LEGAL WRITING INSTITUTE

THE SECOND DRAFT

Bulletin of the Legal Writing Institute

Volume 20, No. 1 August 2005

A Tribute

On May 11, 2005, Adam Milani, a member of Mercer Law School's legal writing faculty, died from complications following surgery in an Atlanta hospital. Adam was a model of competence, compassion, and courage, and the impact of his life is profound. Despite complete paralysis in his lower body and limited use of his arms and hands, Adam successfully championed two causes during his much-too-brief life: equality for disabled people and the importance of effective legal writing in the practice of law. The legal writing profession–and the world at large–has suffered a tremendous loss with Adam's passing.

Adam never used his disability as an excuse. He never had to. Adam's many accomplishments serve as a testament to his talent and his courage.

The Scholar. Adam was a prolific legal scholar. He wrote or co-wrote numerous books and law review articles in the areas of disability discrimination and legal writing. Many of Adam's scholarly works have been cited by state and federal courts, including the United States Supreme Court. In 2003, Adam was honored for his legal scholarship by being elected to the prestigious American Law Institute.

The Teacher. Adam was also a talented teacher. Students often commented that they learned more than doctrine when they took a class with Adam; they also learned by example what it means to be dedicated and professional. Adam was one of those rare law teachers who inspired his students to be better lawyers and better people. In 2001, the graduating students in Mercer's legal writing certificate program honored Adam for his exceptional teaching by presenting him with the first Honorary Certificate in Legal Writing.

The Warrior. Adam was also a fierce warrior. Not satisfied to simply let his scholarship expose the inequities of disability discrimination, Adam took a more active role in fighting for the rights of the disabled. Adam regularly gave speeches on disability discrimination to both legal and non-legal audiences. He also served as a consultant to disability attorneys around the country and even co-wrote an amicus brief in the Supreme Court case of *The PGA Tour v. Casey Martin*. Adam volunteered his expertise in disability law by serving on the boards of several local service organizations. In 2004, Adam was honored by his undergraduate alma mater, the University of Notre Dame, for his outstanding public service.

As if that were not enough, Adam also fought valiantly to improve the status of legal writing in the legal academy. Even before Mercer converted its legal writing positions to tenure-track positions, Adam demonstrated through action that legal writing professionals can effectively perform the tasks traditionally required of tenure-track faculty: producing quality scholarship, being an effective teacher, and providing service to the law school and the community. Adam's dedication and hard work contributed in no small measure to the conversion, and in 2002, Adam received tenure at Mercer under the new system he helped create.

The Friend. Adam was also one of the most generous and friendly people you will ever meet. He freely shared pedagogical advice and materials with his Mercer colleagues as well as with other legal writing professionals around the country. Adam was well known for his warm and gracious attitude toward everyone he encountered.

Because of Adam's many accomplishments, and because Adam rarely complained about his disability, many people who worked closely with Adam would say that they often lost sight of his disability. Such a view of Adam is both a tribute and a disservice. Adam worked hard to put those around him at ease and to demonstrate his tremendous capabilities. To lose sight of his disability, however, is to loose sight of how truly remarkable

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In This Issue

Save the dates for the 2006 LWI Conference: June 7-10, 2006, in Atlanta, GA. We hope to see you there!

From the Editors

The theme for this issue, "My Best Class," set me to reflecting on my own best class. Since becoming a teacher, I have secretly dreamed of having one of those Dead Poets Society moments, where students stand on their laptops, triumphantly calling "Oh Captain, my Captain!" as their faces gleam with understanding of CREAC, synthesis, how to use "*id.*" properly, or some other great truth to which I have led them. Alas, I am not Robin Williams, and such a dramatic moment has not happened to me yet, or so I believed.

In reading the outstanding submissions for this issue, however, I realized that all of us are having those "Oh Captain" moments, albeit in a more subtle way. The following articles consistently show that such a seemingly elusive moment is occurring daily in legal writing classes across the country. It happens when students understand how to construct persuasive facts after hearing the story of the three little pigs, when an old song and the air banjo effectively illustrate a legal rule, when students realize that law school is about the limes, or even when a new explanation we give makes one tiny light bulb flicker over a single student's head. Through your novel ideas and creative insights, your students *are* "getting it"—they are achieving that higher level of understanding.

We received a record number of submissions on this theme of "My Best Class," and we wish that all of them could have been printed. We hope the following articles challenge and inspire you to try new things or revisit your class with a fresh eye. More than that, we hope this issue will help you to realize your own "Oh Captain" moments, which are happening more often than you may think.

Continuing in this vein of thought, our next issue, "How to Communicate Difficult Concepts," will explore ways in which you teach the most difficult legal concepts to your students. Do you have particularly effective ways to teach IRAC, research, citation, synthesis, case selection, or any other challenging writing or analytical concepts? What class format has worked best in your experience: lecture, workshops, small group sessions, or one-on-one conferences? How do you deal with students who just cannot seem to get the basic principles of legal analysis, research, or writing? We are looking forward to hearing your ideas.

With this issue, we welcome Kathleen Vinson and Lisa Healy from Suffolk University Law School as new editors of *The Second Draft*. We are excited about their extensive experience in the field of legal writing and the enthusiasm they have already brought to our publication. As announced in the last issue, Barbara Busharis has retired as editor of *The Second Draft*. We would like to thank Barbara for her years of hard work and service to this publication. We hope you enjoy this issue.

Sandy Patrick (Lewis & Clark)
Lisa Healy (Suffolk)
Joan Malmud (Oregon)
Kathleen Vinson (Suffolk)

CALENDAR

The Second Draft

Deadline for submissions for the next issue is September 15, 2005
The theme is "Communicating Difficult Concepts"

Legal Writing: The Journal of the Legal Writing Institute

Status of Volume 10: Publication in Summer 2005
Status of Volume 11 (Conference Proceedings): Fall 2005
Status of Volume 12 (Ethics and Professionalism): Currently accepting submissions, deadline is October 1, 2005
For information, contact Mary Beth Beazley, Editor-in-Chief, beazley.1@osu.edu

2006 LWI Conference

June 7-10, 2006, Atlanta, GA

Regional Conferences

Central States Regional Legal Writing Conference, The Indiana University School of Law, September 23-24, 2005
New England Consortium of Legal Writing Teachers, Boston University School of Law, December 9, 2005.

LWI Board Meeting

AALS Meeting: Wednesday, January 4, 2006, 4 pm

Golden Pen/Blackwell Reception

Friday, January 6, 2006, 7-9pm

Board of Directors Elections

Call for Nominations: February 15, 2006
Elections: March 2006 (ballots distributed)
April 2006 (ballots returned)

Thanks to Litho-Craft and Mike Hudak for assistance with publishing Volume 20, and to Barbara Busharis for her continued support and invaluable advice.
The Editors

Guidelines for Contributors

We welcome unsolicited contributions to *The Second Draft*. Our goals include providing a forum for sharing ideas and providing information that will be helpful to both experienced and novice instructors.

Content of submissions. Each newsletter will have a "theme," which will be announced in the preceding issue. Submissions should be consistent with the announced theme. At the top of each submission, please include:

- a title for your article
- your name
- the school with which you are affiliated, and
- your email address.

The ideal length for a submission is approximately 650 words. We encourage authors to review recent issues of *The Second Draft* to determine whether potential submissions are consistent with the type of contribution expected, and with the format and style used. Copies of *The Second Draft* and information on deadlines for submissions are available at www.lwionline.org.

Form of submissions. Submissions should be made in Microsoft Word. Please include your name and the school with which you are affiliated, and a suggested title for your article within the Word document. Please send your submission electronically by attaching it to an email, which should be sent to Kathleen Vinson (kvinson@suffolk.edu) or Lisa Healy (lisa.healy@suffolk.edu).

Review and publication. Submissions are reviewed by the editors. One of the editors will notify the author of the article's acceptance, rejection, or a conditional acceptance pending revision. Please note that if your article is accepted for publication, your name, school and email address will be published so that others may contact you for further information about your article. Finally, after an article is accepted, it may be further edited for length, clarity, or consistency of style.

LWI Website Resources

The LWI website, *www.lwionline.org*, provides numerous informational resources for members. You can search the LWI membership directory, locate a committee chair, or search *Second Draft* archives. You can use the Idea Bank, download a copy of the LWI plagiarism brochure, or review detailed information from the ALWD/LWI Survey.

The President's Column

Terry Jean Seligmann, University of Arkansas-Fayetteville

Dear Members,

Legal writing is in full bloom, with many interesting conferences that testify to the healthy growth of our discipline. Plans for the June 2006 Conference in Atlanta are well under way with Conference Co-Chairs Tracy McGaugh and Cliff Zimmerman and Site Committee Chair Linda Edwards. In addition, Diane Edelman and Steve Johansen worked for months to put together *Preparing for Practice: A Conference on Legal Skills Training in Central and Eastern Europe* at the Central European & Eurasian Law Initiative (CEELI) Institute in Prague, Czech Republic. Held on May 17-20, 2005, LWI and ALWD were the original joint sponsors of this conference, but it drew sponsorship from The American Society of International Law, The European Law Faculties Association, The National Center for State Courts, and the United States Department of State, Regional Language Office, along with CEELI. Just working with all of these organizations would be success enough, but the program, at which several LWI members presented, drew at least fifty registrants from thirteen countries. Congratulations to Diane and Steve on this global effort.

The most exhilirating experience of the spring for me was participating in the LWI Board's planning retreat, held May 3-5, 2005, in Midway, Utah. Board member Kristin Gerdy of BYU made all arrangements seamless and freed the Board to focus on LWI. Thirteen of your fifteen Board members, plus the LWI Journal Editor-in-Chief, were able to clear their calendars during this busy time of year to brainstorm and plan for LWI's future. With the able help of Professor Terrill Pollman of UNLV as facilitator, we identified a set of priorities: development of scholarship; outreach to practitioners and others; assessing and improving the survey of legal writing programs; providing useful website content to members; involving more and new members in leadership positions; developing better mechanisms for member input; supporting experienced teachers; mobilizing responses to adverse program changes; and claiming our place as an empowered and positive voice for legal writing professionals. For each of these priorities, we outlined the procedural steps to be taken to move forward, designated Board volunteers to help carry out the process, and generated specific activities to pursue within each category. I was struck by the intelligence, creativity, and dedication to legal writing demonstrated by every Board member.

We are indeed a fortunate community. We all have passionate views about the issues that face us, but the positive energy generated during our meetings was palpable. I am excited to be a part of LWI as we work on these projects, and I hope that many of you will become involved as they develop.

Sincerely,
Terry Jean Seligmann

In my remarks at the 2004 Conference, as printed in the last *Second Draft*, I failed to mention that the Legal Writing Institute began at the University of Puget Sound in 1984. It continued there until 1994 when Seattle University took over sponsorship of the law school. The law school then became Seattle University School of Law.

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If you have ideas for "themes" that would be of special interest, or have any comments about the content of this or other issues of *The Second Draft*, please contact the editors.

Deadline for submitting material for the next issue of The Second Draft: September 15, 2005.

The Metamorphosis

Linda S. Anderson, Franklin Pierce law Center

For a few moments I am almost invisible–a fly on the wall. In front of me, students in my Legal Skills class are arranged in small groups, engaged in lively debate about the cases they are trying to understand for use in their appellate brief. In short, they are behaving as lawyers.

When students start to engage in discussions about the case law with each other, rather than with me, I am having my "best class." More importantly, what makes this my "best class" is that my students are engaging with each other as they might do in practice. They are treating each other respectfully, listening, contemplating, and adding to the discussion.

As students begin to analyze the cases related to their appellate advocacy problem, they are still learning to read and analyze cases. As we begin the semester they realize they must do more than just read and highlight these cases. However, they are not always aware of what, exactly, they should add to their process.

To move students toward true analysis, I assign two specific cases related to their issue and ask them to consider several focused questions. Though the questions are based on the cases, they are targeted toward case analysis in general. To encourage understanding of procedural history and the difference between the appellate court's explanations of the prior decision's reasoning and the appellate court's own reasoning, I specifically ask about the reasons for the lower court's decision. This requires them to identify the different courts involved and how the case has moved from one court to the next. Students must also determine whether the appellate court agreed with the lower court, and why it did or did not do so. In addition, I specifically choose at least one case with a dissenting or concurring opinion and ask students to identify the differences of opinion expressed by members of the same court.

After reading both cases and answering questions about each, I then ask some questions about the way the cases do and do not fit together. Finally, I ask students to apply the reasoning of each case to the current set of facts they are addressing. For those who read and analyze cases regularly, these questions seem too obvious, and much like a Socratic dialogue. But for first-year students the questions are not automatic; rather, they are preparation for a class discussion–not the discussion itself. Students address these questions prior to arriving at class, knowing that they will be part of the classroom discussion. They come prepared to dig deeper into the cases and spend much of the class in small groups doing just that.

After reading and analyzing the cases on their own, students discuss the same questions in small groups. Each member of the group is on the same side of the issue. They must discuss the cases and reach consensus about the appropriate responses. Surprisingly (to them), they often have different answers to almost all questions. By justifying their responses they must delve more deeply into the cases, which they might not do otherwise.

When students start to engage in discussions about the case law with each other, rather than with me, I am having my "best class."

Why is this my "best class"? My students are teaching each other. They are engaged in the discussions we are trying to encourage them to have. They are engaged with the law. They are engaged with each other. Their analysis skills are being honed. Their oral presentation skills are being exercised. Their listening skills are being utilized. They are emerging from their cocoon and trying their wings.

To reach this point–the "best class"–requires many classes that introduce and reinforce these behaviors. It requires a semester where students are encouraged to read cases closely, describe what they are reading in the cases, and discuss the law respectfully. It requires many classes where we agree that there are different interpretations and not one that is perfect. It requires other classes where we work on supporting a position. Most of all, it requires a never-wavering attitude that expresses confidence in the students' ability to engage in these discussions. This fosters their confidence in articulating a position, knowing that it may not be perfect, and their willingness to listen to others and potentially change their position or argument as a result. ◆

The S.M.A.S.H. Work-Out Circuit: Tightening Flabby Sentences

Naomi Harlin Goodno, Pepperdine University School of Law

Losing weight. Every week it seems there is a new way to fight the battle of the bulge, and the most recent kick is to lower the carbs–the inconspicuous, quiet potato and bagel of the '90s are the newest enemies. Of course, there are as many new diets as there are approaches to exercise. All we need is a fresh approach and a new name and we are ready for the same old battle. It may be that we need to take this same approach with teaching writing – present basic grammar and writing concepts in a new package. In two classes my students received a crash course in sentence structure, and we all had fun doing it.

