with state and federal jurisdictions.

Nevertheless, American Indian tribal law and courts continue to be marginalized by legal education.[6] Native American nations typically are not discussed in required courses and are rarely introduced during first year as the original, inherent, 565 sovereign governments existing within U.S. borders. The core curriculum never mentions their 200 sovereign court systems, even though our graduates practice in those courts regularly on behalf of both tribal and non-tribal interests. Professors Rennard Strickland and Gloria Valencia-Weber highlight the severity of this gap in the curriculum:

> Our modern life and laws are replete with continuous issues in which Indian[s] and non-Indians are affected by the interests of the indigenous sovereigns and their members. The . . . debate about Indian gaming spans the nation; it is not a controversy isolated in the Indian Country of the Southwest, but also erupts in Connecticut and New Jersey. . . . Other significant issues for Indians and non-Indians include, but are not limited to, land and water rights, children subject to the Indian Child Welfare Act, and development of natural resources—all areas in which tribal people have interests and entitlements. Failure to expose all law students to some opportunity for Indian law training presents an incomplete picture of this country when contemporary life involves law from *three* sovereigns.[7]

It should be no great surprise, then, that tribal justice systems continue to be disrespected and threatened[8] by many state and federal courts, particularly the United States Supreme Court.[9]

As educators on the front lines, law professors who teach legal writing can help to demarginalize tribal justice systems by introducing them as valid and vibrant institutions. While many professors can see the value in introducing tribal justice systems, they may also experience understandable reluctance due to the widespread fear that those systems are inscrutable and perhaps even unprofessional or illegitimate.[10] In addition, the American legal system is typically introduced during the first week of classes—a period that is not only hectic, but very sensitive for making a positive first impression on students. Professors may not be eager to begin with a topic that seems not only exotic, but also fraught with opportunities to appear unknowledgeable.[11]

Fortunately, the rewards outweigh the risks. While it is true that tribal justice systems are deep and culturally varied, the basic facts about tribal sovereignty and courts remain accessible. They also tend to generate much more student interest than the traditional state and federal material alone. Taught together, the three sovereigns can generate better learning through comparative models, as well as some excellent "teachable moments" for developing cross-cultural literacy. Some basic concepts follow.

Sovereign Nations. American Indian tribes are considered by federal law to be sovereign, "domestic dependent" nations within the United States. Although they are subject to Congressional plenary power, they have inherent, Indigenous sovereignty[12] that predates contact with Europeans. They come from different cultural and language groups, and have their own internal, ancestral common law in addition to the law "received"[13] from the Anglo-American justice system.

Statistics. As of 2011, there are 565 federally-recognized tribes listed in the Federal Register.[14] Just over 340 of them are found in the lower 48 states. The rest are Alaska

1 *See* Matthew L.M. Fletcher, American Indian Tribal Law 1-5, 10-16 (Wolters-Kluwer 2011); Duane Champagne, Social Change and Cultural Continuity Among Native Nations 107, 111 (AltaMira Press 2007)

2 *Cf.* Champagne, *supra* note 1, at 107, 111. Professor Champagne notes that by Western scientific and some Indigenous standards, the First Peoples of North America have populated the continent for about ten to twenty thousand years. *Id*. He also stresses that according to many other Indigenous sources of knowledge, such as creation stories, many of our First Nations have occupied this land since "time immemorial." *Id*. at 107-12.

3 Fletcher, *supra* note 1, at 11.

4 *See* Kathryn McConnell, *Iroquois Constitution Influenced That of U.S., Historians Say*, available at http://www.america.gov/st/washfile-english/2004/September/20040924120101AKllennoCcM9.930056e-02.html

5 Jerome T. Barrett & Joseph P. Barrett, A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement 43-44 (2004).

6 *Cf.* Frank Pommersheim, *"Our Federalism" in the Context of Federal Courts and Tribal Courts: An Open Letter to the Federal Courts' Teaching and Scholarly Community*, 71 U. Colo. L. Rev. 123, 127 (2000) ("A substantial amount of the adversity and difficulty present throughout the history of Indian law stems from the fact that the tribal sovereign is consistently marginalized, if even discussed, in the context of our constitutional democracy. With the increasing prominence and visibility of tribal courts, we are in danger of repeating this harmful process of neglect and indifference unless there is broad and informed scholarly exegesis, insight, and effort that acknowledges and bridges the common themes within the fields of Indian law and federal courts."); *See also* Loretta Fowler, Tribal Sovereignty and the Historical Imagination xvii (University of Nebraska Press 2002) ("Subordinated peoples in colonial and neocolonial situations not only contend with social institutions of dominance. They also face symbolic dominance, for example, ideologies that reflect cultural constructions of the dominant order and that rationalize that order. These rationalizations may come to be unconsciously accepted . . . .")

7 Rennard Strickland & Gloria Valencia-Weber, *Observations on the Evolution of Indian Law in the Law Schools*, 26 N.M.L. Rev. 153, 160-62 (1996).

8 *Cf.* Pommersheim, *supra* note 6, at 124, 129 (arguing that law schools' failure to "identify and discuss the tribal sovereign, particularly tribal courts, seriously restricts, even distorts, the purview of contemporary federalism" and that "t[]he marginalization of tribal courts within the canon of federal courts' textbooks and scholarship only makes it more likely that tribal courts will continue to be marginalized in federal courts' jurisprudence itself.").

9 *See generally, e.g.,* David E. Wilkins, American Indian Sovereignty and the U.S. Supreme Court (1997); Robert A. Williams, Jr., Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America (2005); Matthew L.M. Fletcher, *The Supreme Court's Indian Problem*, 59 Hastings L.J. 579 (2008). These and many other authorities explain the often hostile relationship between the United States Supreme Court and American Indian tribal sovereignty and other tribal interests.

10 *See* Nell Jessup Newton, *Tribal Court Praxis: One Year in the Life of Twenty Indian Tribal Courts,* 22 Am. Indian L. Rev. 285, 293, 347 n. 252 (1998).

11 Tribal law's exotic reputation tends to blind many to its rightful place as another doctrinal field to be researched and analyzed. Almost every week in our classrooms, we use student questions that address topics outside of our fields to model the reality that lawyers are experts in legal methods, not repositories of fixed knowledge.

12 *See* Wallace Coffey & Rebecca Tsosie, *Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations*, 12 Stan. L. & Pol'y Rev. 191, 196-97 (2001)

13 Christine Zuni Cruz, *Toward a Pedagogy and Ethic of Law/Lawyering for Indigenous Peoples*, 82 N.D. L. Rev. 863, 882-85 (2006).

14 75 Fed. Reg. 60810, 60810-14 (October 1, 2010).

Native Villages. Hawaiian Native sovereignty has not yet been recognized by Congress. Today, the federally recognized tribes have approximately 290 trial courts and 150 appellate courts,[15] all in systems of varying "structure, jurisdiction, and substantive norms." [16]

Federal Constitutional Status. The U.S. Constitution treats the tribes and Indian peoples as separate entities from the United States or the individual states for purposes of federal law.[17] Individual Indians were later decreed United States citizens by an act of Congress,[18] and a modified version of the Bill of Rights was imposed on the sovereign tribes in the form of the Indian Civil Rights Act.[19] Early Supreme Court decisions, particularly the "Marshall Trilogy,"[20] interpreted the few references to Indians in the Constitution to mean that the federal government had the exclusive right to trade with tribes and to govern their relations with states and settlers. For this reason, even today, tribal relationships with the states are governed in great part by tribal-state compacts when not in conflict with federal law, particularly in the areas of law enforcement and gaming.[21]

Government Models. Like other governments around the world, not all tribes use an American-style, three-branch government model with a separation of powers, although many do. For example, one nation may have judicial and legislative branches, but they may come under the purview of a tribal council. The reasons for these differences are often cultural, and the many varieties are expressions of community priorities and inherent sovereignty.

Justice System Models. Tribal court systems vary and each unique system is an expression of its people's sovereign nationhood. In addition to trial courts of general jurisdiction and certain trial courts organized under the Code of Federal Regulations, tribal courts often (but not always) have at least one level of appellate review. Some have their own internal appellate courts, and others use regional, inter-tribal appellate courts. Tribal justice systems also often have alternative, traditional forums for resolving crimes and other disputes. These are sometimes called Peacemaker Circles, sentencing circles, and Healing-to-Wellness Courts. Many modern, Anglo-American forms of alternative dispute resolution were influenced by earlier Native American justice models.[22]

Jurisdiction. Both civil and criminal jurisdiction are very complex in matters affecting Indian persons and Indian country. Jurisdiction varies by tribe, state, and treaty. Tribal jurisdiction sometimes overlaps with state or federal jurisdiction, and is sometimes supplanted by them via statute.[23] Jurisdiction also can vary even by the individual plot of land involved within tribal borders, as well as by the Indian status of the persons involved. Fortunately, these special jurisdictional rules are not necessary for academics to understand in order merely to introduce beginning law students to tribal justice systems, although they can make for interesting writing problems. They can also open students to the fundamental notion that court powers are determined by the legislative, executive, and judicial expressions of sovereignty among the various nations and states within the tri-federal system—as well as the conflicts between them.[24] ■

Further reading:

Barbara Blumenfeld, *Integrating Indian Law into a First Year Legal Writing Course*, 37 Tulsa L. Rev. 503 (2001)

Tonya Kowalski, *The Forgotten Sovereigns*, 36 Fla. State U.L. Rev. 765 (2009)

Samantha Moppett, *Acknowledging America's First Sovereign: Incorporating Tribal Justice Systems into the Legal Research and Writing Curriculum*, 35 Okla. City U.L. Rev. 267 (2010).

15 Sen. Comm. Indian Affairs, *Tribal Courts and the Administration of Justice in Indian Country*, 110th Cong. 1 (July 24, 2008) (opening statement of Sen. Byron L. Dorgan).

16 Newton, *supra* note 10, at 291-92.

17 *See* U.S. Const. art. I § 2 ("Indian commerce" and "Indians not taxed" clauses).

18 8 U.S.C. § 1401(b) (2006).

19 25 U.S.C. §§ 1301-03 (2006).

20 *Johnson v. M'Intosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832).

21 *See* Oliver Kim, *When Things Fall Apart: Liabilities and Limitations of Compacts Between State and Tribal Governments*, 26 Hamline L. Rev. 48, 49-53 (2002).

