



Oral Argument: Practice Makes (Nearly) Perfect

Shailini George, Suffolk University Law School

During my first year teaching Legal Practice Skills, I anxiously awaited oral arguments. I was not alone: many of my students were excited to finally do some “real lawyering.” As a litigator, I felt most prepared and qualified to teach those “real lawyering” skills I felt I possessed.

As I began preparing to teach oral argument to my first year students, I thought back to my first courtroom experiences. What did I do to prepare for my first

summary judgment argument, and was my preparation successful? I remember my first summary judgment argument vividly. I read and reread my brief and the cases, but was stumped at the argument by a question the judge posed on an issue not covered in my brief. Fortunately, during my years of practice, I learned a great deal about effective preparation from another attorney in my firm, a seasoned litigator who asked me to help him prepare to argue an appeal before the Massachusetts Supreme Judicial Court (“SJC”). In that case, at the trial, my firm had successfully defended a car dealership against a wrongful death claim, while a \$14 million dollar judgment was entered against the co-defendant car manufacturer. I peppered the attorney with questions every time he practiced his argument. I attended the actual argument before the SJC, and saw how his preparation was rewarded. We had accurately predicted some of the questions and fleshed out weaknesses in the argument. That experience altered the way I prepared for my own oral arguments during my eight years of litigating, and planted the seed for an in-class exercise for my students.

During my lecture on oral argument, I told my students that they should be prepared to receive a number of questions from the bench (after all those years arguing motions, I relished the opportunity

to play judge, and I could guarantee they would be arguing in front of a “hot” bench: me). I suspected that unless they were forced to practice, most would do what I had done in the past: simply reread their brief and cases. Thus, I used this in-class exercise to encourage students to think beyond the memorandum.

Each of my classes was divided nearly equally into plaintiff’s attorneys, representing a woman accusing her employer of sexual harassment, and defense attorneys, representing the company. The students were to argue for or against the defendant’s motion for summary judgment. They were instructed to draft a question which they believed the judge might ask the opposition. The students turned these questions, with their names, in during the next class. I then called on each student, in random order, to come to the front of the class to answer one of their classmate’s questions. I warned them that although I would act as the chief justice by actually asking the question, each question would be identified as coming from “Justice_____” (giving the student drafter’s name). I set no limits on what materials could be brought to the podium.

I was nervous about what might actually take place during the class. With only a few minor glitches (discussed below), the exercise achieved my desired goals and more. The primary goal of the

From the Editors

Blank stares and silence. The legal writing class equivalent of a curtain call with no applause – and what we all want to avoid when teaching a concept that is difficult for students. This issue of *The Second Draft* is devoted to teaching difficult concepts, and turning the blank stares and silence into rooms full of nodding, smiling students who have their hands raised and their pens in motion. Our new publication schedule attempts to deliver these ideas to your offices at the beginning of each semester, so that you can implement teaching ideas from each issue. We are thankful for the large number of excellent submissions we received—it is clear that difficult concepts are being met and taught in a wide variety of interesting and effective ways across our profession.

We want to acknowledge Joan Malmud and Sandy Patrick, former editors of *The Second Draft*, who are entering well-deserved emeritus status with this issue, and have passed the baton to the next team of editors. Their assistance and input in creating the concept for this issue, collecting and organizing submissions, and in teaching us what we needed to know to produce a finished product, have been invaluable.

Finally, we welcome two new editors to this issue, Stephanie Hartung and Samantha Moppett, who volunteered without hesitation to step into Joan’s and Sandy’s shoes. We hope that you find the teaching tools and ideas in this issue as helpful as we did, and wish everyone a spring semester filled with students’ nods and “ahas” of understanding.