My motivation was a hard-core gym class that required working-out in a circuit at different weightlifting stations. I thought it would be fun and challenging to the students to use a similar method–a circuit of "exercising" sentences at different stations to

Elizabeth Fajans (left), Mary Beth Beazley (center), and James Levy (right) brainstorming.

Terrill Pollman (center) facilitating a discussion.

Susan Kosse, President-Elect

News

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Wake Forest University's law faculty approved long-term contracts for the legal research and writing professors along with full voting rights on matters not involving tenure.

The faculty at **Widener University School of Law**, Harrisburg, approved a proposal to add a third required semester to the Legal Methods curriculum, effective with next fall's incoming class. The program will now have a three-semester, seven-credit program.

Conferences

On Friday, December 9, 2005, **Boston University School of Law** will host the biannual meeting of **The New England Consortium of Legal Writing Teachers**. The meeting will explore the first-year Legal Research and Writing curriculum, examining and assessing goals and deciding how to achieve them, particularly within different teaching models. Proposals for panels and presentations should be submitted to **Professor Robert Volk** at Boston University School of Law, rvolk@bu.edu, by October 31, 2005. Submissions should indicate how long the presentation will be, whether media support will be needed, and if a panel discussion will be proposed, how many presenters will be on the panel. Legal Writing professionals from across the nation are welcome to participate. For more information visit the web site at http://www2.bc.edu/~gionfrid/new/NELWCpage.htm.

The **Indiana University School of Law** at Indianapolis will host the **Central States Regional Legal Writing Conference** on September 23-24, 2005. The conference theme is "What's Old is New Again: Legal Writing–A Discipline Coming of Age." The focus will be on rejuvenating your classroom with new ideas and putting a new twist on old favorites. The conference will begin with a reception on Friday, September 23, from 5:30-7:00 p.m. in the atrium of the law school. Tracy McGaugh, Assistant Professor of Law at South Texas School of Law will kick off Saturday morning with a discussion of the millennial generation and how best to tool our teaching to reach them. The remainder of the day will feature presentations on a wide variety of practical topics relating to curriculum, pedagogy, and research by legal writing professionals. The presentations should take a practical, "hands on" approach to the topic. You may submit a proposal for a 15-minute speed round, a 25-minute presentation, or a 45-minute panel presentation. For more information, e-mail Debby McGregor at dmcgreg@iupui.edu.

The **Journal of the Association of Legal Writing Directors** invites submission of articles for its Fall 2006 Rhetoric & Argumentation issue. In this "best practices" issue, the Journal will publish articles relating classical and contemporary rhetorical theory to the practice of professional legal writing. The final deadline for submission of articles is September 15, 2005. Article selection will be completed by November 1, 2005. The Journal welcomes submissions from legal writing professionals, including law professors, lawyers, and judges, as well as from academics, researchers, and specialists from other disciplines. In addition to full-length articles, the Journal welcomes essays and practice notes. The complete Call for Articles is available at www.alwd.org or by contacting Linda L. Berger, Chair, Editorial Committee, Thomas Jefferson School of Law, lberger@tjsl.edu, 619-374-6933.

Northwestern University School of Law presented a conference on *Teaching Contract Drafting* in July. The conference was designed to help professors develop curricula to teach contract drafting skills. The conference was organized by **Susan J. Irion** and **Judith A Rosenbaum** (Northwestern), **Richard K. Neumann**, Jr. (Hofstra), and **Tina L. Stark** (Fordham).

Please send *The Second Draft* editors news items relating to publications, promotions, program changes, or upcoming conferences and meetings.

make the sentences strong and tight. The circuit name: S.M.A.S.H. The goal: to smash sentences into shape. I introduced the S.M.A.S.H. work-out circuit with the following slide that defined the acronym:

The Tight Sentence
S*M*A*S*H

Surplus words, get rid of them
Mind the gap
Active Voice
Short Sentences
Hereinafter Simplify the Words

I then explained that S.M.A.S.H. should help identify weak sentences and target flabby grammatical errors. Each letter in S.M.A.S.H. is like a different weightlifting station that exercises different parts of a sentence. Here is an explanation of each of the five work-out stations on the S.M.A.S.H. circuit, all of which were inspired by Richard C. Wydick's invaluable book *Plain English for Lawyers* (3d ed. 1994).

S.M.A.S.H. Station One: Surplus Words

The first way to "exercise" a sentence on the S.M.A.S.H. circuit is to get rid of surplus words.[1] There are two ways to do this:

(1) Use concise words. As Wydick wisely points out, "Compound constructions . . . suck the vital juices from your writing."[2]

Here is a short list of the most common compound constructions in my students' writing, and concise statements to take their places:

Surplus	**Concise**
At that point in time	then
in connection with	with, about, concerning
in order to	to
subsequent to	after
for the period of	for
despite the fact that	although
because of the fact that	because
clearly, obviously	[Avoid using these words. What is obvious to you, may not be so to the reader. Rather than saying that something is "clear," make it clear by explaining what facts establish your point.]

(2) Word order. The second way to identify surplus words in a sentence is to answer the question "who (the subject) is doing what (verb) to whom (object)?" with the fewest number of words and in the order the reader would expect to get information, *e.g.*, subject, followed by verb, then object. The following are a few examples where choosing concise phrases and changing the word order to subject-verb-object removes surplus words:

Original:
> Because of the fact that in the appellate brief defendant submitted there were misstatements of fact, the attorney was sanctioned by the court. (23 words; contains surplus words; object-verb-subject word order)

Revised:
> The court sanctioned the attorney because his appellate brief misstated the facts. (12 words; no surplus words; subject-verb-object word order)

S.M.A.S.H. Station Two: Mind the Gap

If you have ever ridden the subway in London, you probably remember the announcement, in a sophisticated British accent, to "MIND THE GAP" between the platform and the entrance to the train. You can mind the gaps in your sentences in two ways:

(1) Mind the Gap between the subject, verb, and object. To avoid ambiguity, not only should words in sentences be in subject-verb-object order, but there should be no gaps between the subject, verb, and object.[3] For example:

Original:
> The common law gives to a party who can prove malicious conduct a claim for punitive damages. (Here, even though the subject, verb and object are in order, there is a wide gap between the verb and object.)

Revised:
> The common law gives a claim for punitive damages to a party who can prove malicious conduct. (Here the gap is closed and the meaning of the sentence is clearer.)

(2) Mind the Gap between the modifying clauses and what they modify.[4]

The meaning of the following two sentences changes depending on the location of the modifying words:

Original:
> Ann has discussed your plan to travel to New York with her husband. (It is unclear in this sentence what "with her husband" is modifying.)

Revised:
> Ann has discussed with her husband your plan to travel to New York. (It is clear from this sentence that "with her husband" is modifying Ann's discussion).

The placement of "only" is another common example where the gap between the modifier and the word it modifies impacts the meaning of a sentence.

Original:
> You can use the car only on Saturday. (This could mean that on Saturday, you can only drive the car, not the motorcycle, boat, etc.)

Revised:
> You can use the car on Saturdays only. (This clarifies the meaning that the only time you can drive the car is on Saturday, not any other day of the week.)

S.M.A.S.H. Station Three: Active Voice

The next station focuses on using the active voice over the passive.[5] While this is not a hard and fast rule, for the most part sentences are more precise in the active voice. Again, this relates back to the subject-verb-object order. A reader is more likely to understand a sentence in this order. A sentence in the passive voice, however, changes the order to object-verb-subject. In the following example, the

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The S.M.A.S.H. Work-Out Circuit: Tightening Flabby Sentences

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revised sentence in the active voice is clearer than the original sentence in the passive voice:

Original:

> It was insisted by the witness that the goods were delivered by the company's employee. (15 words; passive voice)

Revised:

> The witness insisted that the company's employee delivered the goods. (10 words; active voice)

Not only is the revised sentence easier to read, but it also has five less fewer words.

There are occasions where the passive voice is useful, particularly if you do not know the identity of the subject or you want to create uncertainty. For example, if you are representing a defendant who punched someone, you may opt to write, "The victim was punched," instead of, "The defendant punched the victim." But it is good to at least run a sentence through this exercise to see if the active voice makes it clearer.

S.M.A.S.H. Station Four: Short Sentences

A partner of a large litigation firm once advised me that he would not read an associate's work if it contained a sentence longer than three lines. Of course, there are times that a clear sentence is longer than three lines. It is, however, a good guideline to remember that short, clear sentences are generally the most effective way to communicate.[6]

I found that first year law students in particular tend to cram all of their ideas into one, long, run-on sentence, sometimes over ten lines long. There are a few ways to remind students to keep their sentences short:

(1) One thought, one sentence. After finishing the final draft of a paper, you should proofread one sentence at a time to make sure that each sentence contains one main thought. If there is more than one main thought, consider breaking up the sentence into two or three separate sentences.

(2) Consider using lists. If there is one main idea, but the sentence is still too long, another approach is to use lists or tables to make the information clearer.[7] For example:

Original:

> An employee can qualify to receive a pension if he or she has worked at the company for twenty years and is at least fifty-five years old, or if he or she worked for the company for at least ten years and is sixty-five years old or older, or if he or she contributed to the pension fund for fifteen years, in which case age does not matter.

Revised:

> Employees can qualify to receive a pension if they have: worked at the company for twenty years and are fifty-five or older; worked at the company for ten years and are sixty-five or older; or contributed to the pension fund for fifteen years.

S.M.A.S.H. Station Five: Hereinafter Simplify the Words

Hopefully, by the time a sentence goes through the first four stations of the S.M.A.S.H circuit, it is already tight. However, there is at least one more way to make wordy, lawyer-sounding sentences simpler: good word choice.

I noticed that some students think that because they are in law school, they should use lofty words to express their ideas; but, the simpler the words, the clearer the sentence. There are at least two ways to check word choice and to avoid the pitfalls of redundant, verbose legal writing.

(1) Avoid nominalization. As Wydick explains, nominalization is turning a verb into a noun;[8] *e.g.*, turning "object" to "objection," or turning "decide" into "decision." While it sometimes makes sense to nominalize, it often adds unnecessary words to a sentence.[9] Consider the following example:

Original:

> When you make an objection during trial, the court will render a ruling before allowing the testimony of the witness to continue. (22 words)

Revised:

> When you object during trial, the court will rule before allowing the witness to continue to testify. (17 words)

(2) Use familiar words. The best way to avoid sounding like a lawyer is to avoid using legalese.[10] I encourage my students to use familiar words. It paints a much clearer and more powerful picture. For example:

Original:

> Your client intentionally misled me about his last will and testament.

Revised:

> Your client lied about his will.

Using the S.M.A.S.H. Circuit in Class

S.M.A.S.H. captures age-old concepts of writing simple and compelling sentences, but puts them in a new package. It took only about two classes to get through all five stations of the S.M.A.S.H. circuit, including in-class written exercises. Wydick's book provides numerous exercises you can work through with your students to demonstrate each of the concepts.

I was amazed how my students' writing improved after being introduced to the S.M.A.S.H. circuit. It seems that many law students have made their way through high school and college without learning basic writing skills. A quick workout on the S.M.A.S.H. circuit teaches some basics.

Moreover, S.M.A.S.H. made grading quicker. When I ran across a long, awkward sentence, I simply wrote S.M.A.S.H. next to it and circled the appropriate letter to direct the student to a station that would tighten the sentence.

S.M.A.S.H. helped my students write tighter sentences and made grading more efficient. Now if there were only a work-out that would produce tighter muscles in less time! ◆

Legal research and writing teachers **Alison Julien** and **Jill Hayford** (Marquette Law School), were recently promoted to Associate Professors of Legal Writing.

In January, **Eileen Kavanagh** (Thomas M. Cooley Law School) was promoted to full professor with tenure.

Joe Kimble (Thomas Cooley Law School) has finished work on the preliminary draft of the restyled Federal Rules of Civil Procedure, now available at www.uscourts.gov/rules/newrules1.html. Joe was the principal drafter. He also published an article called *The Straight Skinny on Better Judicial Opinions* in Volume 9 of The Scribes Journal of Legal Writing, published several short articles in the Michigan Bar Journal, and spoke about jury instructions at the annual meeting of the American Judicature Society. He currently serves as the president of the international organization Clarity and is helping to organize a July conference in Boulogne, France.

Legal writing professor **Robin A. Boyle** (St. John's-New York) was selected to receive an Outstanding Faculty Achievement Medal at the University's Convocation in May. The university awards the medal to faculty members who have demonstrated deep, personal commitment to the aims and purposes of the university and dedication to its mission in the areas of instruction, advisement, professional growth and research. One of her colleagues noted, "Robin's many contributions to the law school in teaching, scholarship, and service over the last eleven years, including her past service as a co-advisor to the St. John's Moot Court Honor Society and her present service as Assistant Director of the law school's Writing Center and Coordinator of its Academic Support Program, certainly evidence this commitment and dedication."

Lisa McElroy (Roger Williams) accepted a position at Southern New England School of Law as the Director of their Legal Skills program. The position carries a title of Dean and will be a tenure-track position.

Elaine Mills and **Debbie Mann** (Albany Law School) have been promoted to Professor and Associate Professor, respectively, and were recommended for long-term contracts by the law faculty. Professor Mills also directs the law school's Writing Center.

The University of Memphis School of Law granted tenure to **David Romantz** and promoted him to Associate Professor.

The law school faculty at the University of Oregon granted tenure to **Suzanne Rowe**.

Upon unanimous recommendation of the faculty of the Indiana University School of Law at Indianapolis, the Trustees of Indiana University have approved **Joel Schumm's** promotion to Clinical Associate Professor of Law.

The faculty of Southern Illinois University School of Law voted to promote **Sheila Simon** and **Melissa Marlow-Shafer** from Assistant to Associate Clinical Professors of Lawyering Skills. The promotion comes with a five-year contract and a salary increase.

The Temple Law School faculty voted to accept a new union contract with the university, and as part of that package five legal writing professors, **Kathy Stanchi, Susan DeJarnatt, Ellie Margolis, Robin Nilon, and Bonny Tavares**, were awarded salary increases commensurate with the tenure-track faculty appointees.