22 *See* Barrett & Barrett, *supra* note 5, at 43-44.

23 For example, several states hold concurrent jurisdiction under Public Law 280, which is codified in large part at 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (2006).

24 *See* Tonya Kowalski, *The Forgotten Sovereigns*, 36 Fla. State U.L. Rev. 765, 802-21 (2009).

The World is a Diverse Place for Future Lawyers

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Because law practice is becoming more global, future lawyers likely will need to interact with lawyers who were trained in and practice in very different legal systems, about which only a minority of American law students are usually educated. Therefore, we need to include in our legal writing courses at least an introduction to diverse legal systems.[1]

The majority of the world's nations do not have common law systems. The Juriglobe[2] research project of the University of Ottawa has divided the legal systems of the members of the United Nations into five broad categories: civil law, common law, Muslim law, customary law, and mixed law systems. Of the 192 member states[3] of the U.N., 77 states fall into the "civil law systems" category, while only 23 states fall into the "common law systems" category. Juriglobe categorizes 10 additional states as having "civil law and common law mixed systems," 4 states as "common law and Muslim law mixed systems," 14 states as combining common law and customary law, and 16 more that combine two or more categories with common law. Even including these combined or mixed systems, the number of all the states with some element of common law is smaller than the number of states in the category of pure civil law systems. In addition, in all of the systems that mix common law with another category, the legal structures and legal educational systems vary greatly from the U.S. system.

Those of us who are interested in international law or who teach international students are well-aware that U.S. legal education and purely common law systems are not the "only" way students become lawyers or legal disputes are settled. But the majority of American law students generally lack that awareness of the diversity of legal systems and education. The Global Lawyering Skills program at Pacific McGeorge includes international and foreign law issues in research and writing curriculum already, but we wanted to make our students aware of the larger aspect of diversity of systems as well. We decided to capitalize on our LL.M. program, which every year brings approximately 50 international students to our campus. They come from all over the globe. Each of them has to take a course that introduces U.S. legal education and American-style common law reasoning.[4] One of the course requirements is that all the LL.M. students have to go to a class session of a second-year section of our Global Lawyering Skills course and give a presentation to the class. They may discuss whatever they want about the law in their home countries. Most of them discuss the legal education system, the legal profession, the structure of the legal system, or a combination of the three. No matter what they discuss, the J.D. students finish the session with a much greater appreciation for the diversity of legal systems and education in the world.

While a 30-minute presentation is certainly not enough to fully educate the American students about law in other countries, it does open their eyes to the fact that their own legal system and legal education are not the model for the rest of the world. For instance, all of them learn that a law degree is an undergraduate degree in the rest of the world, no matter what legal system we look at. They learn that getting that undergraduate law degree may well require a five-year course of study.

1 This is not to say that all law school courses cannot benefit from introducing a global perspective. This introduction is the goal of a series of texts published by West called the "Global Issues" series. See West Academic Publ'g, *Global Issues Series*, http://www.westglobalissues.com/ (last visited Oct. 11, 2011).

2 Univ. of Ottawa, JuriGlobe – World Legal Systems Research Group, *Alphabetical Index of the Political Entities and Corresponding Legal Systems*, http://www.juriglobe.ca/eng/syst-onu/rep-sys-juridique.php#syst1 (last visited Oct. 11, 2011).

3 With the addition of the Republic of South Sudan, the U.N. now has 193 members. The Juriglobe website has not yet categorized this newest state.

4 I say "American-style" because our form of reasoning from precedent is often different from that of some other jurisdictions based at least in part on common law. A student from South Africa last year told me he was almost as confused as the students from pure civil law jurisdictions despite South Africa having in part a common law system.

If the international student visiting the class is from a member country of the European Union, they may learn about the Bologna Process that has created the European Higher Education Area with a goal of making educational credentials interchangeable across all the member states.[5] Many of the J.D. students will learn that the content of legal education is generally set by the government of each country, not by a bar associations. Conversely, even if they come from countries with a bar association such as Spain, international students tend to be shocked when they learn of the power of the ABA over American legal education. The J.D. students learn that the Socratic method is unique to the United States and that, for the most part, law students in other countries are never called on to speak in class. Instead, students from other countries are usually required to memorize black letter law and study the unified theoretical basis for the law. American students may also learn that getting the law degree isn't enough to enable a graduate to practice law; rather, university graduates in some countries must then go through a year or more of practical training before they can enter the profession.

In addition to international diversity in legal education, our students may learn that there are many different legal structures. Our three-tier system of trial and appellate courts does not exist everywhere, even though every country, of course, has courts. J.D. students certainly learn that the jury system is not used in most other legal systems. If the visiting student is from a civil law jurisdiction, the American students learn that lawyers play a much-reduced role in trials and that judges are much more active in eliciting facts. Our students generally learn that being a judge in a foreign country is a career choice that university graduates make as soon as they graduate, not a goal to be achieved after many years of law practice. Our J.D. students may learn that there are different kinds of legal professionals in other countries, some of whom would be considered "lawyers" in the U.S. and others of whom would be considered something else. For example, notaries in France are a distinct category of legal practitioner rather than being someone without legal training to whom we go to get a signature verified.

Each year, we who teach in our Global Lawyering Skills program learn new things about other legal systems by listening to the LL.M. students give their presentations. We and the students learn to look on our own system as less universal and more unique. We hope our J.D. students learn that they will need to be more aware of these legal cultural differences when they go into practice. And we learn a little each year that can help us teach our J.D. students about this form of diversity. ■

5 See European Higher Educ. Area, *The official Bologna Process website*, http://www.ehea.info/ (last visited Oct. 11, 2011).

Tridialectalism

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Teaching formal writing to law students with diverse backgrounds can be challenging. One reason is that students whose undergraduate curriculums did not include much formal writing often come to law school writing the way they speak. And students from diverse backgrounds speak in many different ways, resulting in a variety of writing problems. These native dialects may be very useful if the students return to their home towns to practice law but will not serve them well in federal court or in other jurisdictions.

I teach in Louisiana at one of the most diverse law schools in the nation.[1] Even the students who are Louisiana natives have vastly different speech patterns. Students from New Orleans, for example, speak a dialect we refer to locally as "yat," based on their tendency to add unnecessary prepositions at the end of sentences (e.g., "Where y'at?" instead of "Where are you?"). Students from the northeast part of the state tend to have a Southern drawl. And Cajun students have their own dialect, as anyone who has heard the Cajuns on *Swamp People* can attest. For some of these students, learning formal English is like learning a second language. Indeed, one of my students from "down the bayou" told me that to write for my class, he had to translate every word in his head from Cajun (Franglais) to formal English.

Consequently, my challenge is to teach these students to write and speak like lawyers without demeaning their native dialects. I need to teach them to write in formal English without making them feel they are being criticized because of their backgrounds. I discovered a way to do that when I read an article called *Trilingualism* by Judith Baker, an English teacher at a Boston vocational/technical high school.[2]

Baker's solution to this problem, which she posed as a race and class issue, was to explain to her students that by the time they graduated they would be tridialectal because they would speak at least three forms of English: the English they learn at home or from their peers; the English they learn in school; and the particular language of their profession or trade.[3] Her students examined the reasons people speak and write in particular ways at particular times. She explained to them that using their home dialect is not wrong in the right context, but that in other contexts, a formal or professional dialect is required. This "motivation first, rules last" method of teaching grammar created an atmosphere in which "the mechanics and usage and vocabulary of formal English no longer threaten to demean" the students.[4]

Baker's students did a detailed study of their home dialects, but my cramped legal writing syllabus did not afford such luxury. Instead, I created an abbreviated form of her study of motivation by helping my students look at the differences in the ways they made one simple statement, a description of a close friend's new baby. I asked each student to write, in one sentence, what he or she would say to a friend upon seeing the child for the first time. Based on those responses, we examined the differences between home dialects and formal writing.

It took a few tries to perfect the exercise. At first I did not describe the imaginary baby, and some of the students gave equivocal responses. Lawyers to be that they were, they wrote tactful statements so as not to offend a friend whose baby was not pretty. Eventually I resorted to showing a panoply of photographs of cherubic children of various races and ethnicities and asking them to assume that they were commenting on one of those babies.

The responses ranged from, "He's soooooooo cute" to "Dat's one healthy baby" (with the student explaining that in her culture "healthy" meant "fat") to "He Guicci." Each student shared his or her sentence, which I wrote on the whiteboard, complete with phonetic spellings. After

1 SULC tied for seventh place in the 2011 U.S. News Law School Diversity Index. *Law Schools Diversity Index: Best Law Schools*, U.S. News, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-school-diversity-rankings (last visited Aug. 13, 2011).

2 Judith Baker, *Trilingualism*, in The Skin That We Speak 49 (Lisa Delpit & Joanne Kilgour Dowdy eds. 2002). Baker uses the terms trilingual and tridialectal interchangeably. I chose to use tridialectal as all three types of speech are forms of the English language.

3 *Id.* at 51-52.

4 *Id.* at 59.

the students shared, I added what my grandmother said when she first saw my son: "Ain't he the purtiest thang!"

We then discussed whether my grandmother's statement, made in the privacy of her home in a loving atmosphere, was "wrong." I explained that my grandmother, who lived in the rural South and had only a sixth-grade education, was very intelligent but spoke just one dialect. At the age of six I tried to correct her grammar, for which I received a swat on the rump and the advice not to sass my elders. My students concluded that Grandma's dialect was perfectly acceptable when speaking to family, just as what they had written was acceptable when speaking to friends.

Then, I asked the students what people would have thought of Grandma if her statement had been made in a public place in front of highly educated people. The students agreed that people who heard her but did not know her would have considered her ignorant. We then looked at the language in the students' statements and considered whether that language would have been appropriate in a written document filed in court. Most of the students' statements included contractions and slang. Many had verbs and subjects that did not agree. We discussed why slang and contractions were inappropriate for formal writing and the impression that a reader gets from sentences that are grammatically incorrect. We talked about how readers form an opinion of a writer's intelligence and the accuracy of his written statements based on whether he follows the rules of standard formal English. By the end of this discussion, the students seemed to be more motivated to write legal documents in formal English.