The Editors

Stephanie Hartung

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THE LEGAL WRITING INSTITUTE

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The President's Column



Terry Jean Seligmann,
University of
Arkansas-Fayetteville

Dear Members,

My column this time is on how LWI gets me through October. I am writing this in mid-October, a time of year that my LRW colleagues and I refer to as hell month. The first-year students are feeling the pressure of real and practice mid-terms as they read for class, and at the same time must research and draft what will become their final, graded memo in our course. For LRW faculty it is also an intense period. We have a pile of rewritten memos to return in time for the students to make use of our comments as they do their new memo drafts, and then before we know it, we are commenting upon the new drafts, and then conferencing for an hour with each of our thirty plus students. We are still preparing for and teaching the class and another course, and helping students in the library with their research. Plus, all the other aspects of the academic year are in full swing. So this is a time when I feel much more like an LRW professor than an LWI officer.

Thinking about writing this message, though, I realized how much of what I am doing is being supported by LWI and our legal writing community. For example, I am using a problem from the idea bank that Ruth Anne Robbins, Sonia Green, and Mimi Samuels created. It is a statutory issue, and I devoted a class session this week to a statutory exercise that Laurel Oates posted. In my next class I used Richard Neumann's discussion of conclusory, substantiating, and comprehensive legal discussion, and then had the students critique a sample analysis for its organi-

zation and support. When I get to the pile of memos this weekend, I will be commenting on them electronically, using the coaching that Kristin Gerdy gave me one morning last year by telephone. I will be inserting common comments that are saved on ClipMate, a software program she suggested.

For twelve years now, LWI and the legal writing community have supported my teaching. Whatever the skill, someone in LWI has thought about it deeply, researched material, and synthesized it into teaching material better than any I could come up with on my own. You cannot say that about most non-LRW casebooks and their teacher manuals.

Besides knowing it will be November when October ends, it is this support that keeps at least this teacher going. I am looking forward to the AALS meeting where we will get to honor a Golden Pen recipient and along with ALWD, give the Thomas A. Blackwell award to our colleague Mary Beth Beazley. The event is scheduled for Friday, January 6, 2006 from 7-9 p.m. I have also seen the outline of the program schedule that Tracy McGaugh and Cliff Zimmerman have put together for the LWI Conference in Atlanta that runs from June 7-10, 2006. The program includes exciting out of the box presentations regarding the theme of Legal Writing On the Move, a solid track for new teachers, and Anne Enquist's series of inspiring and challenging workshops for the Peak Years track (we vetoed the original working title, The Last Decade of Our Careers, although in October I feel the latter may be more appropriate to my endurance level). Linda Edwards and the site committee are making arrangements for us to enjoy each others company during the conference, too, including an event at the new Aquarium. Stay tuned for more details this winter via brochures and the LWI webpage.

That is all for now—productive procrastination has its limits, and that memo pile awaits.

Sincerely,
Terry Jean Seligmann



From the Desk of the Writing Specialist

Help for the Tone Deaf Legal Writer



Mary Barnard Ray, University of
Wisconsin Law School

"They just don't sound professional." About a decade ago, I began hearing this complaint from various employers about the writing coming from novice attorneys. The complaint was intermittent but persistent. Like a would-be singer who is tone deaf, a legal writer who lacks an instinctive ear for the inappropriate tone must compensate quickly—or seek a new profession. The seriousness of this tone deafness was driven home to me when I was employed by several legal firms to consult with employees who needed to improve the professionalism of their documents to avoid losing their jobs. This consulting experience taught me how to help law students avoid the problem in their future work.

The key to improving this professional tone lay in adjusting the writers' word choice. Some of these writers, thinking that they should write like they speak, used contractions, current slang, and less precise words to sound friendly. When their employers told them that this writing sounded unprofessional, they responded by adding scholarly terms, such as multi-syllabic, latinate words and unneeded legal terms. This response only exacerbated the problem because many of the contractions, current slang, and less precise words still remained. Other writers began by using the scholarly terms, but lapsed into more informal language when the right scholarly term did not come to mind. A few writers used the scholarly terms consistently, but received complaints that their writing seemed

aloof and unfriendly.

Although words that are either overly informal or overly formal can create the wrong tone, using a combination of too informal and too formal words created the most serious concerns. This vacillation between levels of formality made the writer's voice inconsistent, ranging from pompous or stuffy to emotional or careless, as the following examples illustrate. (Informal language is *italicized*; arguably stuffy language is **bolded**.)