Director of Legal Writing and Clinical Professor of Law **Wanda Temm** (University of Missouri–Kansas City) was recently granted voting rights by the law faculty.

Judith Tracy's (Boston College) article was accepted by the Touro Law Review for its upcoming symposium issue on legal writing: *"I see and I remember; I do and I understand": Teaching Fundamental Structure in Legal Writing Through the Use of Samples*, 21 Touro L. Rev.___ (forthcoming May 2005).

Paul Von Blum, Writing Advisor at Loyola Law School in Los Angeles, is the author of a new book titled *Resistance, Dignity, and Pride: African American Artists in Los Angeles*, published by the UCLA African American Studies Center, where he is a senior faculty member.

Mark E. Wojcik (The John Marshall Law School), Director of Global Studies, was promoted to Professor of Law.

Program News

The **Rutgers-Camden School of Law** faculty unanimously voted to change the designation of its research and writing faculty from instructors to clinical-faculty status.

The faculty at **Stetson University** changed the designation of research and writing faculty from contract status to clinical-tenure status.

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News

Publications and Promotions

The graduating seniors at Rutgers-Camden School of Law named **Randy Abate** Professor of the Year. This award marks the first time in the school's institutional memory that a legal writing professor or skills professor has received the honor.

Joan Blum (Boston College) recently published an article, *Clarifying the Law on Post-Employment Covenants*, 178 New Jersey L.J. 765 (Nov. 22, 2004). The article looks at the theoretical underpinnings of the New Jersey law on post-employment covenant not to compete and questions whether the Appellate Division opinion in *The Community Hosp. Group v. More*, 838 A.2d 472 (N.J. Super. App. Div. 2003), *aff'd in part and rev'd in part*, 2005 WL 767012 (N.J. Apr. 05, 2005), was consistent with that underlying theory.

Bill Chin (Lewis and Clark) wrote two articles accepted for publication: *The "Relay" Team-Teach Approach: Combining Collaboration and the Division of Labor to Teach a Third Semester of Legal Writing*, 13 Perspectives 94 (Winter 2005) and *Multiple Cultures, One Criminal Justice System: The Need for a "Cultural Ombudsman" in the Courtroom*, 53 Drake L. Rev. __ (forthcoming 2005).

Jo Anne Durako (Stetson) was a panelist in an ABA-sponsored CLE video-conference program webcast from Washington, D.C. in February. The Chair of the ABA Business Law Section organized the two-hour program on Contract Drafting. The CLE program was a follow-up to a program on Document Drafting that Jo Anne appeared in at the ABA Conference in Atlanta last August.

Lisa Eichhorn (South Carolina) was promoted to full professor and awarded tenure.

The law faculty of Ohio State University voted to recommend the appointment of five staff attorneys to clinical faculty appointments as Associate Clinical Professors of Law. Two of the attorneys, **Terri Enns** and **Beth Cooke**, have taught legal writing as an overload and have attended Legal Writing Institute conferences.

Jane Gionfriddo (Boston College) has written an article exploring analytical feedback by legal writing teachers that is coming out this summer: *"The Reasonable Zone of Right Answers": Analytical Feedback on Student Writing*, 40 Gonzaga L. Rev. __ (forthcoming 2005). In addition, Jane organized the December 2004 meeting of the New England Consortium of Legal Writing Teachers, held at Boston College Law School. During this day-long, hands-on workshop, participants critiqued a sample memo and then shared insights on each other's written feedback in small groups. Over thirty legal writing teachers from around New England (and from as far away as New Jersey and Indiana) attended.

Dr. Deborah Hecht (Touro Law Center), Director of the Writing Resources Center, was awarded a Dean's Summer Research Grant last year to write *Any Angels in the House? 19th Century Attitudes and Anxiety About Marriage, Divorce, and Divorce Law as Evidenced in Selected Works by Edith Wharton*. She presented her work at a Touro Law Center Faculty Colloquium in March and at the Edith Wharton Society Conference in June. Her article, *Private Letters and the Nineteenth Century Law: Edith Wharton's Questions About Ownership and the Right To Publish Private Letters*, has been published in the Touro Law Center Law Review, Vol. 20, No. 2. Spring 2004. Also, her work titled, *Representing Lawyers: Edith Wharton's Portrayal of Lawyers and the Lawyering in The Touchstone and Summer*" has been published in Law and Literature, edited by Michael J. Meyer, Rodopi Press, 2004.

Steve Johansen (Lewis and Clark) attended the *Power of Storytelling Conference* in Gloucester, England in May. Steve, along with **Diane Edelman** and **Emily Zimmerman**, organized the first LWI-ALWD sponsored conference in Europe, *Preparing for Practice: Legal Skills Training in Central and Eastern Europe*, held at the CEELI Institute in Prague, Czech Republic, on May 17-20. The Conference brought together professors, judges, and practitioners from the United States and 17 other countries to discuss how to incorporate skills training into European law study. Topics discussed included how to develop legal writing programs, clinics, student competitions, and legal English training.

[1] *See* Richard C. Wydick, *Plain English for Lawyers*, 7-22 (3d Ed. 1994). The entire chapter, entitled "Omit Surplus Words," targets verbosity.
[2] *Id.* at 11.
[3] *See id.* at 41-44.
[4] *See id.* at 48-52.
[5] *See id.* at 27-32.
[6] *Id.* at 28.
[7] *See id.* at 33-39.
[8] *See id.* at 46-47.
[9] *See id.* at 23.
[10] *See id.* at 43-25.

Mixing it Up: Introducing Statutory Construction and Oral Argument

Toni Berres-Paul, Lewis & Clark Law School

On the first day of the spring semester, I used a tried and true statutory interpretation exercise that I'm sure many of you have used, threw in a sprinkle of oral argument, and presto: the students had a lot of fun and learned some new skills. For this lesson students do some pre-reading about statutory construction tools, including the plain meaning rule and the Latin canons *ejusdem generis* and *expressio unius*.

The exercise is based on the two *McBoyle* decisions: *McBoyle v. United States*, 43 F.2d 273 (10th Cir. 1930), *rev'd*, 283 U.S. 25 (1931). The decisions revolve around the following statutory language from the National Motor Vehicle Theft Act: The term motor vehicle when used in this section shall include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails. 18 U.S.C. sec. 408. I hand each student a slip of paper containing the statutory language and the following information: The act was passed in 1920, and Congress has had several opportunities to change the language in this definition section, but has not. Question: Defendant recently stole an airplane. Under the National Motor Vehicle Theft Act, can the U.S. Attorney's office prosecute defendant for taking the plane?

I divide the class in half, and then I divide each half into groups of four. I assign half the groups to defend the airplane thief and the other half to be the U.S. Attorney. I tell the groups they must create arguments to support their client by using tools of statutory construction. In addition, each group must pick a spokesperson. I allow the groups to work together for 20 to 25 minutes. At the end of that time, I select two groups to present arguments to the class. The spokesperson for each group comes to the front of the room and sits at "counsel table." I briefly explain how to start an oral argument: May it please the court [or whatever opening you prefer], my name is . . . and I represent . . . . The issue in this case is . . . . Both sides present a brief oral argument in support of their client's position, and the rest of the class acts as judges. I allow any student who wishes to intervene to ask questions. Usually there is time for two sets of arguments. I briefly critique each person who argues and allow other students to provide feedback as well.

The students thoroughly enjoy the class. It's a fun way to start the semester and introduce them to advocacy. They leave class with the two *McBoyle* cases. Through the cases, they learn that courts actually use statutory construction tools and even resort to the dictionary to understand the words of a statute. The students also get some practical experience applying the tools of statutory construction. They learn the importance of the plain meaning rule, and the statute forces them to think how the historical perspective might be relevant to the meaning of a statute. They also get their first exposure to oral argument in a non-threatening setting. And best of all, the students get to argue which they love to do! ◆

A Tribute

Continued from page 1

he was. Things that most of us take for granted–getting out of bed, taking a shower, picking a dropped item off of the floor–were major events in Adam's life. To accomplish all he did while overcoming such adversity is amazing. Adam's true legacy is the inspiration he has given to all of us for what can be accomplished with courage and hard work. ◆

Michael Smith, Mercer University School of Law

Writing for *The Second Draft*

We encourage you to consider submitting an essay to *The Second Draft*, regardless of whether you have published before. Writing a "theme" essay can be an ideal springboard to a larger article, or can help you clarify ideas that might merit further development elsewhere. We are delighted to hear from first-time contributors!

From the Desk of the

Writing Specialist

Creating a Rock-Solid Foundation for IRAC

Jacquelyn E. Gentry, Whittier Law School

IRAC rocks! No, IRAC sucks! Our students may not always express their opinions so vociferously, but writing specialists know that many students have strong opinions about legal writing techniques. Whatever the plethora of writing problems we confront, a recurring commonality appears in the challenges we face, and one of the most common is how to overcome deficiency in effective use of IRAC for legal analysis.

I teach legal writing in addition to serving as a writing advisor, and, consequently, I know that we present IRAC thoroughly. Even so, I have been mystified that students continue to have difficulty using IRAC despite meticulous instruction and further reinforcement in class. So many students have come to me for individual help with IRAC that I created a workshop for small groups to help students develop IRAC skills through the analysis of hypothetical examples.

The workshop format works well because students seem to find it less intimidating to ask questions when the setting engenders small group conversation, and they also tend to be less self conscious than in one-on-one conferences. Students have responded positively, with a typical comment being, "It was like the light bulb finally went on. Now I think I can really use IRAC in my legal writing."

Because some students in the workshop simply do not understand the IRAC process, we first review the basic concept before moving on to apply IRAC in analysis. I project the explanatory material on screen so students can follow the examples. To illustrate the basic concept, we use IRAC to analyze a simple hypothetical example. I show the italicized portions below on the screen, and we talk about the examples as we go along.

The relevant facts are the following.

> *Plaint was standing in a buffet line holding a tray at a business meeting lunch. Daft walked up to Plaint, snatched the tray from Plaint's hands, and yelled that Plaint should leave because he was an ignorant jerk who should not be at the meeting. As a result of the incident, Plaint's glasses fell off and broke, and he left immediately, feeling publicly humiliated. Plaint wants to know if he has a cause of action against Daft for battery.*

***I**ssue (identifies the issue for analysis stated as a question, or in the TRAC variation stated as a topic sentence)*

> *Does a person commit a battery when he pulls an object from another person's hands in an insulting way, but does not touch the body of the other person? (Or if formulated as TRAC, the issue would be stated as a **T**opic sentence giving the conclusion rather than as a question.)*

***R**ule (formulates the legal rule)*

A battery is an unconsented act, done with the intent of bringing about a harmful or offensive contact with the person of another, which causes such a contact. (Therefore, the four required elements are lack of consent, intent, touching, and harm.)

***A**pplication (applies the law to the facts)*

> *Plaint apparently did not consent to Daft's snatching the tray, which Daft intended because one does not snatch something without intending to do so. Daft apparently intended to be offensive when he yelled at Plaint in an insulting way, which caused harm by humiliating Plaint and breaking his glasses. Although Daft argued that he did not touch Plaint, and therefore did not actually contact him, it is more reasonable to conclude that Daft indirectly caused contact with Plaint by contacting the object that Plaint was holding, which may be considered an extension of Plaint, and thus all four elements are satisfied.*

***C**onclusion (reaches a conclusion based on the reasoning)*

> *Therefore, Daft's act constituted battery.*

We then proceed to build on that basic example, showing how to apply precedent to the case at hand, *i.e.*, reasoning by analogy.

Now suppose the Plaint v. Daft case is a decided appellate opinion that is mandatory authority in your jurisdiction. You have a new client, Cleo, who wants to know if she has legal recourse for her problem, as follows.

> *Cleo is a beautiful fashion model who was wearing a skimpy costume at a photo shoot on the corner of a busy street. She was holding a fancy parasol as part of her costume. Mr. Holiman, a religious fanatic, was preaching across the street when he saw Cleo. He dashed across the street and snatched the parasol from her hand, shouting, "Cast aside worldly things, you wanton harlot." In the process, Cleo's parasol was damaged and her makeup was ruined when she burst into tears. The photo shoot had to be extended to make repairs, and as a result Cleo lost another scheduled modeling job which cost her considerable monetary loss.*

Our client wants to know whether she has a cause of action against Mr. Holiman for battery, and our legal authority is Plaint v. Daft.

famous letter and speech. I began by introducing the three fundamental persuasive techniques from classical rhetoric. I explained that they had spent the entire fall semester learning about and applying *logos*, persuasion through logic and rational argument. CREAC is the quintessential example of this process of persuasion. Classical rhetoricians also identified *pathos* and *ethos* as persuasive devices. *Pathos*, or persuasion through emotion, incorporates both emotional substance (arousing an emotional reaction in your audience through the substance of your argument) and medium mood control (arousing an emotional reaction through the medium of the message). The final technique, *ethos*, means to persuade one's audience by establishing one's own credibility (character, good will, and intelligence).

One of the most critical considerations for an advocate is knowing one's audience, so I spent some additional time explaining the elements of *ethos*. Judges and attorneys (and LRW professors) are busy readers; they are reading your brief or memo because it is their job. Since my students often come from more laid-back undergraduate experiences, this is a wonderful opportunity for me to teach them that respect, zeal, professionalism, and good will (how the advocate is disposed toward the audience) all need to be deliberately conveyed to the reader. In addition, one's own intelligence and ability can be conveyed through good research, clear organization, practicality and eloquence, among other things. In other words, if you spell your client's name wrong on the cover page of your brief, if your citations are not well-edited, or if your organizational structure is unclear, your reader will doubt your credibility and your legal analysis.

I then spent some time talking students through the *Letter from Birmingham Jail*, pointing out King's use of *logos*, *pathos*, and *ethos*. Creating emotion without being overly emotional is not easy, so I point out how the letter persuades through *pathos* when, through use of repetition, it becomes almost sermon-like. King also uses his knowledge of his audience (one member of the eight Alabama clergymen that he is writing to is Rabbi Hilton Grafman, and King cleverly makes an allusion to Martin Buber). Since students have spent time in the previous class dissecting the court documents leading to King's imprisonment and seen photos of police brutality during the Birmingham marches, King's letter is powerful on several levels

The letter is also a wonderful example of the classical *exordium*, or introduction to an argument. King first establishes his goodwill toward his audience, summarizes his argument, lays the groundwork for an argument whose subject he asserts has been misrepresented, and presents his credentials. Students see later in the semester that they do something similar in an appellate brief. After King's introduction is the exposition, argument, rebuttal (itself a fascinating study of showing how your opponent's facts are incorrect, logic faulty, and conduct unethical), and conclusion. The entire document is an example of argument by redefinition: he questions his opponents' logic instead of merely attacking them.