We concluded by discussing the third dialect that they would speak by the time they graduated from law school: the language of law. I refuse to refer to that dialect as legalese, as that word has a definite negative connotation in my class. They knew they would learn many new words in law school, but I wanted to impress upon them that their understanding of many common words would change.

To demonstrate this concept, I asked them to define three words: prescribe, frivolous, and desertion. They responded that prescribe is what a doctor does so a patient can get drugs; frivolous means self-indulgent, like buying things you do not need; and desertion means abandonment. Imagine their surprise when I told them that under Louisiana law, prescribe means to give up the right to sue or claim property by the passage of time; being frivolous means acting in bad faith; and desertion means exposing someone to danger, even if the "deserter" was in the same room or vehicle as the victim. I hope that this exercise convinced them that the language of law has its own definitions and meanings, much like their own dialects.

I use this exercise early in the first semester. Even though all of my students do not stop writing "being that" instead of "because" or stop pronouncing "ask" like "axe," they do have a better understanding of why formal writing and speaking are important. And they no longer think that I am picking on them because of their backgrounds when I comment on their slang or substandard English. Because they now understand the importance of using the right dialect at the right time, they want to be tridialectal and are willing to work harder to get there. ■

Other Useful Statutes for Challenging Your Students to Analyze Issues of Diversity

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Legal research and writing assignments provide an opportunity for first-year students to encounter how the American legal system impacts people of diverse backgrounds in nuanced and different ways. These assignments can make our students confront how a person's disability, ethnicity, gender, and sexual orientation may cause them to be treated differently and what legal protections, if any, exist to address such situations. Of course, assignments centered on claims brought under Titles VII and IX, the Americans with Disabilities Act, and 42 U.S.C. § 1983 are ideal for this task. A potential downside is that there are thousands of cases interpreting each of these statutes. Limiting students to research in only a particular jurisdiction certainly can help, but even the most competent first-year students can become overwhelmed by the sheer number of cases that they will have to sort through. The greater number of available cases also increases the likelihood that students will rely upon different cases in their papers, requiring the professor to read more cases while grading. Alternatively, some professors close the universe of the problem, but this too leads to a struggle as the professor has so many cases to choose from. This article suggests three statutes a little more off the beaten path that provide opportunities for students to analyze legal issues related to diversity, but do not overwhelm the problem creator or the student researcher and writer with the vast number of applicable cases.

Court Interpreters Act (CIA), 28 U.S.C. § 1827 (2006): This statute requires a federal judge to utilize a certified or otherwise qualified interpreter if a party or witness in a judicial proceeding speaks only or primarily a language other than English, or suffers from a hearing impairment.[1]Only about a hundred district and circuit court cases have interpreted various parts of the CIA. Memorandum and trial brief assignments about this statute work well because courts make a very fact intensive analysis when determining whether a party or witness is entitled to an interpreter.[2] Moreover, because the statute applies to witnesses as well as parties, a variety of multi-issue assignments can be created that analyze whether a witness and a hostile party is entitled to an interpreter and whether a non-certified interpreter – e.g. requested for someone with a severe stutter or who is deaf-mute – is qualified. Assignments in the criminal context can add the additional constitutional concern of impartiality, and one issue in the memorandum can focus on whether an interpreter has such an interest in the proceeding as to violate the defendant's right to due process. Bringing in the constitutional concern further challenges students to sort and prioritize statutory and constitutional protections.[3]

Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq.(2006 & Supp. 2009): This statute requires states that receive federal special education funding to provide all children with disabilities a free and appropriate public education.[4] A myriad of assignments focused on analyzing administrative regulations and the procedures of a state administrative hearing are possible from the many parts of the definition for "a child with a disability."[5] The phrases "serious emotional disturbance," "other health impairments," and "specific learning disabilities" are particularly useful because only a handful of courts have interpreted them and there is greater disagreement on what precise conditions the phrases are

1 28 U.S.C. § 1827(d)(1) (2006).

2 *See, e.g.*, United States v. Edouard, 485 F.3d 1324, 1337-39 (11th Cir. 2007).

3 *See* United States v. Ball, 988 F.2d 7, 9-10 (5th Cir. 1993); Prince v. Beto, 426 F.2d 875, 876 (5th Cir.1970). Cases on this issue can be found in West's Federal Practice Digest under headnotes Criminal Law 642 and Courts 56.

4 20 U.S.C. § 1400(d)(1) (2006) (detailing Congress's findings and purpose of the IDEA).

5 "A child with a disability" is a child "with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities." 20 U.S.C. § 1401(3)(A) (2006); see also 34 C.F.R. § 300.8(a) (2010) (further detailing the meaning of "a child with a disability").

meant to encompass.[6] Additionally, very few cases address what constitutes a "manifestation" of a child's disability, which is relevant to whether a parent can block long-term suspensions, expulsions, or other removals from school imposed upon a child with a disability.[7] There are also fact intensive cases relating to whether and when parents can be reimbursed for private school tuition if they believe that the school district is not providing their child with the free and appropriate public education promised by the IDEA.[8] A discussion of IDEA issues and regulations to help inspire your next assignment can be found at the U.S. Department of Education's website at http://idea.ed.gov/explore/home.

Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, 18 U.S.C. § 249(Supp. 2009): This statute was signed into law on October 28, 2009 and expanded the earlier federal hate crimes law, 18 U.S.C. § 245(b)(2)(2006), to include crimes committed because of the victim's actual or perceived gender, sexual orientation, gender identity, or disability. No published circuit court case has yet interpreted the statute.[9] The few district court decisions about the statute addressed either that it created a private cause of action[10] or that it was unconstitutional because Congress exceeded its authority under the Thirteenth Amendment.[11] While challenging the constitutionality of the statute is unlikely to create a balanced problem, the lack of case authority makes the statute an "open canvas" for appellate problems focused on statutory interpretation. The definitions in § 249(c) and decisions interpreting § 245(b)(2), which covered crimes motivated by actual or perceived race, color, religion, or national origin while the victim was engaged in a federally-protected activity, will give students a starting point to interpret what activity Congress meant to make illegal under § 249. The legislative history[12] of § 249 also provides information to support students' statutory construction and policy arguments. For instance, an interpretative problem could be structured around what Congress meant when it defined "gender identity" as "actual or perceived gender-related characteristics" or whether a defendant's statements made in relation to his or her strongly held religious beliefs some time before or after a crime are sufficient to show the crime was committed "because of" the victim's "actual or perceived" inclusion in one of the protected categories.

Naturally, LWI members are also a great source of assignments! The following is a non-exhaustive list of assignments submitted to the 2010 LWI Brief Bank that deal with diversity issues:[13]

Brief Problems

- 5th Circuit, Criminal, Chris Evers (pre-trial motion based on the CIA to disallow a girlfriend to interpret for a man with a severe stutter and phobia of speaking and that a criminal defendant should have been given an interpreter for his suppression hearing)
- 5th Circuit, Constitutional, Steve Lachman (habeas petition alleging racial bias in jury selection)
- 6th Circuit, Education, Chris Evers (administrative hearing under IDEA about how child's conduct was a manifestation of his serious emotional disturbance)
- 9th Circuit, Immigration and International, Kelley Poleynard (appeal of asylum denial)
- Fictitious, Constitutional, Robert Volk (same-sex couples seeking marriage licenses) [both entries]

Memo Problems

- Florida, Constitutional, Family Law, Cynthia Baines (child custody dispute in which one parent is now in a same-sex relationship)
- North Dakota, Civil Rights & Other, Catherine Wasson (petition to hospitalize a mentally ill individual without his consent)

Ultimately, students attend law school to learn how to navigate the complexities of the American legal system. Including an issue related to diversity in your next problem not only gives your students the opportunity to experience our legal system from a different perspective, but it introduces them to new possibilities of what lawyers can do on behalf of their clients. Whether you use one of the statutes discussed in this article, take inspiration from the IDEA Bank, or create your own problem, I encourage you take the opportunity to inspire your students through the analysis of a legal issue related to diversity. ■

6 Relevant cases can be located in West's Federal Digest under headnote Schools 148(3) and West's notes of decisions numbers 3 to 9 for 20 U.S.C.A. § 1401 and 6 to 8.5 for 34 C.F.R. § 300.8.

7 20 U.S.C. ' 1415(k)(1)(E)-(G) (2006); *see also* 34 C.F.R. § 300.530(e)(1)-(2) (2010).

8 Relevant cases can be located in West's Federal Digest under headnote Schools 154(4) and West's notes of decisions numbers 126-130a for 20 U.S.C.A § 1412.

9 Relevant cases can be located in West's Federal Digest under headnote Schools 154(4) and West's notes of decisions numbers 126-130a for 20 U.S.C.A § 1412. As ofOctober 27, 2011, when the author updated this article.

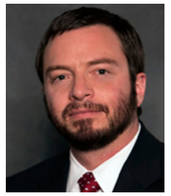
10 See, e.g., Wolfe v. Beard, No. 10 2566, 2011 WL 601632, at *3 (E.D. Pa. Feb. 15, 2011). The three other unpublished district court decisions that address this issue all reach the same conclusion, but only Wolfe explains its reasoning.

11 United States v. Beebe, ___ F. Supp. 2d ___, No. 10-cr-03104 BB, 2011 WL 3416734, at *2-10 (D.N.M. Aug. 4, 2011) (holding that Congress did not exceed its authority under the Thirteenth Amendment when it passed 18 U.S.C. § 249, nor were there violations of the Commerce Clause, Fifth Amendment, or Fourteenth Amendment); United States v. Maybee, No. 11-30006, 2011 WL 2784446, at *3-7 (W.D. Ark. July 15, 2011) (holding that 18 U.S.C. § 249 is constitutional as applied under the Thirteenth Amendment). Beebe in particular has an extensive discussion of Thirteenth Amendment jurisprudence.

12 The most relevant legislative history is H.R. Rep. No. 111-86 (2009) and the debate held by the 111th Congress on H.R. 1913, found in 155 Cong. Rec. H4940-58 (daily ed. Apr. 29, 2009).

13 Consistent with the purpose of this article, I did not include the numerous assignments based on Titles VII and XI, 42 U.S.C. § 1983, and the ADA that were also contained in the Idea Bank.