Pursuant to Wis. Stat. XXX, statutory authority *says* the Board *can't* grant tenure within a department **if and when said professor** was previously **denied under the auspices** of the same department.

Ms. Jascoviak *could maybe claim* that the cruise line breached its contract when it denied her the right to **renegotiate** her departure time **as per** its promise. Finding a cause of action **upon which to rest** her claim *could turn out to be a big job* based on my research **thus far**. *I did find some things that seem to be hinting at something feasible.*

The writers needed to choose an acceptable level of formality and use words that fell within that level, which would also create a more concise text, as the following revisions illustrate.

The Board cannot grant tenure to a professor who

was previously denied tenure by the same department in which he or she now seeks tenure. Wis. Stat. XXX.

Ms. Jascoviak could claim that the cruise line breached its contract when it denied her the right to change her departure time as promised. She could also claim that . . . Ms. Jascoviak may have other options, such as . . .

Inconsistent levels of formality are noticeable to a reader in part because the shifts force the reader to work harder than necessary to understand the text. When the tone of a text is consistent, the reader can often anticipate the phrase that will follow particular words or phrases. The reader is thus ready and waiting when the information appears as anticipated. When the tone is inconsistent, however, the reader does not know what to expect. Like a pianist accompanying a singer who drifts off key, the reader has to adapt and improvise to stay with the writer.

Readers also often notice inconsistent levels of formality because these inconsistencies make the reader uneasy about the writer's expertise. Through word choice, a writer conveys his or her relationship to the reader and to the content. Inconsistent levels of formality create shifts in that relationship, so the writer appears inconsistent in his or her view of the content. The reader, sensing this, begins to question the writer's reasoning.

Even when the content is not called into question, inconsistent

levels of formality usually lead the reader to see the writer as less skilled, less in control. Literally, the writer is not in control of his or her words, and readers easily generalize this and see the writer as not being in control of the content. The writer loses credibility, which translates into looking less professional.

Fortunately, the problem can be fixed when it is understood and described in a way that both employer and employee can understand. With a common vocabulary, the employer can give the employee clearer instructions about what is needed. Also, when the employee understands the problem, he or she can edit to remove the tone problems before the document reaches the employer.

To explain the problem of inconsistent levels of formality, I use clothing as a metaphor. I explain the varying formality of words and phrases by describing them as tuxedos, t-shirts, and business suits. Tuxedos are the formal words, which usually include longer words derived from Latin and Greek, multi-syllabic and unfamiliar words, and nominalizations. Tuxedos are the kind of words used when writing a scholarly article intended to impress other readers with the writer’s erudition, or when giving a formal or scholarly speech. T-shirts are the kind of words used in conversation with friends and colleagues. T-shirts include slang (“botched,” “screwed up”), exaggerated modifiers (“awesome,” “totally”), words with prepositions attached

(“scoped out,” “had a hand in,” “put up with”), tired metaphors (“horse of a different color,” “bomb”), abbreviations (“IMHO,” “OK”), and contractions (“can’t” “wouldn’t”). Business suits are words that avoid either extreme. They are words that avoid driving the reader to a dictionary and avoid current trends in word choice. Business suits do not sound dated and are likely to still be used in ten years. They are identified by default; they are neither tuxedos nor t-shirts.

When teaching this lesson in the classroom, I begin by having students read some of their writing and identify phrases they use as T-shirts, tuxedos, or business suits. The students then list these phrases on a prepared chart. I have them fill in alternative words or phrases that communicate the same idea in a different level of formality. Usually the younger writers fill in the middle, business suit level last. The formal and informal terms come to mind first because they are the active speaking vocabulary. Eventually, however, they fill in the blanks and develop a table like the one below.