Finally, and this was the best part of "my best class," I played the entire eighteen-minute recording of King's *I Have a Dream* speech. The experience was memorable because some students were obviously emotional and most avoided eye contact. There are so many times in law school that we feel emotionally constrained, forced to discuss real life as "legal issues," and when we're just simply nervous. The climate of that classroom changed during those eighteen minutes. When I turned off the CD, I began by asking for comments. Many students felt comfortable commenting about the power of the speech and the rarity of this type of advocacy in the modern day. Students who had never before volunteered raised their hands. One man actually came to my office the next day and said he had cried. This doesn't happen often in LRW.

I then guided students through the written speech. First, I told them to look for uses of refrain, hyperbole, and figurative language. King uses multiple shifts in sentence length to capture and keep his audience's attention. He also employs dramatic shifts in tone. Moreover, it is an interesting example of two literary devices. King employs *anaphora*, the use of the same word or group of words at the beginning of a series. He also employs *epistrophe*, the repetition of the same word or series of words at the end of a series. Second, I introduced the idea of a theme, something students were able to come back to as they prepared their own appellate briefs. This year, I received more than one brief that successfully repeated the client's theory of the case in both the statement of the case and the argument.

In my best class, I achieved my goals of introducing students to classic persuasive writing and speech techniques, bringing a discussion of race into the classroom, and simply making students care. The class was memorable for all. ◆

[1] 2 J. ALWD 209 (2004).
[2] 388 U.S. 308 (1967)

Please make sure all of your legal writing colleagues are getting *The Second Draft* by e-mailing address changes or additions to Yonna Shaw, LWI Program Assistant, at shaw_yw@Mercer.edu

Revealing Skills: Remembrance of Things Not Long Past

Mary B. Trevor, Hamline University School of Law

In my best class, we spend less time explicitly addressing legal writing skills than we do in any other class of the year, and the students, I think, emerge the better for it. The class comes at a particularly low time for many first-years: the second class of second semester. First semester grades are just out. Many students have gone on-line to access the lowest grades they have ever received—some have received one of those grades from me. In my class, they have just broken open (I hope) an intimidating packet of material that they will use for their appellate brief assignments in the coming weeks. They're hearing, with anxiety, about doing oral arguments later in the semester. For many, it is a time of major self-doubt, and they are not having much fun.

As a young teacher, my instinct was to discuss this self-doubt in class. But most students who are upset are doing their best not to show it to their classmates. I have learned, therefore, that students are usually uncomfortable about any extended public discussion of this issue. One student worries that his face will betray his distress; if I happen to look at another student as I speak, she fears that her classmates will think I am talking about her. Sometimes students are skeptical about whether a teacher can truly understand what they are going through, and they may even resent an endeavor to "relate" to them.

My students need a reminder that they are capable human beings; however, they are resistant to overt efforts to provide this reassurance. And after this build-up, you might well view what I do instead as pretty insignificant. But teaching in law school (like teaching elsewhere, I suspect) is often a matter of inching forward rather than leaping forward. Here is one inch.

In my best class, we discuss client letters. The first part of the class is a routine discussion of the goals and techniques involved. But I then ask my students to participate in a simple exercise. I ask each of them to pick a non-legal area with specialized terminology or skills that they know something about. I then ask them to pair up with a classmate and explain their area of knowledge to the classmate in an understandable way. I suggest that the classmate be an active listener and ask questions about anything unclear. About halfway through the exercise time, I ask them to switch roles.

Occasionally I encounter a student or two who struggles to come up with a topic. But students who have been admitted to law school have generally already managed to accomplish some pretty interesting things in their lives, and I usually am struck by how quickly and enthusiastically students come up with topics and discuss them. The faces of the speakers become animated and self-assured; the listening classmates are attentive. I openly eavesdrop on conversations about quilting, calculating baseball statistics, being a computer technician, giving a speech, and teaching English as a Second Language. As I watch, pocket Kleenex packages (it is, after all, January in Minnesota) become soundboards and sanders; class notes sprout diagrams; and students display hidden thespian skills.

Once finished, we return to the group to discuss what worked well. We must first concede that demonstrations or pantomime, although fun, will not work for a client letter. We quickly move beyond that, however, to note some "surprising" things: people have used analogies, they have defined terms that are not in everyday usage, they have explained the underlying goal of the activity, and they have given examples of how it is done. They have found that they need to simplify rather than embellish. I really do see a few light bulbs click on, and students who have never voluntarily spoken up in class have something to say.

By the end of class, I can check off an entry on my teaching "To Do" list: the exercise has served both to reinforce first semester concepts and as a bridge to a new slant on the presentation of legal analysis. But in my mind it has accomplished a more important goal: it has helped my students (and me) to have fun on a day when we needed to have fun. We stopped thinking about law school grades and were reminded of other skills. And the faces leaving the classroom are brighter than the faces that came in. ◆

Classical Rhetorical Devices & the Martin Luther King, Jr. "I Have a Dream" Speech

Kate Weatherly, University of Oregon School of Law

My best class took place the day after Martin Luther King Day, as my students and I examined the writings and oral advocacy of the late Dr. King. We were about to embark upon two months of appellate brief writing and oral argument. My goal was to introduce–and make students excited about–persuasive writing and oral advocacy. I am constantly looking for "real-life" examples of powerful persuasive advocacy, and, having been an attorney for the Native American Rights Fund before coming to Oregon, I strive to bring critical race theory issues into the classroom whenever possible.

Consequently, I was inspired by Shaun Spencer's article in the Fall 2004 issue of the *Journal of the Association of Legal Writing Directors*. In his article, titled *Dr. King, Bull Connor, and Persuasive Narratives*,[1] Mr. Spencer shares an in-class exercise that explores persuasive narrative techniques in *Walker v. City of Birmingham*.[2] I expanded on his idea by preparing a three-class examination of persuasive writing and oral advocacy techniques using the *Walker* briefs and case, an outline of classical rhetorical devices, and Martin Luther King, Jr.'s *Letter from Birmingham Jail* and his *I Have a Dream* speech.

For the third class in this series, I asked students to read Dr. King's

***I**ssue*

Does our client have a cause of action for battery when a man snatched her parasol, causing her discomfort and monetary loss?

***R**ule and Rule Explanation*

A battery is an unconsented act, done with the intent of bringing about a harmful or offensive contact with the person of another, which causes such a contact. (Therefore, the four required elements are lack of consent, intent, touching, and harm. After stating the rule, you must explain the rule, sometimes referred to as the rule proof, by describing the holding, facts and reasoning of Plaint v. Daft.)

***A**pplication (applies the law to the facts)*

> *Compare the facts of Plaint v. Daft with the facts of our case, showing how they are like or unlike the facts. If they are alike on each element, then the result should be the same. If they are more unlike the precedent case, the result may be different.*

Students are able to go through each element and show how each is satisfied under the analogous facts.

***C**onclusion*

> *State the answer to the issue, and briefly state why.*

We then discuss how changing the facts of the hypothetical may change the outcome of the analysis, as in the following example.

Now suppose a slightly different factual scenario, again using Plaint v. Daft as authority.

> *Cleo is a beautiful fashion model who was wearing a skimpy costume at a photo shoot on the corner of a busy street. Mr. Bumper, a businessman, was rushing to an appointment when he dashed across the street and happened to be looking at traffic instead of where he was walking. He bumped into Cleo and knocked her down, causing her costume to be damaged and her makeup to be ruined when she burst into tears. The photo shoot had to be extended to make repairs, and as a result Cleo lost another scheduled modeling job that cost her considerable monetary loss.*
>
> *Our client wants to know whether she has a cause of action against Mr. Bumper for battery, and our legal authority again is Plaint v. Daft.*

***I**ssue*
Does our client have a cause of action for battery when a man accidentally knocked her down, causing her discomfort and monetary loss?

***R**ule and Rule Explanation*

A battery is an unconsented act, done with the intent of bringing about a harmful or offensive contact with the person of another, which causes such a contact. (Therefore, the four required elements are lack of consent, intent, touching, and harm. Again, after stating the rule, you must explain the rule by describing the holding, facts, and reasoning of Plaint v. Daft.)

***A**pplication (applies the law to the facts)*

> *Compare the facts of Plaint v. Daft with the facts of our case, showing how they are like or unlike the facts. If they are alike on each element, then the result should be the same. If they are more unlike the precedent case, the result may be different.*

Students are then able to go through each element and show how each is satisfied under the analogous facts except for intent, because Bumper did not intend the act that caused the harm. They recognize the legal significance of different elements as triggered by different facts. They may also observe that the cause of action affects the analysis, for example, that Bumper might be liable for negligence though not for battery, applying what they know about the elements of negligence.

***C**onclusion*

> *State the answer to the issue, and briefly state why.*

Like any other teaching technique, it would be an exaggeration to claim that using hypothetical examples can instantly solve every problem students have with IRAC. The technique of examining hypotheticals in the workshop setting does, however, provide a solid foundational skill for understanding the basic IRAC concept and later applying that concept to more complex legal analysis. ◆

Current Events Are an Effective Teaching Tool

Grace H. Barry, Louisiana State University Law Center

"Good morning class. How many of you read the *New York Times* this morning?"

Both silence and stares of "are you kidding" crossed the faces of twenty-two first-year law students two months into their spring semester. Since the first day of class in the fall, I had often opened class with this query and subsequently lecture about the importance of keeping informed and abreast of national and world events.

For months, the students have been reminded that they are the future leaders of America. When cajoling them with such delusions of political grandeur did not inspire them, promises of finding that potential law school exam "hot topic" was yet another enticement.

I regularly open class with a news story–be it local, national or global–that relates to the practice of law. Complex legal issues sometimes titillate–other times bore. But when one news story evoked a "light bulb moment" for the entire class–no matter how dim–I knew a teachable moment had just occurred.

Last spring, class began with a reminder of the pending deadline for appellate briefs. The tension level meter peaked as I spoke. Then in a seemingly unrelated (but familiar) query I asked "How many of you read the *New York Times* today?"

CONTINUED ON PAGE 10

Current Events Are an Effective Teaching Tool

Continued from page 9

I swiftly placed a headline from the trial of Martha Stewart's stock broker, Peter Bacanovic, on the overhead projector. "Martha Stewart?" they silently groaned. "What does our appellate brief about non-competition agreements have to do with her?" they silently asked themselves. Within minutes, the mystery was solved and a new appreciation for their pending summer jobs as law clerks emerged.

Martha Stewart's stockbroker Peter Bacanovic was on trial for perjury. Certainly, numerous legal wranglings, motions in limine and pre-trial conferences and documents occurred before the trial. Months and months of preparation, and now the prosecution rested. The jury retired to deliberate. Struggling with the perjury element of "corroboration," the jury returned to the courtroom to ask the judge an important question. Specifically, the jury wanted to know whether Martha Stewart's secretary's testimony could be corroborated by her own handwritten note to Martha. I'm not sure whether the judge was as stunned as I was to learn that neither attorney addressed this in any pre-trial deliberations, but she swiftly pronounced that she "would take briefs on that question into the night" and would reach her decision in the morning.

Gasps and some giggles of nervousness permeated the classroom. "Whaaa?" the students exclaimed. "Is this real? Everything that went before this moment is effectively down the drain? This stockbroker's guilt or innocence will rest on a brief that is researched, written, and submitted 'into the night?'"

Suddenly, having six weeks to write a brief, before entering the world as a law clerk that summer, seemed almost like an eternity. I was no longer a demanding professor but Santa Claus. The students "got it." Once again, using the morning's newspaper was more effective than any well prepared lecture in making the point that research and writing can be tantamount to success or failure, and that sometimes this research and writing must be performed post haste. Ah . . . a teachable moment ripped right out of the headlines! ◆

A Glimmer of Insight

Teresa Kissane Brostoff, University of Pittsburgh School of Law

While one's "best" class depends on many factors and probably varies from year to year, I think the legal writing classroom is best when students experience a glimmer of insight or a flash of excitement about the skills they are beginning to learn. My students and I experienced that type of class at the beginning of this past spring semester. To begin to understand the perspective of the court, the students received briefs submitted in a real case heard recently by one of the Pennsylvania appellate courts. The students' assignment was to consider and decide the case, based only on the materials presented in the briefs, and to draft the opinion of the court.

I devoted a class to putting the student judges into three-judge panels as they would be for the actual court conference following oral argument. Each panel was to decide the case. After giving initial instructions, I circulated among the student panels, listened to the students, and helped to advance discussion. I was amazed at the quality and depth of learning taking place in those panel deliberations. The students discussed the briefs in the case with each other, pondering the usefulness of those documents to them as decision-makers. They expressed the frustration they felt when the briefs did not fully explain or analyze the prevailing law or apply the law to their case. The students even lamented that poor citations left them unable to find the pertinent subject matter in the precedent cases, without additional struggle on their parts. The advantage of a well-written brief and the detriment to both attorney and client of a poorly written brief never needed an explanation in theory, as the students experienced what judges encounter every day when reading the briefs submitted to them.

In addition to valuable insights about brief writing, the students also began to understand the difference in tone and authority attributed to majority and dissenting opinions in cases. Each panel had to vote on the outcome in the case at the beginning and the end of its deliberations. The student judges discussed the various arguments in the case and found themselves advocating for the outcome that each determined that the law dictated. While each student wrote his or her own opinion, each had to write either for the majority or the dissent depending on the vote of the panel. The students found that voting within the panel shifted from the beginning vote to the ending vote, sometimes based on the advocacy and explanation offered by the briefs, themselves, or their fellow students. The students experienced the power of effective written and oral advocacy.

After this classroom experience, the students wrote powerful opinions. Those writing for the majority seemed to understand the authority that their words carried. Those writing for the dissent had carefully crafted arguments, but they seemed to naturally adopt the more personal tone of a dissent. The student judges seemed invested in the outcome of the case and how they communicated that outcome to the larger legal audience.