Partnering with an LGBT Legal Services Organization to Teach Analysis, Writing and Research



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Nationwide, experiential learning is taking off as law schools continue to commit to producing practice-ready graduates. At Rutgers-Camden our lawyering faculty have developed innovative and collaborative skills programs steeped in the experiential model of learning. For example, in addition to the Public Interest Research and Writing class taught by Sarah Ricks, and the Pro Bono Research Project run by Ricks and Eve Biskind Klothen, Rutgers offers my hybrid writing clinic, Advanced Legal Writing: Community Based Practice. This class gives upper-level students the opportunity to perform research and writing for Philadelphia's Mazzoni Center, which offers free legal services to low income members of the lesbian, gay, bisexual and transgendered (LGBT) communities.

Over the years, I have noticed that second and third year law students are eager to put their newly learned professional skills to practice. In my experience with this class, this eagerness to engage in lawyering seems to transcend the subject matter of the practice of law. I chose to collaborate with the Mazzoni Center because I am connected to the LGBT community and have had a six-year professional relationship with the organization. Notably, though, only one student in two semesters of the collaboration has identified as LGBT. In fact, one student professed to me in the beginning of the class that her religious beliefs put her directly at odds with many issues affecting the LGBT community. The fact that the majority of my students do not identify as LGBT, and the fact that this student chose the class despite her personal beliefs, shows that regardless of subject matter, students simply want to learn how to be lawyers. Below, I generally describe the class, highlight its process of becoming a part of our clinical programs, and give a few student reactions.

Serving an LGBT Legal Organization

I spent 7 years as a litigator at a firm in Philadelphia before I moved to teaching. By the end of my time at the firm, I knew both how to give my assignors what they wanted and my assignees what they needed for each project.

I thought that this would be useful to impart to students in a course. After some logistical maneuvering, the most current version of the course, entitled Advanced Legal Writing: Community Based Practice was approved as a class in Fall 2010. And, the Spring 2011 offering brought some exciting experiences.

Starting off with an orientation session at Mazzoni's Philadelphia offices, the students met with the legal director, staff attorney, and other area law students. Rutgers' students were surprised to learn that they would be performing pre-litigation research and writing for a potential discrimination lawsuit brought on behalf of a transgendered client. Rather than just general, survey-type legal writing, students used their new lawyering skills to answer targeted legal questions on jurisdiction, federal and state constitutional law, Title VII, Pennsylvania's Human Relations Act, ordinances, statutes of limitation, common law tort claims, public policy, and potential defenses.

True to real life practice, the semester was very fast paced. The class met with me on campus two hours per week. Together, in lectures and discussions, we spent time developing not only advanced writing concepts, like argumentation and persuasion, but also we focused heavily on important professionalism issues, like how to manage the assigning attorney/junior attorney relationship, including learning the appropriate substance, tone and frequency of the junior attorney's communication with the assigning attorney. Students had significant interaction with the assigning attorney in the form of follow up conference calls and emails, and a final in-person meeting with the legal director to receive feedback on the student's draft. After this feedback, students had the opportunity to incorporate these critiques before submitting the final work product to both me and the assigning attorney. Students were also expected to perform tasks outside the classroom: one student spent a day in the chaotic Philadelphia clerk's office researching and copying pleadings from other pending litigation—something almost any junior attorney can claim to have experienced. Because the students spent much time performing work outside the classroom, much like a third year clinic experience, the class qualified for 3 credits, despite only spending 2 hours per week in the actual classroom.

Although there were many lawyering universals that transcended the subject matter of the work, one of the most important parts of the course was the initial orientation session in which we focused on the unique aspects of serving an LGBT client base. Students were expected to read not only their writing texts, but also diversity-specific materials like, Tips for Legal Advocates Working with Lesbian, Gay, Bisexual, & Transgender Clients, Nat'l Center for Lesbian Rights, http://www.nclrights.org/site/DocServer/Proyecto_-Poderoso_Flyer_cd-.pdf?docID=2321, and Shannon Price Minter, Representing Transsexual Clients: Selected Legal Issues, Nat'l Center for Lesbian Rights (Oct. 2003), http://www.transgenderlaw.org/resources-/translaw.htm. Moreover, to familiarize them with the legal issues generally affecting the LGBT community before the class even began, students were expected to browse though the table of contents for the Sexual Orientation and the Law database in Westlaw.

Evolution of an Idea and Acceptance by Rutgers Clinical Programs

The class itself was a culmination of a years-long relationship with the organization. Back in 2005, I approached an LGBT public interest organization in Philadelphia and asked if they needed any help with research, writing, or representation. Two pro bono cases with two student mentees later, I started thinking about creating a class around this relationship, minus the direct representation. As I waited for the organization to approve the partnership, I discussed making the collaboration part of the clinical program offerings at Rutgers with the Director of Clinical Programs, Dean Victoria Chase. I explained that some of the advantages of a hybrid writing clinic included the benefit of students' use of the clinics' physical space; cross pollination of legal writing and clinical teaching ideas; and ultimately the idea that legal writing and clinicians—collectively referred to as "clinical professors" at Rutgers—were all part of the same faculty team designed to teach lawyering skills.

The Director agreed that the work we did for Mazzoni could be part of the school's clinical programs, subject to some concerns. For example, she wanted to determine whether Mazzoni was the type of organization that fit into the tone and tenor of the type of organizations the other clinics were doing legal work for. She also wanted to ensure that there would be no conflicts, either in the representations or in student backgrounds. Finally, both the organization and the school were interested in maintaining confidentiality because the students might be exposed to client information. In the end, and after working through these issues, the partnership with Mazzoni was accepted by Rutgers Clinical Programs.

Student Reaction, Spring 2011

Students appreciated the "real-life" aspect to the course. The class gave these upper level students the opportunity to break the chains of formulaic 1L memo writing, in that they were able to innovate their analysis and writing beyond the formulas and dogmatic approaches to memo writing they had learned (and in some cases, I had personally taught them) in their first year. For example, because the students were performing work for a client who wanted to bring a lawsuit, the aim was not just to find and identify the case's weaknesses. Rather, the students had to creatively think about legal ways *around* those weaknesses in a manner consistent with both the client's and assigning attorney's goals. This thinking changed their ideas of what an "objective" memo should be in practice. One 2L student said this aspect of the class was essential to the type of research and writing he would perform months later for a big firm summer internship.

Other reaction seemed to mirror student reaction to experiential learning in general: "This was probably my

favorite course that I've taken in law school . . . . [I]t was interesting and challenging to write a memo where the facts and the law had not been specifically shaped to ensure that both sides of the case had good arguments." Another student enjoyed interacting with practicing attorneys: "I enjoyed meeting and communicating with the attorneys at the Mazzoni Center as well. Needing to conform my work to what they wanted added an element to the class."

As the legal market adapts to leaner economic times, Rutger and its innovative lawyering curriculum stands ready to meet these challenges; and the school's partnership with the Mazzoni Center will continue to offer students hands-on practical experience. ■

(from left to right): Rutgers students Sara Fusco, Neha Pasricha, Alex Rubenstein, Meagan Iosca; Legal Director Amara Chaudhry

(from left to right): Legal Director Amara Chaudhry, Sara Fusco, Meagan Iosca, Alex Rubenstein, Neha Pasricha

Call for Submissions

The Spring-Summer 2012 issue of *The Second Draft* will address issues related to the ethical dimensions of teaching legal analysis, writing and research. As teachers and practitioners in skills programs, legal analysis, writing and research faculty often model behavior and discuss "real-world" issues with law students. To ensure that our students receive the maximum educational benefit from a practice-based program, we welcome articles and commentary that address how we teach law students about the ethical dimensions arising in the course of research for and drafting of memorandum, briefs, advice letters and/or transactional legal documents. We also welcome contributions addressing ethical issues as they pertain to client counseling, interviewing, negotiations, mediation or to litigation related skills, such as the discovery process or oral argument.

Freeing Students to Write More Effectively – Taking the Fear Out of Plagiarism

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It was the third week of the semester, and a student came into my office looking for help. Her paper was filled with direct quotes from cases, and filled with very little else. When I asked her why she had used so many quotes, she said she was afraid to paraphrase, lest she commit plagiarism by mistake. Two days later, another student came in. His paper was filled with nearly unrecognizable paraphrases of basic legal rules. He told me that he was so scared of plagiarizing that he tried to change every word, including key terms. Then came an international student whose fear of plagiarizing prevented her from even beginning a draft. She told me that she had no idea how to avoid plagiarism, as she had never had to address the issue before entering law school in the U.S.

Each semester I see students who are terrified of committing plagiarism. Their fear paralyzes them or renders them incapable of producing anything resembling clear, concise written analysis. (This is true even when students have no trouble communicating their analysis orally.) In fact, their fears are well placed. Law schools demand that students avoid plagiarism, professors increasingly use plagiarism detection software that catches even slight infractions, and a charge of plagiarism can lead to anything from a slap on the wrist to expulsion from school to exclusion from the bar. To make matters worse, plagiarism is neither clearly defined nor consistently interpreted. So, what can we do to help our students overcome their plagiarism fears? Several things – some conventional, some a little less so.

First, some conservative suggestions . . . .

Don't assume anything. Often, we don't teach students enough about plagiarism because we assume they know what it's all about. But we work with a diverse group of students whose writing experience varies widely. For example, students who did little writing as undergrads – or who had little attention paid to their writing – likely never learned how to avoid plagiarism. Students entering law school after a long absence from academia may have forgotten anything they did learn. International students may come from countries where, historically, plagiarism has not been a concern. Students with law firm experience might be accustomed to rules that are far less strict than those that apply in law school.

Overlaying this diversity of experience is the digital age. Today's students are used to accessing, borrowing, and sharing an enormous amount of information – much of it for free. There's some suggestion that this use is leading to new attitudes towards attribution – to a feeling that crediting sources isn't always necessary.[1] Because our students have varying levels of experience and perhaps changing attitudes, we need to educate them about what we mean by plagiarism - which leads to the second suggestion.

Actively educate your students. Don't just rely on a paragraph or two in a student handbook or honor code to convey what plagiarism is. Instead, have a discussion about it, especially as it relates to internet sources. Then, go beyond teaching students rules of citation, and teach them proper quotation, proper paraphrasing, how to take notes from sources, and how to keep a research journal. Maybe use some class time to do exercises with your students. Lots of resources already exist. LWI has great materials online, as do many undergraduate writing centers. CALI even offers a 45-minute lesson targeted to 1Ls. One caveat, though. Always check resources to make sure you agree with their content. Your views may differ from what you find in these sources.