Different Levels of Formality

T-Shirt	Business Casual to Business Suit	Tuxedo
about that case	regarding that case	as to that case
soused, snookered, feeling no pain, etc.	drunk, intoxicated	inebriated
a whole bunch of a lot of	many	myriad a great number of
clear up	explain, clarify	elucidate
being that, since	because	in the situation where
can’t	cannot	lacks the capacity to
didn’t cut it, flunked	failed, did not succeed, was ineffective	was inefficacious
say that	argue that	make the argument that
settle on	agree	concur
in a jam	have a problem	discomfitted
give a hand	help, assist	facilitate
gave in to	agreed to, gave consent, consented to	acquiesced to, acceded to
shell out	pay, reimburse	remunerate

As students develop this table, they begin to see the difference that wording can make. They begin to understand the problem troubling the reader. They also begin developing a solution, because they can use the table as a specialized thesaurus, finding the phrases they need to substitute for their tuxedo and t-shirt language.¹ The focus throughout this learning process is not on increasing or changing the writer’s vocabulary itself. Writers know the business suit words they need to use. The problem is simply that the business suit word is not the first one the writer remembers and chooses when writing. Evening out the writer’s level of formality is a matter of replacing the first choice with a more “suitable” word.

The focus of learning in this exercise is on the writer’s awareness of the tone created by these levels of formality. When a writer learns to discern the different tone created by stuffy or informal phrases, he or she knows what phrase to substitute. And, if the writer has developed an extensive table of words, he or she has the answer close at hand.

When writers develop this awareness of the tone created by different words, they can then add a check for tone as a necessary part of the revision process. Somewhere after reorganizing but before checking spelling and punctuation, the writer can add a revision pass just to check for consistent levels of formality. For writers who have had a problem in this area, I suggest that they take time to make the needed revisions in all the documents they write, even their e-mail. Just as the writer needs to be

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consistent within a document, these writers need to be consistent across documents. This consistent, business-like tone does much to restore their credibility with their employers as well as with the readers of individual documents.

To help writers remember this revision step, I tell students that this revision is like one of those shooting games at a carnival. They need to look at their text carefully and shoot any words that stick out, whether they are tuxedos or t-shirts. By focusing on the phrase “if it sticks out, shoot it,” the writers move away from worrying about sounding formal enough and toward the need to be consistent. They also move toward developing a sense of humor about the eternal need to edit, which lightens the burden.

Editing for consistent levels of formality is a small task with large ramifications for legal writers. It is worth including in our editing classes, and fortunately can be taught quickly. When students understand the concept and develop a table that shows alternatives for common words they use, they have the tools they need to avoid criticisms about “sounding unprofessional.” Before long, they can find editing for consistent levels of formality to be as important as dressing for an interview, and as easy as shooting fish in a barrel. ♦

¹ Some students may have word processors that provide synonyms, or they may use a thesaurus as long as they remember to seek the familiar, business-like term over the obscure term.



Quick Tip

Keep Proper Attribution SIMPLE: A Mnemonic for Placing Citations in Proper Citation Format

Brooke J. Bowman, Stetson University College of Law

Whether the format is ALWD or Bluebook, the students need to place citations into the appropriate format, and this is an easy mnemonic for the students to use.

S: Source: First, spot the source (case, statute, etc.) that supports the proposition set forth in the text. The student should ask, “Where did I find this information?”

I: Identify the rule: Once a student has spotted the source, the student can look in the index or table of contents of the appropriate citation manual to identify the rule regarding how to format the citation of the source.

M: Models: After identifying the rule in the appropriate citation manual, the student can examine model citations that point out the components of a full citation.

P: Placement and pinpoint: Next, a student should look at the sentences to determine where the citation should be placed. If the source supports the entire legal proposition set forth in the sentence, the student should place the citation at the end of the sentence. (A citation sentence). If, however, the source supports only part of the textual proposition in the sentence, the student should place the citation in the middle of the sentence, after the

proposition that it supports (a citation clause).

Second, the pinpoint. Once the student has determined where to place the citation, the student should incorporate a pinpoint citation that informs the reader exactly where they could find the information in the source.

L: Look at the previous citations:

At this point, the student should look at the previous citations to the source in the document to consider whether they need to provide a full citation or a short citation.

E. Extras: Finally, the student should consider the extras or details that govern citation format. For example, typeface conventions, spacing, abbreviating, etc.

By remembering the equation and the mnemonic, hopefully, the students will find that proper citation form is really that SIMPLE!