In addition to enriching the opinion-writing assignment, this class also affected how the students crafted their arguments for their appellate brief assignment. They often harkened back to the frustrations and helpful moments that the briefs provided to them during their time as decision-makers. Understanding their intended audience and its perspective gave the students a broader and more critical eye in reviewing and editing their writing. The experiential learning that took place in this "best" class taught advocacy, perspective, tone, and professionalism in ways that a lecture or reading alone on these subjects never could. While it is sometimes difficult for a professor to set the stage, step back, and trust the students to shoulder the heavy burden of learning for themselves, the rewards in this case were well worth the effort and the risks. ◆

make it to the in-office stage, in part because he hadn't misspelled the partner's name! Another student paid homage to Sheila Simon's terrific IRAC teaching technique with an oft-repeated phrase: "stay out of the blender!"

I don't typically ask students for feedback on a class-by-class basis, but because this was a new experiment for me, I solicited a few opinions. In summary, the students found that this was a great "wrap-up" class because it: 1) gave them a chance to get over oral argument jitters, 2) reminded them of how much they had learned in the course and would bring to their summer jobs, and 3) provided an enjoyable activity to close out a long and hard year. As their teacher, I walked away with a smile, knowing that something had sunk in and that my students were prepared for the tasks that awaited them this summer. ◆

Sometimes You Have to Be the "Guide on the Side"

David I. C. Thomson, University of Denver College of Law

For my Best Class, I did nothing. I did nothing to prepare for it, unless you count selecting the book I took to read. I did virtually nothing in the class, except read that book with my feet up on the desk. We work so hard to prepare for class, and in class, it seems utterly incongruous that this was my best class last semester. But I do think it was, and this is why.

Increasingly, I have been using collaborative learning methods in my classes. There are a lot of reasons favoring the use of collaborative learning in law school, among them reduced stress and better results. Virtually all law school classes could benefit from these teaching methods, but LRW is particularly well suited. Since the mission of our course is to teach forms of thinking and expression, much of what we do as teachers is guide our students in a process of self-learning. You can't teach someone to write well solely through lecture. Similarly, you can't teach someone to synthesize the holdings of several cases solely through lecture. These concepts can be illustrated in a lecture format in part. But to be fully understood and deeply learned, an approach based on multiple teaching techniques is required. One of these techniques must be some form of cooperative learning. When students start to teach each other how to express themselves better, and challenge each other's conceptualization of a legal problem, their learning will improve.

Perhaps more importantly, I believe that increasing the use of cooperative learning in law school more effectively prepares law students for the practice they will enter. So much of the current legal education process is experienced by the student as a solitary affair. Law students primarily work alone. They take their finals alone, they ask questions in class alone, and most of the out-of-class assignments (such as final papers in seminars) are completed alone.

You can't teach someone to write well solely through lecture.

Yet collaborative skills are very important in the practice of law. Lawyers often work in firms, try cases in teams, and work with other attorneys to achieve mutual goals. If legal knowledge is primarily communicated through dialog and constructed through consensus, increasing the amount of collaborative learning in the law school curriculum surely must help produce lawyers who are better at participating in what is fundamentally a group-based process.

So back to my best class. I teach two sections of LRW, one in the day division and one in the evening division at the University of Denver's Sturm College of Law. Because of the various holidays in the fall semester, I had one extra evening class this year on my syllabus. At this point in the semester, I had the students working on a collaborative writing project in teams of two. While cooperative learning has all of the advantages described above, it does require more student coordination–of schedules, meetings, draft reviews, etc. For the evening students–who often work full-time jobs during the day–accomplishing an appropriate amount of coordination to complete the assignment is often quite difficult.

The solution to my "extra" class for the evening students was quite simple: I gave it to them. That is, we met at the regular time in the regular class room, and I gave them the class period to work with their partners on their project.

Here is what made it my best class: I sat there with my feet up on the desk and I got to sit there and listen to all the *learning* going on in the room. If they had a question, they would come to ask me. But mostly they worked on their own, and I read my book. They worked hard throughout the class period–talking, debating, reviewing the examples I had given them. It was just amazing to sit there and listen.

A saying in the literature of collaborative learning scolds us teachers for being too fond of the sound of our own voices: "You need to be less of the 'Sage on the Stage' and more of the 'Guide on the Side.'"[1] The night of my "best class" this saying really hit home to me. I was the Guide on the Side, and the students took over the teaching–and the learning. ◆

[1] Alison King, *From Sage on the Stage to Guide on the Side*, 41 College Teaching 30 (Winter 1993).

Keeping It Real

Continued from page 21

Fair Park, and Johnnie Jones, Mrs. Miller's attorney, had spoken to my class the preceding semester about his experiences as a pioneer civil rights attorney. The students paired and shared their thoughts with one another on the two cases, and an enthusiastic class discussion followed. Thus, choosing a topic very relevant and familiar to the students kept the assignment real for them. On that cold Tuesday morning I hoped they would be as enthusiastic when discussing another civil rights case, *Walker v. City of Birmingham*,[4] which I had asked them to read over the Dr. King holiday observance. I was not disappointed.

Walker is a United States Supreme Court decision affirming the convictions for criminal contempt of eight black ministers, including Dr. Martin Luther King, who led a civil rights march in Birmingham, Alabama, on Easter 1963. Four justices dissented in three separate opinions. I gave the students a bit of background and explained that Dr. King wrote his famous "Letter from the Birmingham Jail" while imprisoned on this criminal contempt charge. When I asked students to comment on the differences in the majority affirming the contempt convictions on procedural grounds and the dissenting opinions condemning the abridgement of First Amendment rights, gloved hands shot into the air. Some of the students were shocked at the differences. "Is it ethical for Justice Stewart to say 'Violence occurred' when onlookers, not marchers, threw rocks?" one student asked. What an opening for explaining the role of passive voice in persuasive writing! Students who had not spoken at all during the previous semester suddenly piped up. With a very relevant social justice discussion before them, the students had soon completely forgotten about the chilly classroom.

The stories and cases we discussed–*The True Story of the 3 Little Pigs*, *Miller,* and *Walker*–are probably already contained in the LWI idea bank. What made them work so well for me this semester was that my students could relate to them. The lesson to be gained from my experience is this: When choosing cases and problems for class discussion, choose something your students will consider relevant. I managed to translate my students' passion for social justice into a "heated" discussion of persuasive facts. You can too. ◆

[1] 259 F. Supp. 523 (E.D. La. 1966).
[2] 394 F.2d 342 (5th Cir. 1968).
[3] Section 201(b) of the Civil Rights Act of 1964 enumerated specific types of business covered by the Act.
[4] 388 U.S. 307 (1967).

A Telling Last Class

Hollee S. Temple, West Virginia University College of Law

For my final class, I built upon an idea mentioned at last year's LWI conference: a "lightning round" in which students would have a quick public speaking opportunity prior to presenting full-blown oral arguments. I wanted to both raise the stakes and give my students a chance to meet their opposing counsel before our oral arguments, so I combined my two sections for this final class. When my 44 students arrived, I had written two statements on the board:
1) Top 10 Things I Can Do to Impress the Partner on my Persuasive Writing Assignment and 2) Top 10 Things I Learned in LRRW to Take to My Summer Associate Position.

I began the class by telling students that as soon as I finished giving the instructions, they would need to find their opposing counsel (this made sense because it gave them both a chance to meet and also an opportunity to figure out their brief-exchanging plans). I framed the task for the final class as a "game," a trick that I used to remarkable effect all year (students were always more interested in "playing a game" than in "completing an exercise").

Next, I directed the students to the statements on the board. I told them that they would be creating two "Top 10" lists with their opposing counsel, and added that they would need to be particularly diligent for two reasons. First, they would soon be asked to share an item from their lists with the entire class, but I wouldn't reveal which side of the room would be charged with which list until after they had worked in their teams. Second, I made a "house rule" that no student could repeat something another student had said (this provided a strong incentive for a lot of brainstorming).

I gave the students about ten minutes to complete this task. Showing no signs of end-of-the-semester malaise, the students dove into the game, and the room was abuzz with conversation. Most of the teams wrote at least 15 discrete items for each list!

After the ten minutes were up (and I clarified which side of the room would tackle which "Top 10 list"), I told the students that before they revealed their items, I wanted them to stand and introduce themselves with a "May it please the Court, I am …" introduction.
This was, of course, practice for the real oral argument that would take place the following week.

The students' responses were both educational and gratifying. The students had actually absorbed the persuasive techniques that I had presented in the second semester, and moreover, they were excited to stand up and share their knowledge. Their suggestions for the "Things I Can Do To Impress the Partner" list ran the gamut, from "humanize your client" to "avoid misleading the Court" to "don't forget about proofreading." Surprisingly, even though it was the last class, most of the students took notes on the tips that their classmates had shared.

When we got to the "What I Learned in this Class" list, I was nervous. What if the students didn't think they had learned ten things over the year? But my concerns were soon allayed, as I heard the "zingers" that I had repeated all year coming back at me. "No one cares what we think," one student said, giving a nod to my catchphrase for reminding students to ground arguments in authority. "Don't misspell the client's name," another said, adding that an interviewer had recently remarked that he was one of a handful of students to

Teaching IRAAC: The Power of Self Discovery

Angela Caputo Griswold, University of Maine School of Law

Legal paradigms work. Convincing students of this fact, however, can be a challenge. For many years, I imposed IRAAC, or one of its other forms, on students. I simply instructed students on the formula, told them of its benefits, and required that they follow it. To those students who were particularly resistant, I would explain that they should follow IRAAC anyway because legal readers expect to see information in a certain order and they needed to be mindful of their audience. Then I would add, "You will see the benefits eventually." In retrospect, this tactic is akin to telling children that they need to eat their vegetables to grow up big and strong. Not very compelling. Moreover, the learning process in my IRAAC classes was passive. This approach made me wonder whether I could find a way to engage the students in the process and get them to see the benefits of IRAAC for themselves, before any paradigm was even suggested.

My "best class" was really two classes in which my colleague Nancy Wanderer and I gently guided students to discover the benefits of IRAAC on their own. We decided to withhold IRAAC from students for two weeks at the beginning of the semester. During those weeks, we eased students into IRAAC.

First, we took advantage of the fact that students were just learning how to read cases, and we reviewed with them a particularly easy-to-follow case: a case that followed IRAAC form. We asked the students to read the case and think about the type of information the court conveyed in each part of the case. As we talked through the case, we discussed, indirectly, each part of IRAAC and asked the students to think about the order in which the information was presented. After, we discussed whether the analysis in the case was easy to follow. A number of students noted that it was much easier to follow than many of the cases they were reading in their various casebooks. That week, we asked them to pay attention to the order of the information in cases that they found easy to follow.

The following week, as one of our in-class exercises, we brought in two different versions of the same analysis. We used a simple, short, single-issue analysis. One version followed proper IRAAC order. In the second version, however, the IRAAC was out of order. All of the same information appeared on both versions; the only difference was the order in which it appeared. We asked students to read the two versions and to think about which version was easier to follow and why. Then we asked them to gather in small groups to discuss their findings. Each group then reported its consensus on which analysis they preferred and why.

All groups chose the "proper" IRAAC. As we went around the room and had students explain their group's preference, we kept a tally on the board of the "votes" and noted the reasons. What appeared on the board we could not have written better ourselves: a compelling list of reasons why the proper IRAAC was stronger. The students went through the IRAAC systematically, explaining each part and why the order made sense. They seemed to truly appreciate the order. We also asked the students to explain what they did not like about the mingled version. They commented that it was confusing and hard to follow.

After this exercise, we "revealed" why certain analyses are easier to follow than others. They all had one thing in common: They present the information in the same order. We then discussed that order, with the students describing each part of IRAAC and coming up with the words to construct the paradigm. When we were done, the familiar IRAAC was right there on the board in front of the class. "We," however, did not put it there on our own. The students constructed it. They owned part of it because they discovered it themselves. After revealing the code, we require that students follow it and spend a good part of the year learning how to use it effectively in different contexts, but we now have little to no resistance to IRAAC itself. Students now accept it as the helpful tool that it is. And that certainly is a good class! ◆

The Small Group Progress Conference

Susan M. Chesler, Widener University School of Law - Harrisburg

My best class occurred when I played the role of facilitator and not teacher. The class was a small group conference, where four to five students discussed the progress of their work on the appellate brief assignments. I was introduced to this type of class while I was an adjunct professor at New York Law School, and I incorporated it into my second semester Legal Methods class at Widener-Harrisburg.

How It Works

About a week before the group conferences, I advise my students that I will be playing the role of supervising attorney and that, as is regularly done in a law firm, they will be asked to discuss their anticipated arguments for the appellate brief. I tell them to be prepared to support their arguments with a discussion of the relevant facts and caselaw, but that we will not be referencing any specific cases by name. I also tell them to be prepared to discuss their theory of the case and any policy and equity arguments they can make to support their position.

The small group conferences are held approximately two weeks before the appellate briefs are due, and each one lasts for forty-five minutes. There are 4 or 5 students in each conference, all of whom represent the same client for the appellate brief. Every student is required to answer questions and discuss the issues during the conference. My initial questions target the relevant rules. Then, I ask the students to explain how those rules should be applied and what facts support their arguments. Several of my questions elicit the students' ideas about how they plan to deal with their opponent's potential arguments; I question them about the troubling facts in the record or about the cases I

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The Small Group Progress Conference

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discovered in my preliminary research that their opponent will likely use. I ask the students to describe their theory of the case, to comment on the other participants' articulated theories, and to explain how they plan to address the competing policy considerations. As the students begin to express a greater understanding of the issues, my questions focus more on their strategic decisions, such as which arguments to emphasize, whether to make arguments in the alternative, and how to effectively portray their client or the opponent to the court.

Why It Works

Not only does the small group progress conference simulate a practical experience (the report to a supervising attorney), it also encourages group discussion and stimulates independent analysis. Since my students are not permitted to collaborate or speak with each other regarding their appellate briefs, this class presents a good opportunity for students to have an open discourse and to learn from their peers in a controlled setting. In addition, my targeted questions require the students to delve more deeply into the facts and the law than they likely would, or could, have done on their own. Best of all, those ideas did not come from me, but through facilitated discussion among the students themselves.