Clearly communicate *your* expectations. Not every professor thinks of plagiarism in the same way. Perhaps you allow omitting quotation marks for well-settled legal rules or key terms. Maybe you only expect quotes around a word-string of more than six words. Your expectations may also vary from assignment to assignment. Make certain that students understand what's expected at all points during the semester. After all, *your* students need to meet *your* expectations, as you are the one who will be checking their papers for plagiarism.

Highlight the benefits of proper attribution. Too often, plagiarism discussions focus solely on punishment. Of course, let your students know the seriousness of a plagiarism charge. But also discuss the benefits of proper attribution. It lends support to arguments, provides authority, shows an ability to follow rules and conventions, highlights research skills, and aids the reader. Knowing this, who wouldn't want to attribute properly?

And now for a more radical idea . . . .

Bring plagiarism detection programs into the open. Tell your students if you plan to use Turnitin or other plagiarism detection software. This can act as an immediate disincentive for students to plagiarize – or to put it in a positive light, it can act as an immediate incentive for students to attribute properly. Also consider letting your students run their papers through a plagiarism detection system so they can catch any inadvertent plagiarism and correct it. I know this is controversial. Some believe that if we give students access to this software, it will encourage them to cheat – to find creative ways to plagiarize that the software won't detect. But those who want to cheat will likely find a way to do so, no matter what we do. Turnitin and the like help the other kind of plagiarists – those who are trying hard to follow the rules but don't quite have them down yet.

Now for the truly radical . . . .

Give beginning students a break. Yes, talk about plagiarism, teach skills to avoid it, and discuss sanctions. Then, take a step back. Remember, plagiarism conventions may be new to many of your students, and legal writing is likely new to all of them. So before holding students accountable for plagiarism, give them a short grace period to let them experiment, without fear, with this new form of written discourse. Give them the chance to develop legal writing skills before imposing sanctions on them for doing what might be – at that point, at least – the best work they are capable of. Of course, students will still need to cite for authority and support. But if we call a brief moratorium on checking for plagiarism – not for a year or even a semester, but maybe for the first assignment or even a first draft – we free students to learn, to write, to analyze. Once fear is removed, students will be more confident putting others' ideas in their own words without resorting to tortured paraphrases or quote upon quote. Who knows? We might find they're really better writers than they sometimes appear to be.

We need to remember who our students are and that many of them have not yet mastered the skills to avoid plagiarizing. Let's help them develop those skills and give them the time to do so. Freed from the fear of plagiarism, even momentarily, students will be happier, less stressed, and more able to engage in the process of writing and analysis. In the long run, this will help us as much as it helps them. After all, we are the ones who must read and grade their papers and who must go through the long and often emotionally draining disciplinary process when a plagiarism question arises. ■

1 See, e.g., Trip Gabriel, Plagiarism Lines Blur for Students in Digital Age, N.Y. Times, at A1 (Aug. 1, 2010) available at http://www.nytimes.com/2010/08/02/education/02cheat.html?r=3&_r=1&adxnnl=1&pagewanted=1&adxnnlx=1310967665- jHB+g519aWk5qDsVZ3cn5w.

Program News

New York Law School
In August 2011, New York Law School launched its new first-year skills program, Legal Practice, offering a comprehensive year-long introduction to lawyering skills, including legal research and writing, analytical reasoning, client interviewing, fact-gathering, negotiation, and counseling. The new Legal Practice Program faculty includes: **Jodi S. Balsam**, Associate Professor of Law, who joined NYLS after serving as an Acting Assistant Professor of Lawyering at New York University School of Law; **Melynda H. Barnhart**, Associate Professor of Law, who joined NYLS after serving as an Abraham Freedman Teaching Fellow at the Beasley School of Law at Temple University; **Heidi K. Brown**, Associate Professor of Law, who joined NYLS from the Chapman University School of Law faculty; **Kirk D. Burkhalter** '04, Associate Professor of Law, who joined NYLS from the Hofstra School of Law faculty; **David M. Epstein**, Associate Professor of Law, who has been a faculty member at NYLS since 1991 and was the Law School's research specialist; **Mercer ("Monte") Givhan**, Associate Professor of Law, who joined NYLS after teaching clinics for three years at CUNY Law School and Fordham Law School; **Anne Goldstein**, Professor of Law, and Director, Legal Practice Program, who joined NYLS from the University of Connecticut School of Law faculty; **Kim Hawkins**, Associate Professor of Law, who joined NYLS after serving as the Director of the Peter Cicchino Youth Project of the Urban Justice Center; **Cynara Hermes** '03, Associate Professor of Law, who joined NYLS after serving as an adjunct professor of law at St. John's University School of Law and as a fellow in the Ronald H. Brown Center; **Chaumtoli Huq**, Associate Professor of Law, who joined NYLS after serving as Director of Litigation at Manhattan Legal Services and as an adjunct professor at City College of New York and Rutgers University; **Marcia Levy**, Professor of Law, who joined NYLS after serving most recently as Special Counsel for Pro Bono and Director of Professional Development at Sullivan & Cromwell LLP; **Lynnise E. Pantin**, Associate Professor of Law, who joined NYLS from Debevoise & Plimpton, LLP, and also serving as an adjunct instructor at Brooklyn Law School; **Lynn Boepple Su**, Associate Professor of Law, who joined the Legal Practice Program after serving for many years as Co-Director of the NYLS Writing Program; **Parisa Dehghani-Tafti**, Associate Professor of Law, who joined NYLS after serving as a staff attorney in the Special Litigation and Parole divisions at the Public Defender Service for the District of Columbia; **Daniel A. Warshawsky**, Associate Professor of Law, who joined NYLS after 15 years at the Office of the Appellate Defender (OAD); **Erika L. Wood**, Associate Professor of Law, who joined NYLS after serving as Deputy Director at the Brennan Center for Justice and as an adjunct clinical professor at New York University School of Law.

Pacific McGeorge
Pacific McGeorge hosted the ALWD Conference: Leadership for the Second Wave in June 2011.

University of North Carolina Law School
The full faculty at the University of North Carolina Law School voted unanimously to increase the credit hours for our first-year legal research and writing program from four credits to six credits beginning in fall 2011. In addition, the faculty likewise unanimously voted to staff the program exclusively with full-time legal writing faculty. Hiring is underway, and soon the school will have a team of nine full-time professors on long-term, presumptively renewable clinical appointments. These nine professors will teach first-year research and writing and also serve the entire community of students through UNC's innovative Writing and Learning Resources Center.

University of San Francisco
On August 26-27, the University of San Francisco School of Law hosted the 2011 Western Regional Legal Writing Conference "How to Hit the Ground Writing: Meeting the Expectations of the Changing Legal Market." The conference featured panels of different types of employers, including judges, public interest organizations, solo practitioners, and large law firms. The panels provided the legal writing professors in attendance with unique viewpoints on the skills that are most critical to law school graduates' success in today's legal employment landscape. Legal writing faculty from around the country also presented on a range of topics relevant to legal writing instruction, including how to maximize cost-effective legal research in small practices, sustain a work-life balance, teach effective billing practices, and use popular media to teach persuasive writing skills. **Richard C. Wydick** (Professor Emeritus, UC Davis School of Law) delivered the keynote address, which included a lesson on how to avoid ambiguity in writing. Professor Wydick is the author of *Plain English for Lawyers* (Carolina Academic Press, Fifth Edition 2005).

University of Nevada Law Vegas
The Boyd School of Law is hosting a December workshop, that brings together excellent practitioners and scholars on Negotiation, Written and Oral Advocacy and Persuasion. Speakers will include our own scholars, **Linda Edwards**, **Linda Berger** and **Jay Mootz**, as well as other nationally recognized experts on persuasion. Finally, our Rhetoric Working Group is sponsoring a visit to UNLV by **Kathy Stanchi** in the spring. Professor Stanchi will speak to law school faculty and students. We also plan to host a scholars exchange workshop as part of Professor Stanchi's visit.

Western State University College of Law
The faculty at Western State University College of Law voted in May 2011 to approve a bylaw amendment allowing Assistant Professors of Lawyering Skills (full time legal writing professors) to be eligible for long term contracts and voting rights.

Hiring and Promotion

Barry University School of Law in Florida
At Barry University School of Law in Orlando, Florida, Susan Sockwell Bendlin completed her term as Interim Associate Dean for Academic Affairs on July 1, 2011. She has returned to full-time teaching as a tenure-track member of the school's Legal Research & Writing group.

Chicago-Kent College of Law, Illinois Institute of Technology
Chicago-Kent hired **Wendy Epstein** (J.D. Harvard, 2003), Visiting Assistant Professor, and **Cherish Keller** (J.D. Chicago-Kent, 2006), Visiting Assistant Professor of Legal Research & Writing. It promoted **Kari Johnson** to Professor of Legal Research and Writing.

Duke Law
Diane Reeves and Sarah Baker will teach first-year Legal Analysis, Research and Writing and will develop upper-level classes for the spring-semester curriculum. Diane A. Reeves (http://www.law.duke.edu/fac/reeves) comes to Duke Law after 12 years with the North Carolina Department of Justice, where she was special deputy attorney general in the Criminal Division, Capital Litigation/Federal Habeas Section. In the course of her career, Reeves has practiced in all levels of North Carolina's state trial and appellate courts. She has been in private practice and worked as assistant district attorney in Charlotte, and taught Torts, Criminal Procedure, and Appellate Advocacy at Loyola University School of Law in New Orleans as a visiting professor of law. Reeves received her BA from Duke University, magna cum laude, in 1974, and her JD from Wake Forest School of Law in 1979, where she was notes and comments editor for the Wake Forest Law Review. Sarah C. W. Baker (http://www.law.duke.edu/fac/baker) clerked for Judge Allyson Duncan of the United States Court of Appeals for the Fourth Circuit before entering private practice as an associate in the litigation and employment groups at Smith, Anderson, Blount & Dorsett in Raleigh. She specialized in oral advocacy and legal research and writing, and served as a member of the litigation team in complex commercial cases. She also provided counseling on labor and employment issues to employers. As a Duke Law student, Baker served as a note editor for the Duke Law Journal and as a Hardt Cup coordinator and member of the Moot Court Board. She received her BA in 2001 from the University of Virginia, where she was a Jefferson Scholar and an Echols Scholar.