Teaching the Difficult Concept of “Respect”
Leah M. Christensen, University of St. Thomas Law School

As a former litigator, I use writing problems that focus on litigation and the adversary system. A recent classroom experience, however, has reminded me that reasoning and writing in an adversarial setting are not the only skills a successful lawyer should possess nor are they the only skills that we should teach in legal writing. In fact, a simple lesson about collegiality and respect between lawyers can go a long way.

Last spring, I developed a problem based upon a state court of appeals case. The case was great for a persuasive brief assignment and a subsequent student

oral argument because it was flashy, interesting, and had many policy implications. Shortly into the semester, I learned that the state supreme court had accepted the case for review and had scheduled oral arguments for the fourth week in the semester. I had a decision to make. Should I allow the problem to evolve alongside the actual case? Or, should I pull the plug? I chose to go forward. Of course, potential pitfalls always exist when you create a problem based upon a real-life case. In the end, I found that the benefits of using a problem based upon a real case outweighed any potential hassles. And, I was able to bring the true “work” of lawyers into my classroom.

Our class attended oral arguments at the state supreme court. We witnessed how the attorneys presented their cases to the court and how the justices questioned the attorneys. Shortly thereafter, I invited the lawyers to our class. We listened to the oral arguments on tape. At various times throughout the argument, the lawyers would stop the tape and discuss what the court’s questions meant to them and to their clients, or how they felt about a particular question.

My students had their own oral arguments about two weeks later, so they were particularly interested in any tips our visitors might have on oral argument preparation and strategy. The lawyers confided to my students that they practiced their arguments for many hours, revised their arguments endlessly, and held practice sessions with other members of their firm to ensure they were well-prepared. They gave us copies of their notes and outlines. We all laughed because the outlines they had pre-

pared were completely different from the questions the court asked them.

We also watched the attorneys compliment each other. One attorney told the other that he answered the question “well.” The other attorney complimented the first attorney on giving a “thoughtful” and “well-reasoned” response. We witnessed them laughing at themselves and at each other, making remarks that they “had no idea how to answer that one” or that they “felt completely unprepared.”

In fact, a simple lesson about collegiality and respect between lawyers can go a long way.

When class concluded, I knew my students had learned a great deal about how to prepare for oral argument. My students, however, learned something more. They saw that lawyers can have different opinions, represent different clients, and argue zealously for their position. Yet, lawyers can do all this and still treat each other with respect.

One of the most important skills we can teach our students is to treat each other, their clients, and their opposition with respect. Perhaps the best way to teach respect is to model the behavior ourselves. As professors, we can treat our students respectfully, grade their papers fairly, and provide a respectful classroom experience that allows for open discussions of all viewpoints. We can also use “real-world” experiences to enrich our classroom. Your students will love the experience and it will allow you to illustrate that lawyers need more than just their legal skills to succeed. They need respect as well.

My students did an amazing job with their own oral arguments. They were articulate, well-prepared, and thoughtful. And, most importantly, they treated each

other with respect. I cannot help but think that they modeled what they witnessed in that special class. ♦

Stare Decisis and Analogy from a Child’s Perspective

Sheila Miller, University of Dayton School of Law

Analogical reasoning is one of the most basic and important types of reasoning that lawyers use. Early on in the first semester, I tie the concept of *stare decisis* and analogy together and point out that even children use this type of reasoning. I like to start with *stare decisis* because it helps explain why lawyers use analogies.

First, I teach the concept of *stare decisis*. I explain that it’s fun – students can impress friends and family with a nice Latin term: “I learned about the concept of *stare decisis* today.” Nonetheless, the basic doctrine of *stare decisis* is something every child understands and uses in front of the judge known as Mom or Dad.

Think back to when you were a child and think about a typical plea to your parents that might have gone something like this: “My 11th birthday is coming up and I want to have 11 kids at my party because when my older sister turned 11, *she* had a party with 11 kids.” Children have an inherent sense of fairness, thinking: “If someone else in the family got a certain privilege at a certain age, then I am going to get the same thing. I deserve to be treated the same. I have been waiting to turn 11 for two years and I have been counting on having this party. I have told all 11 potential guests that they are going to be invited. It is not fair if you change the rules when I have been counting on them.”