The students also begin learning how to become effective oral communicators. For many students, oral discussion often leads to a better understanding of the issues. The group conference also enables me to level the playing field for the students before they actually begin drafting their final appellate briefs. By omitting references to specific case names during the conferences, students see gaps in their research, without having the other students "give away" the answers. Moreover, the students are required to make significant progress on their research and to begin formulating their arguments in preparation for the conference, and are usually well-prepared even though this "assignment" is not graded.

Finally, although student feedback is not always indicative of success or failure, I received overwhelmingly positive feedback from my students. The students at the top of the class felt the progress conference allowed them to collaboratively discuss the issues and come up with more sophisticated arguments and strategies. For students who were still struggling, it provided them with the appropriate level of guidance to complete their research and start developing stronger arguments.

Because students improve so many skills during the small group progress conference, this, to me, is my "best class." ◆

Beethoven's Fifth and IREAC

Ann Cronin-Oizumi, Saint Louis University School of Law

On a cold day in November 2002, I realized that a dangerous ennui had crept into my classroom. I'd required students to use an IREAC structure and methodology (Issue, Rule, Rule Explanation, Rule Application, Conclusion) for their legal analysis and legal writing. Beginning with orientation the past August, I had also urged students to use an IREAC template I had proudly developed during my first year of teaching the year before.

By November I thought students seemed bored and skeptical about the worth of IREAC, the method I'd now promoted for three months.

I worried that I might lose students' confidence in me for the rest of the year if I didn't act quickly. I asked myself: "What to do? What remedy?"

By chance I saw a possible solution in a non-legal source: Beethoven's Fifth Symphony. I noticed the powerful structure of the Fifth for the first time. I also thought I heard each element of IREAC in the Fifth.

I decided to make the Fifth the basis of a class presentation. I wanted to create an aura of mystery at the beginning of the class. I brought my boom box and my CD of the Fifth to class. I placed the box on a desk in the middle of the classroom, CD inside, to give the boom box "elephant impact." I taught for a while. Students glanced at the boom box continually.

On the board, I wrote vertically:

Issue

Rule

Rule Explanation

Rule Application

Conclusion

I told the class I intended to play music that would demonstrate both the structure and content of IREAC and that I thought the piece began with the "Rule." I told students to listen to the structure of the music as well as its substance. I would place a check mark on the board whenever I heard notes that I thought expressed an element of IREAC.

Dramatically, I pressed the "on" button of my boom box. Students gasped when they recognized the Fifth. As Beethoven's varied repetitions of "dun, dun, dun, dun" played in stunning succession, I placed check marks on the board next to "Rule," "Rule Explanation" and "Rule Application." Students laughed and clapped as they followed the music and my check marks.

We listened for about twenty minutes. I continued to place check marks next to each element of IREAC when I thought I heard one reflected in the Fifth. Then, reluctantly, I checked "Conclusion."

The students' first open memorandum was due that Monday. I told them to go home and compose their own best "symphony." I suggested they call it their "Symphony #1" (not Beethoven's symphony, not mine). Everyone cheered!

Fortunately, my Beethoven's Fifth/IREAC presentation dispelled the ennui that had crept into my classroom. Each year, a similar demonstration with subsequent classes has produced the same results.

My Beethoven's Fifth/IREAC demonstration has thus become the heart, soul, mind, and music of my "best class." ◆

reasons. First, by this point in the academic year, my students were comfortable with me and with each other. Second, the issues arose naturally from the subject matter of the problem. See Lorraine Bannai and Anne Enquist, *(Un)Examined Assumptions And (Un)Intended Messages: Teaching Students To Recognize Bias In Legal Analysis And Language*, 27 Seattle U. L. Rev. 1, 9-10 and 37-38 (2003).

[2] *Id.* at 3-4.

[3] *Id.* at 4.

[4] *See generally id.* at 10-22.

[5] *See generally id.* at 23-31.

[6] *Id.* at 27-28.

Omitting Glue Words

Mary Beattie Schairer, Quinnipiac University School of Law

"The glue words [exercise was] most helpful in the editing process and creat[ed] a better overall product." "The in-class sentence-by-sentence scrutiny of our memos was my favorite [exercise],[because] it illustrated a great method of reducing excess verbiage in our papers." These quotes, from this past fall's 1L student evaluations, are referring to the working words/glue words terminology and exercises from Richard C. Wydick's *Plain English for Lawyers*. In a year when the Legal Writing Institute presented its fifth Golden Pen Award to Professor Wydick, I wanted to include in this "Best Class" issue my own tribute to him.

This year, I was blessed with students who generally had done a lot of analytical writing in their undergraduate careers (the good news), but who admittedly were used to stretching their writing to fill the minimum page requirements of their undergraduate research papers (the bad news). We did in-class exercises in early weeks on active/passive voice and base verbs/nominalizations, but nothing really seemed to click until I told my students, a few days before a memo was due, to bring a hard copy of their memo-in-progress to class for some in-class editing. In that class, one thing I went over was the working words/glue words terminology from Wydick–working words carry the meaning of the sentence and glue words hold the working words together–and on the board we analyzed some examples from Wydick. I then told them to choose a paragraph from their own memo and to underline the working words, circle the glue words, and then lessen the number of circled words.

The genius of the exercise is in its simplicity. Novice law students, overwhelmed by the complexity of legal reasoning, find this straightforward exercise refreshing. Their overloaded brains may not be able to conceptualize "nominalization," but when told to rid their papers of glue words, instinct seems to take over and their nominalizations, passive voice, compound constructions, and word-wasting idioms (well, most of them anyway) disappear.

One other point, regarding editing onscreen. The concept of physically taking an editing pen to rework text on a hard copy was new to some of my students, as I had suspected. Thus the act of bringing a paper draft to class was a novel concept that in itself sent home a message: print drafts to edit them.

An early draft of this article was between "the ideal length . . . of 500 and 750 words." After editing, I'm now down to 426. As they say, if I had more time, it would be even shorter. ◆

Keeping It Real

Gail Stephenson, Southern University Law Center

The heating system went down at the Law Center over the Martin Luther King holiday break. No one was there to notice as the building developed the chill of a meat locker. The following Tuesday morning, the outside temperature was 41 degrees, frigid by Baton Rouge standards. The students sat in the classroom dressed in coats, hats, and scarves; one claimed she could see her breath. I feared it would be my worst class ever.

We had started the semester of persuasive writing by reading Jon Scieszka's *The True Story of the 3 Little Pigs* in our first class. Students who had small children volunteered to read the story. I wove in theme, audience, point of view, and storytelling during that first class. The exercise was "real" for the students because it gave them a chance to see the other side of a story most of them already knew well.

We spent the second class of the semester comparing and contrasting the description of facts in Judge E. Gordon West's trial court opinion in *Miller v. Amusement Enterprises, Inc.*[1] with the federal Fifth Circuit's *en banc* decision reversing Judge West.[2] Judge West dismissed the suit Mrs. Miller brought under the Civil Rights Act, holding that Fun Fair Park, a Baton Rouge amusement park, was not a "place of exhibition or entertainment"; thus her action could not be maintained.[3] He dispassionately described the park as two and 3/4 acres of land with mechanical rides, an ice skating rink, and concession stands. He devoted one short paragraph to the incident giving rise to the suit, stating that an attendant who mistakenly rented a pair of skates to a black child merely "retrieved the skates" and "informed" her that the facilities were open to "white people only."

The Fifth Circuit, on the other hand, painted Fun Fair Park as a child's paradise. The court named all the major rides and the delectable refreshments available for purchase and noted the park's advertising slogan, "Everybody come." Moreover, the court detailed the incident, describing how a manager had become involved, "snatched" the skates away, and "announced" that the park did not "serve colored." The court concluded its fact summary with a poignant portrait of Mrs. Miller's daughter crying while the bystanders "began to giggle" and "appeared to be amused."

Many cases would have served the purpose of comparing and contrasting fact summaries told from different points of view, but *Miller* was perfect for my class for two reasons. First, I teach at a historically black university with a commitment to social justice. Second, the case was real to my students because it was set in Baton Rouge and many of them had spent happy childhood days at Fun

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starred Sandra Bookman, who had "dog-napped" her dog show rival's prize-winning German Shepard from a local kennel. I asked whether the students had created a persona for Ms. Bookman. At first, some were embarrassed to admit how much they had thought about Ms. Bookman, but once the conversation got rolling, they had all kinds of ideas, ranging from her hair ("she has a bad perm") to her attire ("she has the typical Seattle uniform–jeans and a sweater–and she has a million of the same sweater in her closet") and even to her aroma ("she smells like cats"). After thoroughly dissecting Ms. Bookman's appearance and personality, we turned to the main character from our second memo and had a similar conversation.

By now, the class was disarmed and laughing, but curious where we were going. We moved to the current memo problem, in which the defense had raised a *Batson* challenge after the prosecution struck the only two jurors on the panel who appeared to be Muslim. While the first juror engendered little conversation, the second juror, Antonio Jackson, was the subject of much discussion. Although other attributes were raised, the discussion of Mr. Jackson centered on race. In fact, the first comment was that he was a large, imposing African American man. Although his race was never mentioned in the voir dire transcript, most students agreed that he was black, and several said that he looked like actor Samuel L. Jackson.

Now it was time to deconstruct these images. Why, I asked, do most of you think that Mr. Jackson is African American? Well, I was told, he attends a mosque; therefore, he is Muslim. He doesn't have an Arab-sounding last name; therefore, he is a convert. Many Muslim converts are members of the Nation of Islam; therefore, he is black. We then moved the discussion to a general exploration of the bases of their beliefs about all the characters. Students mentioned personal experience, second-hand information (i.e., my friend has a friend who is Muslim, and she told me . . . .), media, even name association (i.e., Antonio Jackson and Samuel L. Jackson), and, of course, stereotype.

We discussed the relative weight of these influences, recognizing the increased reliance on stereotype and second-hand information when personal experience is lacking. The point here was to have students think not only about these fictitious characters but also about the assumptions and inferences that they make about the parties, the attorneys, and the judges, whenever they read a case, and how those assumptions and inferences may color their views about and understanding of the cases.[3]

Next, we turned to language choices.[4] I gave the students a handout with the following instructions: "For each set of words in brackets, choose the most appropriate term." There were a series of approximately a dozen sentences related to our current problem, including the following:

The Court asked the panel members whether any of them believed that police treat [minorities – people of color – non-whites] differently or unfairly.

Mr. Aitkin, [an African-American – an African American – a black – a Black] juror, stated that he believed that he was singled out for unfair treatment based on his race.

First, the prosecutor excused [Ms. Habib – Mrs. Habib], who is a [housewife – homemaker – domestic engineer – stay-at-home mother].

When they had finished, I explained that I had used an intentionally ambiguous word in the instructions, and I asked them how they interpreted "appropriate" when making their choices. In response, I received every answer I could have hoped for: "we need to be precise," "we should use what is currently popular," "we should look at how people describe themselves," "we should try not to offend anyone." We then discussed (1) how to balance these goals, (2) how to figure out which words are precise and accurate, and (3) how to know who we are trying not to offend. To do this, we got fairly specific, looking at excerpts from the usage notes in *The American Heritage Dictionary of the English Language*, searching for websites that might offer clues, and running searches in respected newspapers to see what they used.

Next, we tackled legal arguments.[5] I gave the class a handout with 10 arguments raised by parties in the cases that they had read for this memo. For example:

Religious people in general tend to be less likely to sit in judgment of others, and therefore, are not "good" jurors for the prosecution.

People who wear traditional religious symbols such as crosses and Stars of David tend to be more observant in their religions than other people are.

When exercising peremptory challenges, attorneys should be permitted to make inferences about potential jurors based on their religious affiliation. Doing so is no different from making inferences based on the jurors' employment, level of education, or appearance.

For each argument, we discussed whether it was based in fact; if not, whether it was based on bias or stereotype; and even if it was based on bias or stereotype, whether it was a legitimate point for an attorney to raise. In addition, we touched on issues of professional responsibility such as what to do when a partner or a client asks a young attorney to make an argument that she finds personally objectionable.[6]

I consider this class one of my best because we addressed a sensitive and potentially difficult topic in an engaging way. By starting with a non-threatening, even fun, exercise, the students let down their guard. Moreover, by discussing bias issues in the context of their current problem, they could see the necessity of confronting these issues and the need to have tools to do so effectively. Finally, it challenged me to come up with creative ways to present the material and to handle a charged, but interesting, class discussion among a diverse group of students. ◆

[1] I chose to raise these issues in connection with this memo for two

"Take the Lime and the Apple and Mix 'em All Up"

Kirsten K. Davis, Arizona State University College of Law

It is in the areas of ambiguity that transformations take place.
–Kenneth Burke

Every year I face the same problem. My new 1L students believe that they will be learning *the law* in law school, and every year, they are relentlessly devoted to this myth. "Answers," they demand, "answers!" Yet, much to their dismay, there are no answers to be found–"gray areas" dot the legal landscape. "It depends" is the typical answer to a "yes" or "no" question. Frustration abounds.

My best class comes early in the semester when I attempt to demonstrate to students that law school is not about answers but about embracing the ambiguities of the law, analyzing all possibilities that arise in those ambiguities, and making arguments in those zones of uncertainty. I invite them into the zones of uncertainty through an exercise called the "Grocer's Dilemma."

The Grocer's Dilemma is not new; it has been written about in *The Second Draft* as well as in other newsletters and law journals.[1] It has been applauded for its ability to introduce students to issue analysis, rule synthesis, analogy and distinction, and the hierarchy of authority. It is an all-purpose tool for introducing students to the basics of legal analysis and writing. Yet, perhaps what it does best is change students' perceptions of the purpose of a law school education by making those relatively abstract purposes material, tangible, and familiar: students use what they know about apples, limes and potatoes to learn about the transformative potential of focusing on ambiguities and arguments, not on answers.

The Grocer's Dilemma exercise is simple to lead and takes one class period. I start with a short story.

> *You work for a Grocer who is leaving for vacation. She tells you that while she is gone, to attract customers, you should put new shipments of produce in the store window. Before she leaves, she places a shipment of red apples in the window and a shipment of russet potatoes in a bin in the back of the store. The Grocer goes on vacation. The next day, a shipment of limes arrives.*

Then I ask, "Okay. Where do we start?" Students (who have done the reading) fairly quickly figure out that we are on our way to learning the steps of legal analysis. Students begin by defining the issue (do the limes go in the window?), they figure out the Grocer's "attractiveness" rule, and they understand that two cases give guidance on what "attractiveness" means. Here is where the real learning begins.