Phyllis Lile-King (http://www.law.duke.edu/fac/lileking) is the principal of The Lile-King Firm in Greensboro, N.C., where her practice focuses on specialized medical litigation and business litigation and consulting, including, franchise matters, commercial contracts, employment litigation and human resource consulting and training, and contracts and commercial matters. Before launching her firm in 2010 she was a partner at Pinto Coates Kyre & Brown in Greensboro and an associate at other firms in North Carolina and Washington, D.C. She clerked for Judge Pierce Lively of the United States Court of Appeals for the Sixth Circuit after receiving her JD, with honors, from University of Virginia, in 1992. At UVA she was on the editorial board of the Journal of Law and Politics. She received her BA from Georgetown College, summa cum laude, in 1986. **Matthew Tulchin** (http://www.law.duke.

edu/fac/tulchin) was an associate at Goodwin Procter in New York, where he focused his practice on white collar crime and government investigations, securities law and SEC enforcement, and general commercial litigation. He also served as a "partner in prosecution" at the Kings County, New York District Attorney's Office. He clerked for Judge Edward R. Korman of the U.S. District Court for the Eastern District of New York following a year of practice with White & Case. Tulchin received his BA, with honors, from Cornell University in 1996 and his JD, magna cum laude, in 2005 from Brooklyn Law School, where he was a Carswell and a Richard Frank Scholar and executive articles and symposium editor of the Journal of Law and Policy.

Loyola Law School in Los Angeles
Susan Smith Bakhshian is the new Director of Bar Programs & Academic Success at Loyola Law School in Los Angeles, where she has taught since 1997. Under her direction, Loyola has created an entirely new academic success program for the 2011-2012 academic year, including a new mandatory first year course for at risk students and the new Mastering Law Series of workshops on law school skills.

Southern University Law Center
Southern University Law Center reduced its student-teacher ratio in the Legal Analysis & Writing program to 25-1 for the 2011-2012 academic year by hiring two new full-time professors of Legal Analysis & Writing. **Michele Butts** joined the faculty at SULC after six years with the legal writing program at Atlanta's John Marshall. **William Blais** came to SULC from Ava Maria, having formerly taught at Duke and DePaul.

Thomas M. Cooley Law School
On the recommendation of the Research & Writing Department, the Dean of Faculty at Thomas M. Cooley Law School has appointed **Mark Cooney** as chair and **Julie Clement** as vice chair. Mark succeeds **Joe Kimble**, our founding and longtime chair, who is now an emeritus professor and is still busy on many fronts. Julie fills a position that has gone unfilled since the death of our colleague, **Marion Hilligan**, over three years ago. In addition, the tenured faculty has voted to promote Mark Cooney to full professor with tenure, subject to the approval of the Board of Directors. Mark has been a member of Cooley's full-time, tenure-track faculty in the Research & Writing Department since 2003. Feel free to congratulate Mark at cooneym@cooley.edu.

University of Louisville
The University of Louisville welcomed two new writing professors this fall. **JoAnne Sweeny** previously taught at Loyola University New Orleans College of Law, and **Tammy Pettinato** is visiting from the University of La Verne College of Law.

University of Missouri-Kansas City
The University of Missouri – Kansas City School of Law welcomed **Aaron M. House** to the legal writing faculty in 2011. Aaron received his bachelor of arts in chemistry in 2001 and his J.D., magna cum laude, in 2005, both from UMKC. After law school, he clerked for the Honorable Laura Denvir Stith of the Supreme Court of Missouri. Aaron began practicing law in June 2006 with Shughart Thomson and Kilroy PC, where he drafted numerous trial and appellate briefs involving complex commercial litigation, including briefs filed in the Supreme Court of the United States and the Seventh, Eighth and Tenth Circuit Courts of Appeals. In 2007, Aaron moved to Husch Blackwell LLP where he represented lenders, financial institutions, and borrowers in connection with asset-based and real estate-secured financing transactions, loan documentation, and compliance issues.

University of Nevada Las Vegas
UNLV is very happy to announce that Linda Berger joined our program this year.

University New Hampshire Law School
This past March, the UNH Law faculty voted to grant **Amy Vorenberg** clinical tenure. In May, she was appointed to be the Director of Legal Writing. **Jennifer Davis** was appointed to be the Assistant Director of Legal Writing. New professors, **Risa Evans and Jessica Durkiss-Stokes**, joined the Legal Writing faculty this summer.

University of North Carolina School of Law
The University of North Carolina School of Law is delighted to announce major positive changes to our first-year research and writing program and to our Writing and Learning Resources Center (WLRC). **Craig Smith** joined as Clinical Professor of Law and Director of the Research, Reasoning, Writing, and Advocacy Program from Vanderbilt in 2010. He now serves as Assistant Dean for Legal Writing and Academic Success. In summer of 2011, **Aaron Harmon** and **Katie Rose Guest Pryal** joined the full-time faculty, bringing with them a wealth of teaching and practice experience. **Jon McClanahan** continues in his role as Clinical Assistant Professor of Law; he also has become the Director of Academic Success. Sadly, after over two decades at the UNC School of Law, **Ruth Ann McKinney** will retire in early 2012. Over the course of decades, she creatively led and shaped the development of the research and writing program, the academic success program, and the Center that houses both—a tradition began under the leadership of then-Dean Judith Wegner, now well known for her co-authorship of *Educating Lawyers* (the "Carnegie Report") and for her leadership role in educational reform. Professor McKinney also has written books on legal research and reading, and she and Professor Pryal recently published the unique online resource entitled *Core Grammar for Lawyers*.

University of North Dakota School of Law
After being tenured at the University of North Dakota School of Law, **Kirsten Dauphinais** was appointed to an endowed professorship. My title is the Law School Builders of the Profession Professor of Law.

University of Oregon
Suzanne Rowe was recently named the James L. and Irene R. Hershner Professor. The chair recognizes her strength in teaching, the high ethical standards she sets for students, and her commitment to preparing students to practice law. Rebekah Hanley has been appointed Assistant Dean for Career Planning and Professional Development. And, University of Oregon welcomes two visitors this year. Debby McGregor is visiting from IU-Indianapolis, bringing over 25 years of experience teaching from another top program. Anne Mullins is beginning her teaching career at Oregon, after clerking for the Fifth Circuit and practicing complex commercial litigation for five years.

Publications, Presentations and Accomplishments

Tracy Bach, Vermont Law School, presented at the 2011 Southeast Regional Legal Writing Conference entitled *Opening the Lens: Re-Visions in Legal Writing Teaching, Theory, & Practice*, held at Mercer Law on April 15- 16. Her presentation, called Re-Visioning Student Problem Solving: Using Problem-Based Service Learning to Teach Legal Research, Analysis, and Writing, demonstrated how LRW teachers may use "live" legal problems to help their students practice core lawyering skills while serving others. She also presented at the 2011 Western Regional Legal Writing Conference sponsored by the University of San Francisco Law School, entitled *How to Hit the Ground Writing: Meeting the Expectations of the Changing Legal Market*. She presented on incorporating statutes into LRW curricula, focusing on how to teach statutory research and interpretation in an integrated way. Tracy will present at the AALS Section on LWRR panel entitled *In the New Millennium, What Are the Best Practices in Legal Writing, Reasoning and Research?* Her presentation is about using problem-based service learning in a capstone predictive writing project. Tracy will co-present with Reference Librarian **Julie Graves Krishnaswami** at the 15th Biennial Legal Writing Institute, on teaching statutory and regulatory research and interpretation in an integrated way. Tracy contributed to *The Encyclopedia of Political Thought* on intergenerational justice, which will be published by Wiley-Blackwell in 2012 in print and online. She was recently appointed to the Fulbright Scholar Peer Review Committee for West and Central/Southern Africa.
Julie Baker's law review article, titled "And the Winner Is: How Principles of Cognitive Science Resolve the Plain Language Debate," was accepted for publication by the University of Missouri – Kansas City Law Review. The article explains the science of how readers process words, then lays out how writers can use that knowledge to maximize persuasiveness. It's available on SSRN at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1915300.

Barbara P. Blumenfeld published Legal Writing is a Creative Endeavor, New Mexico Lawyer, Vol 6, No. 3 (August 2011) 8-11; Can Havruta Style Learning Be a Best Practice in Law School?, 18 Willamette J. Int'l L. & Disp. Resol. 109 (2010); and Engaging Students With Havruta Style Learning, Presentation to Institute for Law Teaching and Learning, Summer Conference on Engaging and Assessing Students, June, 2011. Materials available at http://lawteaching.org/conferences/2011/handouts/2b-EngagingStudentswithHavruta.pdf.

Adrienne Brungess from Pacific McGeorge School of Law presented *Teaching Legal Research, Writing, and Negotiations Skills with Upper-Division Students* at the August 2011 Western Regional Legal Writing Conference and *Teaching and Assessing Legal Research, Writing, and Negotiations*

Skills with Upper--Division Students at the September 2011 7th Biennial Central States Legal Writing Conference.

Adrienne Brungess, **Kathleen Friedrich**, **Maureen Moran**, and **Jeff Proske** presented at Pacific McGeorge School of Law's one-day *Essential Lawyering Skills* conference for law clerks and practitioners in May 2011.

In August, **Charles R. Calleros** published CONTRACTS: CASES, TEXT, AND PROBLEMS (Carolina Acad. Press [Digital Book] 2011) (Plain English content takes students through the law in the manner in which they would encounter and apply the law in practice: treatise-style background information; specific case law and statutory text; and application to exercises in a problem-method. More at http://www.cap-press.com/isbn/9781611631425. He also published two articles in recent months: *Introducing Civil Law Students to Common Law Legal Method Through Selected Issues in Contract Law*, 60 J. L. Educ. 641 (2011); *Toward Harmonization and Certainty in Choice-of-Law Rules for International Contracts: Should the U.S. Adopt the Equivalent of Rome I?*, 28 Wis. Int'l L. J. 639 (2011). In June, Calleros joined three clinical faculty in presenting "Experiential Learning" at the Joint Plenary Session of Conference on Clinical Legal Education and Conference on the Future of the Law School Curriculum (June 14, 2011 Seattle) (encouraging other faculty to look to clinical and legal writing faculty for expert guidance in incorporating experiential learning into "doctrinal" courses.

Susan Chesler recently had published two pieces on teaching transactional drafting: (1) *New Ways to Teach Drafting and Drafting Ethics: Teaching Drafting Ethics Using Video Vignettes* , Transactions: The Tennessee Journal of Business Law, 2011 Special Report (transcript of Transactional Education: What's Next Conference) and (2) *Training for Tomorrow: Negotiations for Future Transactional Lawyers*, Business Law Today, April 2011. Susan presented at the Institute for Law Teaching and Learning's 2011 Conference: Engaging and Assessing Our Students (with Karen Sneddon and Pat Longan), hosted by New York Law School, New York, New York, June 2011 and served as Chair and Panelist for " Negotiation Skills for Transactional Lawyers," a CLE Teleconference Program sponsored by the ABA Section of Business Law, June 2011, and she also presented on "A Day-in-the-Life of a Transactional Lawyer: Negotiation, Ethics, and Professionalism."

Jenny Darlington-Person from Pacific McGeorge School presented *Using Professionalism to Conquer the Fear of Public Speaking* at the August 2011 Western Regional Legal Writing Conference and *What Can the West Wing Teach Students about using Negative Authority?* at the March 2011 Rocky Mountain Legal Writing Conference.

Elizabeth De Armond, Chicago-Kent, published *To Cloak the Within: Protecting Employees from Personality Testing*, 61 DePaul L. Rev. (forthcoming).

Susan DeJarnatt published *Preparing for the Globalized Law Practice: The Need to Include International and Comparative Law in the Legal Writing Curriculum*, 17 LEGAL WRITING ___ (forthcoming 2011) (with M. Rahdert).

Suzanne Ehrenberg and **Susan Adams** presented "Drafting User-Friendly Documents" at the Twenty-First Century Legal Skills Conference in Istanbul, Turkey, June 2011.

Elizabeth Fajans published *Legal Writing in the Time of Recession: Developing Cognitive Skills for Complex Legal Tasks*, 49 Duquesne L. Rev. 613 (2011).

Denise Field, Washington University in St. Louis Law School, along with **Marcia Goldsmith,** St. Louis University, gave a presentation entitled "Ghosts of Assignments Past: Using Old Assignments to Cement Old Skills and Learn New Ones at the Central States Region LRW Conference.

Judith Fischer published the second edition of *Pleasing the Court: Writing Ethical and Effective Briefs* (2d ed., Carolina Academic Press 2011). She also published *Incivility in Lawyers' Writing: Judicial Handling of Rambo Run Amok*, 50 Washburn L.J. 365 (2011) and *Banishing Writer's Block*, Bench & B. 32 (July 2011). And, she gave a presentation on legal writing at the Kentucky Administrative Law Judges' Training Session in Frankfort, Kentucky in April 2011.

Gretchen Franz from Pacific McGeorge School presented *Inspire, Motivate, and Appreciate* at the March 2011 Rocky Mountain Legal Writing Conference.

Douglas Godfrey and **Mary Rose Strubbe**, Chicago-Kent, presented *Ethical Challenges Raised by Modern Technology in the Practice of Law* at the Central States Writing Conference. Douglas also gave a three-day presentation, with co-presenters, to approximately 30 judges about how they can conduct oral trials as required by the recent reforms to the Mexican Constitution. Funding was supplied by a US AID grant at the Judicial College for the State of Toluca, Mexico, in May 2011. He also advocated that law students should be taught how to interview to be effective fact gatherers at the Rocky Mountain Legal Writing Conference, March 2011. And, he gave several presentations to a visiting delegation of Mexican law professors concerning the recent reforms to the Mexican Constitution at the Delegation of Mexican Law Professors, June 2011. He will present a paper on the Constitutional implications of the Government's using the GPS capabilities in smart phones to track individuals at the Conference on Law of the Smartphone hosted by the Whittier Law Review, November 2011.

Tamara Herrera presented "Constructing a Scholarly Persona" (with **Helen Anderson**, **Brooke Bowman**, and **Anna Hemingway**) at the biennial conference of the Association of Legal Writing Directors, Sacramento, California, June 2011.

Kimberly Y.W. Holst recently had published *The Roles of Attorneys in Mediation*, 7 Bahcehesir University 242 (No. 83-84, 2011). This paper is based on a presentation Professor Holst made at the 21st Century Legal Skills Conference hosted by Bahcehesir University in Istanbul, Turkey.

Susan H. Joffe, Associate Professor of Legal Writing at Hofstra University School of Law, presented at the Western Regional Legal Writing Conference at the University of San Francisco Law School on August 26-27. The conference, "How to Hit the Ground Writing: Meeting the Expectations of the Changing Legal Market," explored legal employers' expectations of research and writing for first-year lawyers given the challenging legal market, and how legal writing professors can help students meet those expectations. Her presentation focused on communicating effectively via e-mail in legal practice.

Joe Kimble gave a plenary address at the 8th international conference of the Plain Language Association International.

Sarah Klaper, DePaul University College of Law, published *The Eye-Roll Heard 'Round the World: Protecting Citizens' Free Speech and Petition Rights*, 10 Cardozo Pub. L. Pol'y & Ethics J. __(forthcoming 2012).

Amy Langenfeld spent part of Fall 2011 teaching Common Law Method at Universite Paris Descartes V in Paris. This is her second year teaching at Universite Paris Descartes V.

Pamela Lysaght and **Cristina D. Lockwood** published *Michigan Legal Research* (2d ed., Carolina Academic Press 2011).

Ellie Margolis published *Authority Without Borders: The World Wide Web and the Delegalization of Law*, 41 Seton Hall L. Rev. 909 (2011); *Incorporating Electronic Communication in the LRW Classroom*, 19 Perspectives: Teaching Legal Res. & Writing 121 (2011); presented *Incorporating Electronic Communication in the LRW Classroom* (presentation, Rocky Mountain Legal Writing Conference, March 2011); *Beyond Etiquette: Bringing E-Communication into the LRW Classroom* (poster presentation with Kristen Murray), Section on Legal Writing, Reasoning and Analysis, AALS Annual Meeting (2011); *Making the Transition to a Directorless Program* (presentation, Association of Legal Writing Directors Conference, June 2011); *Authority Without Borders: Citing Electronic Materials in the 21st Century* to the National Conference of State Tax Lawyers, Cambridge, MA, Sept. 2011.

Maureen Moran from Pacific McGeorge School had her article, "The Growing Legal Implications of Tasers: A Primer on the Development, Uses, and Consequences of Tasers," published in the July 2011 issue of *AALL Spectrum*.

Jane Moul and **Ann Shields**, University in St. Louis Law School, gave a presentation titled "Research Presentations 2.0: What Our Students Have Taught Us About How to Teach this Skill" at the Central States Region LRW Conference at The John Marshall Law School in Chicago, Illinois on September 16, 2011.

Chad Noreuil launched a website, Law School Zen (at LawSchoolZen.com). The site is intended to help law students by offering tips, strategies, and advice on succeeding in law school and on the bar exam. In addition to specific advice on essay and multiple choice exams, the site also offers quotes of the week, legal words of the week, and video clips of the week.

Robert Parrish, **Patricia Perkins**, **Catherine Wasson**, and adjunct professors **Jackie Connors** and **John Flynn**, Elon University School of Law, demonstrated a variety

of interactive teaching techniques in their presentation "Students, You May Start Your Engines: Techniques for Engaging the Disengaged" at North & South Carolina Legal Research & Writing Colloquium.

Patricia Perkins, Elon Legal Method & Communication, teamed up with **Kate McLeod**, Associate Dean & Director of Elon's law library, to create a series of short videos designed to help students learn legal citation. The first several videos in this ongoing project are now available for viewing via a link on the Elon Law website: http://www.elon.edu/e-web/law/library/bluebook-videos.xhtml. The videos are about 3 to 5 minutes long, and each shows students how to construct a certain part of a case citation. More videos on case cites, statutes, and other sources are in the works.

Kristen Murray published *Let Them Use Laptops: Debunking the Assumptions Underlying the Debate Over Laptops in the Classroom*, 36 Okla. City U. L. Rev. 185 (2011). This article was selected as the May 2011 Article of the Month by the Institute for Law Teaching and Learning. She also published *Peer Tutoring and the Law School Writing Center: Theory and Practice,* 17 LEGAL WRITING ___ (forthcoming 2011).

David Ritchie, Mercer University, has been selected as a Global Ethics Fellow by the Carnegie Council for Ethics in International Affairs. Global Ethics Fellows develop programs in conjunction with the Carnegie Council's mission to promote scholarship, teaching, and learning in the field of ethics in international affairs. There are currently 13 Global Ethics Fellows who are working to expand the Council's Global Ethics Network, which will partner with educational institutions around the world to implement Carnegie sponsored programs. Carnegie programs will be offered at Mercer as part of David's fellowship. As a Global Ethics Fellow he will primarily be working to promote the activities of the Council in South America (particularly Argentina and Brazil). David will be on sabbatical during the Spring 2012 term. During his sabbatical he will be a Fellow in The Pacifism Project, which is an initiative of the Institute for Ethics, International Law, and Armed Conflict in the Department of Politics and International Affairs at Oxford University. He will be resident at Oxford during the Trinity Term (April to June 2012). During his time at Oxford he will be engaged in research to develop and encourage work in the traditions of pacifism and non-violence, with special attention to the relation of those traditions to just war theory.

Lori Roberts' article "Rhetoric, Reality & The Wrongful Abrogation of the Collateral Source Rule in Personal Injury Cases" was recently accepted for publication in the University of Texas Review of Litigation. It will be published Winter, 2011. She also did a presentation titled "Leading By Example: Assessing Student Learning Outcomes" at the Association of Legal Writing Directors Conferences in June 2011. And she has upcoming presentation, with **Elizabeth N. Jones** titled "Developing Students Identities as Apprentices" at the Central States Legal Writing Conference in September 2011.