When asked what makes an apple "attractive," students have many different answers. Some say color. Others say flavor. Still others say the association between health and apples (students begin to see here that well-known and deeply ingrained cultural norms can affect the law–"an apple a day keeps the doctor away"). Others recognize that the apple's "portability" and "snackability" can make it attractive. Others say it's all of these things combined. The potato yields similar types of answers as to why it is "unattractive." They focus on the potato's dull color, irregular shape, lack of sweetness, and need to be prepared. During this process, the students see that the meaning of the "attractiveness rule" is ambiguous and that each interpretation of the rule is a reasonable one.

No one, single, universal "truth" of a "legal" rule, you say? Who knew?!?

And it only gets better from here. Students then get the chance to analyze whether the lime goes in the window. And they quickly learn that, like the meaning of the "attractiveness rule," the proper placement of the limes is not clear. Some students will make masterful arguments about the lime's similarity to the apple in bright color, shape, and overall "visual attractiveness." Other students will be quick to point out that it lacks the apple's "snackability" and its association with good health. Some will respond by noting that limes are the fruit of choice for margaritas, which can be associated with good times. Others begin to see the importance of context; if Cinco de Mayo is approaching, the argument for the limes in the window becomes stronger. And the arguments continue until the students have squeezed every last bit of argument out of that pesky lime (and are ready for lunch!).

I end the class by asking the students, "So, where *do* the limes go?" Students have an "a-ha" moment here; the limes go in the window–unless, of course, they go in the back of the store with the potatoes. There is no right answer, only the possibilities of transforming the lime into an apple–or a potato–through argument.

I find that students are transformed by the "Grocer's Dilemma." They now have a concrete representation of the ambiguities the law presents and their role in navigating those uncertain waters. They also have a "catch phrase" to quickly convey this purpose to one another: "Law school is always about the limes." This phrase has been widely adopted among our students; it even once appeared in the student newspaper!

My best class is my best class because it represents a transformation of my students' orientation to law school—from "answer seekers" to "legal problem solvers," ready to embrace the ambiguities of the law. ◆

[1] *See* Charles R. Calleros, *Reading, Writing and Rhythm: A Whimsical, Musical Way of Thinking about Teaching Legal Method and Writing*, 5 Legal Writing: The Journal of the Legal Writing Institute 2 (1999); Jane Kent Gionfriddo, *Using Fruit to Teach Analogy*, 12 The Second Draft 4 (Nov. 1997); Suzanne E. Rowe and Jessica Enciso Varn, *From Grocery to Courthouse: Teaching Analytical Skills to First-Year Law Students*, 14 The Second Draft 14 (May 2000).

The Next Step

"So It's Like We're Really Lawyers?"

Linda C. Fowler, Southern University Law Center

This spring semester was my first time teaching advanced legal writing at the Southern University Law Center. This course is a one-hour class, taught during the second year, with a focus on client letters and pleadings. This is also the last required legal writing class.

Southern is one of a small number of historically black law schools in the United States and the alma mater of many civil rights pioneers. One of the reasons I was attracted to teaching at Southern was that so many of our graduates will open their own law practices upon graduation. As many of my students will be, I was a solo practitioner for six years before beginning teaching nine years ago. I know the problems associated with being out there alone, trying to help people in areas such as family and juvenile law, and feeling there is not a lot of guidance available.

What should I teach during this last opportunity to sharpen their writing and analytical skills? How will it help them the most to carry on the proud tradition of Southern's law school?

I took the approach that these were my junior associates in a law firm, and we were collaborating in representing our clients. I held a mock client interview in which the class participated, asking questions of the "client" as they would in practice. I shared forms from my practice days–client interview forms, timesheets, etc. I showed them how much information is available on-line; our state bar association web site has helpful forms such as retainer agreements and letters of representation. All the forms required for the local family court are on-line. These are some of the resources that will help them get started practicing law.

After three or four of the weekly classes, one of my students raised her hand and said, "Oh, so it's like we're really lawyers–and these are our clients!" Yes! About that time, I noticed an increased interest among the students. During in-class drafting exercises for pleadings, students were anxious for feedback even though their work would not be graded. They had a lot of questions about the on-line materials, and they asked for copies of my forms. When I realized that my students were "getting it," that this would help prepare them for practice, I couldn't help but think that this was my best class! ◆

Keeping Students Interested While Teaching Citation

Anna Hemingway, Widener University School of Law

The Second Draft's call for submissions stated "your best class might be on analysis, research, persuasion, writing mechanics, or even citation." A best class on citation? Is that even possible? Well, as it turns out, *yes*. For me, one of my best classes was on the dreaded topic of citation.

I have always had a love/hate relationship with teaching citation. I love it because the topic is rather concrete. Citation is one of the few topics taught in law school in which the answer to students' questions is not "it depends." On the other hand, I hate it because, well, it is rather concrete. Citation is one of the few topics in law school in which the answer to students' questions really *is* "that's right" or "that's wrong."

The mechanical quality of citation makes it a challenge to teach. The material itself really is not that difficult, but the process can be intimidating to students because of its meticulous nature. In the past I have spent an unbelievable amount of time trying to come up with innovative techniques to make citation interesting for students. I would draft exercises involving superheroes, Star Trek characters, and even famous sports figures. The result? Confused, disengaged students. My students just did not seem to care very much about *Mark McGwire v. Sammy Sosa* or *Lois Lane v. Clark*. Rather, they found the process frustrating and unrewarding.

One day a few years ago, I walked in to teach a citation class, armed with my latest clever exercise. I was not looking forward to the class; I had an uneasy feeling that, despite my efforts, the students would once again have an adverse reaction to citation. As I was opening the door to the classroom I had an idea that I thought might just work. The students had been working on a closed memo assignment involving a statute and three state cases. At that very moment I decided to introduce citation to them by having them put together simple citations involving the authority for their closed memos. I had them break into small groups and draft citations in both full and short form. I even had them try "*Id.*" The result? Interested, engaged students!

By presenting citation in the context of their own memo problem, I was able to get the students' full attention. They were invested in the process because they knew that the work done in class would help them write their memos at home. Yet, I did not have to worry that I was doing the work for them by giving students the right answers. I knew that proper citation form would vary depending on how they were using the cases and statute in their memos. Through this exercise, students got a good foundation for citation basics because they worked together to come up with the "right" answers. As for *McGwire v. Sosa*? I deposited that exercise in the recycle receptacle on my way out of class. ◆

Teaching Students How to Receive an Assignment

Michael Higdon, William S. Boyd School of Law, University of Nevada, Las Vegas

My best class was a trial advocacy class I developed and taught this last semester. I put this class together

that there might be a quiz of some sort.)

The students are instructed to raise their hands if they know the answer to a given question. If less than 13 (out of 20) students raise their hands, then I put a point in the "subtract time" column. (Each "point" is worth two minutes of time to be added or subtracted to the time I already owe them.) If 13 or more students raise a hand, then they *potentially* get a point in the "add time" column. If, however, a student raises his/her hand, and that student tells me the wrong answer when I call on him/her, then I get *double points* in the "subtract time" column for that question.

Having done this for several years, I've found that, for most questions, between ten to 15 students usually raise their hands, which always makes for a lot of fun with the students who are on the fence when only eleven or twelve hands are in the air.

A few sample questions
(I usually ask 25):

- Are reporters arranged chronologically or by topic?
- T/F: All appellate court opinions are published.
- A case citation contains seven things. Name 5 of them.
- In what reporter would you find federal district court cases?
- In what reporter would you find this case: 112 N.E. 543?
- What is the meaning of the abbreviation "Ex rel."?

After the questions, I total up the additions and subtractions. (The results vary, but normally only a few minutes are either added or subtracted.) I go over the answers at the end, usually to a chorus of "Oh, yeah" to the ones the students missed. I use the game questions as a springboard for the rest of my discussion on Reporters and ALWD, and I've always found that class participation–both in answering and asking questions–hits its highest level of any prior class.

Even though students come into class uninterested and glossy eyed, "Add Time/Subtract Time" engages them in a form of active learning that really draws them into the subject matter. Moreover, students genuinely enjoy the class. The exercise gives them their first sense of working together, of getting away from the competitive law school environment. For once, it is not students vs. themselves, but students vs. the professor. It is the first time I see them bonding as a class. As an added bonus, it is a fun class for me before jumping into the abyss of merriment we all call grading.

For more information on this exercise, you may contact Chad at Chad.Noreuil@asu.edu. ◆

All Rise

Julie Oseid, University of St. Thomas School of Law

I really can't call it "My Best Class" because I didn't teach the class. I can only claim credit for having the good sense to ask Minnesota Supreme Court Justice Paul Anderson to speak to my class. Justice Anderson spent 50 minutes with my class of 30 students. Without a doubt, it was the best 50 minutes of my first year of teaching.

As you might suspect, Justice Anderson made many of the same points I emphasized all year. So why did I see the light in my students' eyes that I see in my teenagers' eyes when someone else tells them something I have been preaching? That old legal writing adage–consider the weight of the authority! In this case, Justice Anderson was binding, on point, and current. Plus, Justice Anderson was captivating. He had great stories, a great delivery, and a great presence. It doesn't get any better than that.

Justice Anderson started by mentioning Bryan Garner's division of the legal writing process into three parts: brainstorming (the mad scientist part), organizing (the architect and builder part), and creating (the artist part). He then explained that judges write opinions not only because of *stare decisis*, but because writing is the best way to test the soundness of reasoning. By writing, the drafter is forced to think about the issues and make sure everything holds together. He told us that he redrafts his opinions 20 to 25 times and reads them out loud at least three times before publication.

My students find it hard to believe that all the details really matter. Justice Anderson converted them. He explained that the Minnesota Supreme Court rules require a specific type of binding for briefs. He admitted that this might seem like a minor rule, but he then asked the students to imagine him up late at night reading a brief that is inappropriately bound in a way that cuts his hands. Now something that seemed like an arbitrary, picky rule has a real life context.

I was particularly fond of his last comment, which went beyond legal writing advice; it was good life advice. He urged the students to take advantage of opportunities. I smiled to myself. I am grateful that I took advantage of the opportunity to invite Justice Anderson to my class. Oh, I know I can't have a distinguished judge teach my class every day, but I plan to invite a judge to visit my class every year so I can repeat "My Best Class." ◆

Recognizing Bias in Legal Language and Argument

Mimi Samuel, Seattle University School of Law

Our first-year curriculum includes a class to help students explore some of the biases inherent in making choices about language and legal arguments. While I have tried this class different ways, I was particularly pleased with the results of this year's class, which I held in the spring semester, while my first year students were working on a memo problem involving an issue of religious discrimination in jury selection.[1]

At the outset, I explained that we would explore the biases that all of us–students, faculty, lawyers, and judges–bring to our view of legal problems.[2] But I also told the students that the class was *not* about being "politically correct" or about telling them what they should or should not think or say.

To start, we returned to our first memo problem of the year, which

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very careful about not making any fast movements because the turkey has very keen sight. The hunter has to know how to use his shot gun so he can aim correctly and hit his target. Otherwise, he can harm another.

Similarly, the legal writing student has to know how to use his tools. Our tools are our books, our pens, and our words. We have to practice so we can write good briefs to defend our clients. Your mouth is a weapon, Bill said, and you can use it to help or hurt someone. For example, one word from your mouth can take a child from his mother. A stroke of your pen can put a man behind bars for many years. Or, your word, your brief, and your argument can win a case. So you have to use *ethics* in your practice of the law.

The class was mesmerized. Students kept practicing, and the hat game became one of my best oral arguments class. And, after that, I always used Bill's talk to introduce my ethics lecture. ◆

Working Backwards to Generate Arguments

Deborah Mostaghel, University of Toledo College of Law

During the early stages of writing their appellate briefs, students thrash around under a load of material they don't know how to control. Between the many facts and the masses of research, they often worry they will miss important arguments. I now schedule a class to show students how to take control. By using "ends-means reasoning," an idea I first came across in *The Legal Writing Handbook*, § 9.6.1., 320 (3d ed., Aspen 2002) by Laurel Oates, Anne Enquist, and Kelly Kunsch, I show students how they can generate arguments by reasoning backward from the result they want to reach.

I illustrate by using the last office memo of the fall semester. Working backward, we identify each step that our client must prove to attain the relief he desires. Our goal is to find our client's every argument.

On the board, we chart what our client, Mr. Wilson, wants. He wants Mr. Baldwin to stop putting on concerts in the park adjacent to Mr. Wilson's home. How can he get Mr. Baldwin to stop? He must get an injunction. How can he get an injunction? He must prove that the concerts are a nuisance. How can he prove that the concerts are a nuisance? He must prove the elements of nuisance. How can he prove the elements of nuisance? He must identify each element, explain what it means, and show how the circumstances illustrate the element. How can he do that? He must first show that the concerts cause hurt or damage. How can he prove this first element? He must define it. Then he must illustrate it using case law. Then he must show how Mr. Wilson's situation is like the examples in the cases. Then he must conclude that Mr. Wilson satisfies the first element. And so on.

Next, we chart what the defendant wants. He wants to continue putting on concerts in the park. How? He must convince the court not to grant the injunction. How? He must show that the concerts are not a nuisance. How? He must work through the elements of nuisance, showing that the concerts do not fit the definition and are unlike the case law examples.

Working through each side's arguments in these reverse flow-charts forces students to identify every step in the argument. Students see graphically where the two sides' arguments mirror each other and where they don't. These non-convergences are the sources of counterarguments. For instance, Mr. Baldwin says that the concerts comply with city ordinances. Students must find Mr. Wilson's refuting argument, the rule that something lawful can still be a nuisance. Further, students notice that Baldwin has few good legal arguments. He must make policy arguments, or his side of the chart will be fairly empty. We did not need to make policy arguments for Wilson because he had strong factual and legal arguments. This is an eye-opener for students. They see a concrete example of the different types of arguments that can be made and realize the importance of thinking through their opponent's arguments to make their own side's arguments more complete. For example, when we charted Mr. Baldwin's policy argument that the community needs entrepreneurs, students realize that they can strengthen Mr. Wilson's arguments not only by refuting Baldwin's policy argument but by incorporating a policy argument specifically for Wilson.

Students and I both enjoy the class. Students report that they make use of the reverse engineering procedure to help them find arguments and create some order out of the chaos of the early phases of drafting the appellate brief. ◆

Add Time/Subtract Time

Chad Noreuil, Arizona State University College of Law

It's the day they turn in their first memo assignment. Yawning typically precedes a wave of uninterested stares. Ugh. We've all been there, and we all know it can be a tough class in which to get anything accomplished. Not a likely candidate for my best class, and maybe it is not my very best, but it is one of my best early classes in the fall semester.

Let me preface this by noting that I am notorious for going over the allotted class time by five or ten minutes pretty much every class. I always tell the students that I will give them back any time that accumulates some day later in the semester (which does a great job of minimizing the rustling as the end of a class draws near). After the memo assignment is turned in, I tell them that we're going to play "Add Time/Subtract Time."

How it works

I write out two columns on the board–one indicating that I will "add time" to the total I already owe the students and one indicating that I will "subtract time" from the total I owe. I then explain that I will ask a series of questions based on the assigned reading for the day's class. (The assigned reading for this class is their first introduction to Reporters and ALWD. Because we all know students rarely read any assignments the day a memo is due, I strongly encourage them to read before this class, even hinting because I wanted to make it easier for my students to make the transition from law school to practice.

To accomplish this goal, I first introduced the students to the wide range of legal documents beyond the basic memo and brief complaints, answers, motions, oppositions, and discovery documents that first-year lawyers are often called upon to draft. However, in my experience, the biggest problem first-year associates face is simply not knowing how to receive an assignment from a senior partner.

Because of their busy schedules, legal employers often do not do a very good job of giving assignments. Many of us remember leaving a partner's office having little idea of what exactly we had just been asked to do or, even worse, thinking we knew what to do only to discover upon completion that our boss wanted something completely different.

To teach my students how to receive an assignment, I informed the students on the first day of class that all assignments would be given orally. I then instructed the students how to receive an oral assignment. First, students were told they must always listen to what the partner says and write sufficient notes so that they may recall the information later. Of course, listening is key and note taking should never get in the way of actually hearing what the partner is saying. Second, the students were instructed to look back over their notes and ask about any obvious questions that may have arisen. Most importantly, the students were instructed to never leave the partner's office until they had answers to the following questions:

1. What exactly has the partner asked you to do?
   A partner may ramble on about research for a motion, but does the partner want you to just do the research or to also write the motion?
2. How much time can you spend on this project?
3. Can you use Lexis or Westlaw?
4. When does the partner expect to see your draft?
5. If being asked to draft something, does the partner have a sample of how she likes such documents to look?
6. Is there a file for the case, and, if so, may you see it?
7. What is the client billing number?

Subsequently, whenever I gave assignments in the class, I would leave out some key facts as well as the answers to the above questions, thus forcing the students to explicitly ask for the information, which they often forgot to do. Although I allowed students to ask questions later on, I would answer only those questions that I had not already answered in class. Predictably, the students initially hated this method of giving assignments. By the end of the semester, they still were not that fond of it. Nonetheless, by the end of the semester, the students were routinely asking and getting all the relevant information while receiving the assignment. Knowing how much easier my law practice was once I was able to adequately understand what my bosses expected of me, I feel that this was my best class. ◆

The Law Firm Experience

Susan Kosse, Judith Fischer, and Kathleen Bean of the Louis D. Brandeis School of Law, University of Louisville

Background

This year all three legal writing professors at the University of Louisville assigned the *McCreary County vs. ACLU of Kentucky* Ten Commandments case, which is currently before the United States Supreme Court.[1] The actual case involves two courthouses where the counties displayed the Ten Commandments. We modified the case to focus on only the McCreary County Courthouse display, which evolved from the Ten Commandments alone to the Commandments surrounded by patriotic and historical documents. We provided students with copies of the Amended Consolidated Complaint, Answer, two hearing transcripts and one affidavit that we drafted, and the lower court opinions leading up to the Supreme Court's grant of certiorari. Students were prohibited from looking at the briefs or using any of the work product from the real case.

Because the case involves our state, the students were strongly invested, and they avidly read and followed news reports about the McCreary County Courthouse controversy. The timing was perfect because the actual case was argued before the Supreme Court just days before our students' final briefs were due and before the students made their oral arguments.

The Class

In an effort to help students imagine discussing the case in a law firm setting, we invited two attorneys associated with the case to meet with our classes: Frank Manion, who wrote an amicus brief for the American Center for Law and Justice on behalf of the County, and David Friedman, who represents the ACLU. Prior to the meeting with these attorneys, students, in small groups of petitioners and respondents, met together and drafted their questions. We then e-mailed the questions to the attorneys.

On the night of the meeting with the lawyers, all students were present in the room when the students "representing" McCreary County (in favor of the Ten Commandments display) asked their questions of Mr. Manion. Then the students "representing" the ACLU (opposed to the display) asked their questions of Mr. Friedman. The students each played the role of a "junior associate" consulting with the "senior partner" on the case. In the front of the room, we had a desk set up with office props. Students were called down one at a time to ask the "senior partner" questions.

One of the great things about the evening was that the students on the ACLU side got to hear the other side consult about the case, and vice versa. This opportunity is one they'll probably never have in practice. All of the students seemed very engaged,

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The Law Firm Experience

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and the sound of laptop typing was amazing! This student comment sums up the students' reactions:

> *"The Q&A helped increase my understanding of each side's strategies and positions from a practical, real-world point of view. The answers the attorneys gave were candid and honest, and really helped me frame and focus my arguments in my head. I feel much more confident about our position now than before I walked into class last night. I look forward to applying their responses to my brief. Thanks!"*

All of us would highly recommend this project. Even if the case is not as high profile, having real attorneys meet and brainstorm with the students is a unique and unforgettable experience. ◆

[1] Subsequent to writing this article, the United States Supreme Court decided this case.

Saving the Astronauts

Lisa T. McElroy, Southern New England School of Law

Throughout the school year, we emphasize one consistent theme: Because we hold clients' lives and livelihoods in our hands, a lawyer's job requires dedication, competence, and diligence. To an attorney, a legal problem may be routine; to a client, it is likely to be life-altering. What's more, while law school teaches students to think theoretically, they will learn upon graduation that law practice is anything but theoretical.

An effective way I have found to drive this message home is to show a clip from the movie *Apollo 13* early in the second semester, just as we're beginning to learn persuasive writing techniques. As you may remember, Apollo 13 was a real mission, taking place in April 1970 (long before most of our students were even a gleam in their parents' eyes). While the Apollo 13 spacecraft was intended to land on the moon, an explosion in an oxygen tank led to the failure of multiple systems aboard, placing the astronauts in peril, and leading to the second-most famous quote of the early space era, "Houston, we've had a problem."[1]

Yes, a problem. A big one. One for which aeronautic engineers were not prepared, despite all their *theoretical* planning and thinking and training before the mission ever began. All of the engineers in Houston, however, shared a common goal: They were not going to lose their astronauts. Like lawyers representing real clients, they had to think creatively to save the brave men who were, quite literally, lost in space, 200,000 miles from Earth. Because the astronauts knew how to fly an aircraft but not how to fix one, they were totally dependent on the Houston ground crew to get them home safely. As I discuss the problem facing NASA on April 13, 1970, students are able to make the analogy for themselves: The astronauts, the "clients," were relying completely on the expertise of the ground crew, the people in the advisory, "attorney" role.[2]

The best part of the analogy, however, comes later in the movie. After explaining to the students that the only way for the astronauts to make it back to Earth was to move into another part of the spacecraft, the lunar module, I then show them the movie clip in which the ground crew had to figure out, under time pressure, how to make the square carbon dioxide scrubbers on the command module side fit into the round air filter on the lunar module side, using only items on board the spacecraft. In the words of the flight director in charge of the Apollo 13 mission, "I suggest you gentlemen invent a way to put a square peg into a round hole. Rapidly."

And the engineers responded, dumping everything available on the craft onto a conference room table. "OK, people, listen up. The people upstairs have handed us this one, and we gotta come through. We gotta find a way to make this [holding up the square cartridge] fit into this [holding up the round one] usin' nothin' but that [pouring out the usable materials]. Let's get it organized . . . . Better get some coffee goin', too, someone."

And they figured it out, using the cover from a flight plan, some duct tape, and some bags intended for urine output. They saved the astronauts.

I like this example because it brings to life several concepts that I try to reinforce throughout the year. First, preparation matters. The ground crew had done multiple simulations to prepare them for systems failures, and while this particular type of failure was unanticipated, they were able to use their preparation to achieve a positive result. Second, you've only got what you've got. As attorneys, we would love to have a case perfectly on point, one that says without ambiguity that our client wins. Such a case is rare, however, and we're more often in the position of having to persuade the court, using available authority as well as a heavy dose of persuasion in the form of analogy and distinction, that our client can and should win. We have to make this [a somewhat helpful case] fit into this [our client's facts] usin' nothin' but that [all of our analytical and persuasive writing skills].

Last, of course, when we're under time pressure, when we're trying to find just the right analogy, when we're shouldered with the responsibility of saving a client's life and livelihood, it never hurts to get the coffee goin'. ◆

[1] Neil Armstrong's, "That's one small step for a man, one giant leap for mankind," upon touching down on the moon on July 20, 1969, would probably qualify as the most well-known.

[2] For a far less dramatic, but still instructive, example of how the ground crew had to "lawyer" from the ground, see pages 8-9 of the annotated transcript of the real Apollo 13 "problem" at http://www1.jsc.nasa.gov/er/seh/apollo13.pdf. In the transcript, the editor notes, "Another major event . . . threw a usually cool and calm astronaut into a mild panic . . . [an Apollo 13 astronaut] forgot to file his [f]ederal [i]ncome [t]ax return [and realized it after he was already in space]. 'How do I apply for an extension?' he asked. Amid laughter from Mission Control, he sought to explain: 'Things kinda happened real fast down there and I need an extension. I'm really serious. Would you . . . turn it in?'" Presumably, someone on the ground did some quick tax research, as Flight Director Glynn Lunney is quoted as saying later that "American citizens out of the country get a 60-day extension on filing. 'I assume this applies,' he added."

Here's a Shocker

Tracy L. McGaugh, South Texas College of Law

I had a professor in law school; let's call him . . . Satan. Satan had what I now know to be a well-worn trick. When a certain number of students were unprepared, he would slam his book shut and storm out of class in mock disgust. I vowed that if I were ever a professor, I would never punish the prepared masses for the sins of the unprepared few.

Squiggly screen fade to the present day . . .

During my teaching career, I have been, for the most part, satisfied with my students' level of preparation for class. However, one of my sections during a recent semester seemed to be different. I'd had to do a little more razzing and cajoling; we'd suffered a few more uncomfortable silences while students fumbled to find chapters in the books, pages in their notes. After a few weeks of this, though, I thought we'd all reached an understanding, and I was again satisfied with the level of preparation–except for two students; let's call them Mr. Smith and Mr. Jones. One day I decided I was going to call on Mr. Smith and Mr. Jones first, and then, when they were predictably unprepared, I would excuse them from the rest of the class time (the antithesis to Professor Satan's punishing trick). They would get the point. The rest of the class would see that I was really serious about this class preparation business. We would all move forward. I'm very clever, I thought.

I went to class, and called on Mr. Smith. Mr. Smith was unprepared; in fact, Mr. Smith had no idea what I was asking about. It took him about a minute to figure out exactly what I meant by, "You're excused Mr. Smith. Have a good week. We'll see you next time." As he packed up, I turned to Mr. Jones and said, "Mr. Jones, can you answer the question?" Mr. Jones looked perplexed, copped immediately to ignorance, and I excused him. Alright then. Down to business.

I then called on some of my good old stand-by students to get us back on track. But oh, the best laid plans . . . . I couldn't find a single prepared student. After running through about eight more students, I made an announcement: "I'm afraid I don't have half an hour to kick you all out by name. If you're unprepared, please leave now and let the rest of us move on with class." And they left in droves. I felt obligated to stand there as if things were going according to plan. But what I *really* wanted to do was say, "Are you joking me?! All of you are leaving? None of you were prepared?!" and then throw up. No wonder Satan just left.

When it was all over I had four students. That's okay. I came to teach, they came to learn. I went ahead with the plan for that class.

We talked about persuasive fact statements generally and the ones they read for class specifically. Then they brainstormed about how they could marshal facts persuasively for their trial brief problem. The four students worked together for two hours. It really was a great class. The four told me it was the best class of the semester. I pointed out that it was the first class of the semester in which everyone was prepared. Aha, they said.

After class, I went back to my office and sent an e-mail to the entire class offering to have a private session with any individual or group who wanted to talk about the persuasive facts material after they had prepared it. I had one taker. The rest of them were mad. I got it.

The next week was editing. The price of admission to class was a completed brief. In class, they would pair up, use a short critique guide, and critique each other's briefs. Students came with no-foolin' completed drafts. The class was lively and engaged. Afterward, almost every student in the class told me that the editing class was the best class of the semester. I pointed out with as much levity and humor as I could muster that this was the second class for some and the first class for many in which everyone was prepared. Aha, they said. The best class is simply the one for which everyone is prepared.

Now, let's squiggly fade to you reading this now. I hope you don't have to kick your students out of class to get this same effect. Maybe you can get some value out of just telling the story: "I have a friend in Houston, and one semester she and her students learned . . . ."

And if that doesn't work, you can always slam your book shut and tell them about Satan. ◆

Talking Turkey

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One of my best classes was when I introduced oral arguments using a technique from Toastmasters. (Toastmasters is an international public speaking organization that helps people speak better.)

On the particular day in question, the task was to pull an object from a hat; talk extemporaneously for two minutes on a subject related to the object that had just been pulled from the hat; and, in so doing, introduce the term ethics.

The hat was filled with objects: a spring, a ball, a cookie, a small carved

Legal writing is like wild turkey hunting!

wooden turkey, a pen, a plastic sword. One student picked the turkey from the hat.

So, he began: Legal Writing is like wild turkey hunting! Bill was an avid wild turkey hunter. When you hunt, you need the proper tools. As far as wild turkey hunting goes, the hunter needs a camouflaged outfit, a veil over his face, and his gun. He has to be

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