Suzanne Rowe, Oregon, is the editor of the Legal Research Series, published by Carolina Academic Press, which welcomed several new titles and new editions this summer: Iowa Legal Research by **John Edwards**, **Sara Lowe**, **Karen Wallace** & **Mel Weresh** of Drake; Michigan Legal Research, 2d edition, by **Pam Lysaght** & **Cristina Lockwood** of Detroit Mercy; Missouri Legal Research, 2d edition, by **Wanda Temm** & **Julie Cheslik** of UMKC; and Wisconsin Legal Research by **Patricia Cervenka** & **Leslie Behroozi** of Marquette.

Christopher Seaman, Chicago-Kent, published *Willful Patent Infringement and Enhanced Damages After* In re Seagate*: An Empirical Study*, 97 Iowa L. Rev. (forthcoming 2012); *Reconsidering the* Georgia-Pacific *Standard for Reasonable Royalty Patent Damages*, 2010 BYU L. Rev. 1661; and *An Uncertain Future for Section 5 of the Voting Rights Act: The Need for a Revised Bailout System*, 30 St. Louis Univ. Pub. L. Rev. 9 (2010). He is a scheduled panelist on *Understanding the Real Value of Your Patent Portfolio* at the 2011 Annual Meeting, American Intellectual Property Law Association, 2011; a scheduled panelist at 2011 Chicago-Kent Supreme Court IP Review, Chicago-Kent College of Law; moderated *Stanford University v. Roche Molecular Systems*, 131 S. Ct. 2188 (2011); presented a paper *Toward an Optimal Regime for Joint Ownership in Patent and Copyright Law* at the Intellectual Property Scholars Conference, DePaul University College of Law (Aug. 2011) and at the Patent Conference, University of Kansas Law School (April 2011); presented *Willful Patent Infringement and Enhanced Damages After* In re Seagate*: An Empirical Study* at The Inaugural Samsung-Stanford Conference on Patent Remedies, Stanford University Law School (Feb. 2011).

Andy Spalding, Chicago-Kent, was invited keynote speaker at *Corporate Corruption and International Law*, Northwestern Law School International Law Workshop, January 2012; panelist, *Four Unchartered Corners of Anti-Corruption Law*, Wisconsin Law Review Symposium on the Changing Role of In-House and General Counsels, November 2011; panel chair, *Corruption in South Asia: the Role of Law and Legal Institutions*, University of Wisconsin, Madison South Asia Legal Studies Pre-Conference, October 2011; panelist, *The Irony of International Business Law*, Midwest Corporate Legal Scholars Conference, Moritz College of Law, the Ohio State University, June 2011; panel chair *International Business, Economic Development, and Corruption*, Law & Society Annual Conference, June 2011. He published *Four Uncharted Corners of Anti-Corruption Law*, solicited symposium piece for the Wisconsin Law Review, forthcoming 2012, *The Irony of International Business Law: U.S. Progressivism and China's New Laissez Faire*, 59 UCLA L. Rev. ___ (2011) (forthcoming), and *Unwitting Sanctions: Understanding Anti-Bribery Legislation as Economic Sanctions Against Emerging Markets*, 62 Fla. L. Rev. 351 (2010).

Carrie Sperling spoke at Oklahoma City University School of Law as part of the INTEGRIS Health Law & Medicine Lecture Series during September 2011. The topic was "Challenging Shaken Baby Syndrome Convictions in Light of New Medical and Scientific Research."

Kathy Stanchi published Teaching Students to Present Law Persuasively Using Techniques from Psychology, 19 Perspectives: Teaching Legal Res. & Writing 142 (2011). In January, she participated in a panel at the AALS Conference entitled *The Substance of Legal Writing and Reasoning: Rhetoric and Persuasion.* My talk was entitled *Emotion and the Science of Persuasion*. In April, she was a panel participant at the Southeastern Regional Legal Writing Conference entitled *Opening the Lens: Re-Visions in Legal Writing Teaching, Theory, & Practice*.

Judy Stinson presented "Generating Interest, Enthusiasm, and Opportunity for Scholarly Activities" at the biennial conference of the Association of Legal Writing Directors, Sacramento, California, June 2011. She also recently had published *Teaching the Holding/Dictum Distinction*, 19 Perspectives: Teaching Legal Res. & Writing 192 (2011).

Mary Rose Strubbe and **Susan Adams**, Chicago-Kent, presented *Anonymous Grading: Who Wins and Who Loses* at Central States Legal Writing Conference.

Bonny L. Tavares and **Rebecca L. Scalio**, published *Teaching After Dark: Part-Time Evening Students and the First-Year Legal Research and Writing Classroom*, 17 Legal Writing ___ (forthcoming 2011).

Stephanie Thompson from Pacific McGeorge School presented *Teaching Professional and Ethical Conduct in Lawyering Skills Courses* at the August 2011 Western Regional Legal Writing Conference.

Ozan Varol, Chicago-Kent, published *The Democratic Coup d'État*, 53 Harvard International Law Journal __ (forthcoming 2012). This article is one of two papers by a Younger Comparativist (scholars in their first 10 years of teaching) selected in a double-blind review process for presentation at the American Society of Comparative Law Annual Meeting in October 2011, and *The Origins and Limits of Originalism: A Comparative Study*, 45 Vanderbilt Journal of Transnational Law ___ (forthcoming 2011). She was Co-Organizer, Conference on Comparative Constitutional Law and the New Turkish Constitution, Koc University Law School, Istanbul, Turkey (scheduled May 2012); Discussant (invited), The University of Chicago Young Comparativists Roundtable, Chicago, Illinois (scheduled January 13, 2012; Presenter (invited), *The Democratic Coup d'État*, American Society of Comparative Law Annual Meeting, Sacramento, California (scheduled October 21-22, 2011); Presenter (invited), *The Democratic Coup d'État*, The University of Chicago Legal Scholarship Workshop, Chicago, Illinois, September 26, 2011; Presenter, *The Democratic Coup d'État*, Chicago-Kent College of Law Faculty Workshop, Chicago, Illinois, September 21, 2011; Discussant (invited), *Works in Progress Papers: Courts and Trials*, The Law & Society Association Annual Meeting, San Francisco, California, June 4, 2011; chair & Discussant (invited), *Constitutional Controversies Over Religion*, The Law & Society Association Annual Meeting, San Francisco, California, June 3, 2011; Presenter, *How to Pack a Court*, The Law & Society Association Annual Meeting, San Francisco, California, June 3, 2011; presenter, *The Origins and Limits of Originalism: A Comparative Study*, Chicago-Kent College of Law Faculty Workshop, Chicago, Illinois, April 20, 2011.

Catherine Wasson, Director of Elon's Legal Method & Communication program, organized and moderated a two-hour round-table discussion at the annual SEALS (Southeastern Association of Law Schools) conference, held at Hilton Head, S.C. in July. Catherine

was joined by Professors **Ralph Brill** (Chicago-Kent), **Jane Cross** (Nova), **Lyn Entrikin** (Arkansas-Little Rock), and **Anthony Niedwiecki** (John Marshall), and Deans **Richard Matasar** (New York Law School) and **Steven Smith** (California Western) to discuss "What is a Law Professor: Consequences (Intended or Unintended) of Proposed Changes to Standard 405(c)."

Conferences

On December 16, UNH Law will host the New England Consortium of Legal Writing Teachers Conference. ALL ARE WELCOME AND ENCOURAGED TO SUBMIT PROPOSALS. Here is the information on that conference: *Creating Practice-Ready Assignments and Exercises*, New England Consortium of Legal Writing Teachers, December 16, 2011 at UNH School of Law, Concord, NH. FREE and OPEN to Everyone. RSVP to attend or submit a proposal or presentation http://law.unh.edu/legalskills/writing-conference.php.

The Georgetown University Law Center will host the Second Annual Capital Area Legal Writing Conference, to be held on Friday afternoon and all day Saturday, March 9-10, 2012. Out of town participants are most welcome; we are arranging a conference rate at a local hotel close to the law school and major public transportation options. There will be no conference fee. The deadline to submit proposals is October 30, 2011. The proposal submission form can be downloaded from http://www.lwionline.org/other_conferences.html. Completed forms should be emailed to: capitallegalwriting@gmail.com. More information about conference registration, speakers, and conference hotel options will be distributed and accessible from the LWI online site in coming weeks. If you have any questions, please email us at: capitallegalwriting@gmail.com.

The 2012 Rocky Mountain Regional Legal Writing Conference will be held on Friday, March 23 and Saturday, March 24 at the Sandra Day O'Connor College of Law at Arizona State University in Tempe. As in previous years, there will be no registration fee for this conference. The call for proposals was posted on the listserv today and the deadline for proposals is Nov. 10 and proposals should be sent to Chad Noreuil at Chad.Noreuil@asu.edu and Susie Salmon at Susan.Salmon@law.arizona.edu. Additional conference details and the conference website will be available soon. In the meantime, questions can be directed to the conference co-chairs, Kim Holst at kimberly.holst@asu.edu or Carrie Sperling at carrie.sperling@asu.edu. Three organizations--Clarity, Scribes, and the Center for Plain Language--will hold an international conference in D.C. next May 21-23. It will be held at the National Press Club. A conference website should be available soon.

The LWI Conference Site Evaluation Committee and the LWI Board of Directors are pleased to announce that 2012 LWI Biennial Conference will take place at the JW Marriott Resort & Spa in Desert Springs, California, from May 29 to June 1, 2012. Below is a short description from the resort's brochure. For complete information about the resort, please visit

The Third Annual Empire State Legal Writing conference will take place on Saturday, June 23, 2012, at the University at Buffalo Law School in Buffalo, New York. The conference is a full-day event, and there will be no conference fee. Last year's conference at St. John's University School of Law featured over 50 presenters from around the country and was attended by participants from more than 20 states. Buffalo is beautiful in June, and the program committee hopes to arrange an optional excursion to Niagara Falls for those who are interested. A Call for Proposals will be circulated in early November. Additional details and a link to the conference website will be circulated when they become available. The conference program committee includes Stephen Paskey (Buffalo), Robin Boyle (St. John's), Ian Gallacher (Syracuse), John Mollencamp (Cornell), Ann Nowak (Touro), Amy R. Stein (Hofstra), and Marilyn Walter (Brooklyn). If you have questions, please contact Stephen Paskey at sjpaskey@buffalo.edu. ■