I point out that this concept of like cases being decided alike is the

same basic concept of *stare decisis* or “standing by” a previous decision. Under our common-law system, if the same facts come before the same court, the same decision should be rendered. Like cases should be decided alike—a basic tenet of fairness. The previous decisions provide guidance to people who can adapt their behavior accordingly, and feel a sense of stability. Thus, *stare decisis*, standing by the decision, is the legal system’s method of providing fairness and stability, concepts understood by children at a basic level.

The next step in class is to tie the concept of *stare decisis* to analogy. Courts do not usually get the same facts presented again. Lawyers must then resort to analogy in showing how the precedent case is similar in some important way to the new case.

My task is to demonstrate that the similarity must be critical to the analysis, not merely a surface similarity. I find that students want to point out only factual similarities when making an analogy. I am trying to get them to understand that the same reasoning has to apply to the new case.

Again, the arguments of childhood help demonstrate that the reasoning is used in creating an analogy. Child number two, a ten-year-old, requests that her bedtime be changed from 9:00 until 9:30 because her older sibling, child number one, had a bedtime that was changed to 9:30 when she was ten years old. Child number two says that it is unfair not to have the same bedtime at the same age. In order to really understand if this analogy will work, the key is to look at why the parents made the decision that they did for child number one.

When child number one was ten years old, she lobbied to have her bedtime changed to 9:30 by pointing out that she had no trouble getting up in the morning, and was obviously getting enough

sleep. She made the case that a 9:30 bedtime was a good idea for her. Her parents decided that yes, they could move her bedtime to 9:30 as long as she continued to be up and out to the bus on time. The parents clarified that their biggest concern was that she was getting enough sleep.

Child number two is asking for the same treatment, but there are some key facts that are different. Child number two has a hard time getting up in the morning, and has missed the bus twice in the last two weeks. She complains every morning about being too tired.

Thus, what seemed like a good analogy (two children in the same household at the same age asking for the same bedtime) falls apart when we look at why the parents made the decision they did with child number one. It was not biological age that was important, but the amount of sleep needed. The parents can make a reasoned decision and still not make the same decision for child number two. The students see that in order to make a strong analogy they have to show how the same reasoning applies to the similar facts.

At this point, we work on a worksheet involving a short case and some new client facts that the students have read for class. On the worksheet I ask them to list the factual similarities between the precedent case and the new client’s case, and the factual differences between the two. Finally, the students must identify the reasoning or policy that underlies the decision in the precedent case. In the following class, I will have students analogizing and distinguishing the precedent case. When making their arguments, the students refer to the reasoning or policy of the precedent case, and not just the factual similarities and differences. By relating a difficult legal concept to simple childhood logic, students are able to visualize and grasp analogical reasoning. ♦

Oral Argument: Practice Makes (Nearly) Perfect

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exercise was to allow students to appreciate that good, thorough preparation involves much more than simply reading the brief and cases. Suddenly, and with only one question before them, most students immediately learned an important lesson of public speaking: standing at the podium can magically erase everything the students thought they knew. Most students were forced to fall back on what they had truly learned, rather than reciting materials they (thought they) had memorized.

Another goal of the assignment was to show students that effective preparation includes creating an outline or other materials to assist them at the podium. As I suspected, many students who walked confidently to the podium with (1) no materials, feeling that they had it mastered, or (2) all the materials, feeling that they would be able to put their fingers on exactly what they needed to concoct a brilliant answer, learned a lesson regarding what to bring to the podium. During the actual oral arguments some students made major changes in what they brought to the podium that were quite successful.

I also discovered additional benefits. Students identified less obvious strengths in their own arguments by focusing on weaknesses in the opposition’s arguments. Also, writing the questions allowed each student to feel a bit like a judge, or a “mini expert” on the issue (as compared to the general first-year feeling of not being an expert on *anything*). Knowing that their name would be read along with the question encouraged accountability. Many of the student’s questions were so

good that I did not have to prepare many questions of my own to ask during the graded argument (a side benefit that I had not expected).

Of course, the students were not the only ones to learn a lesson from this exercise. If I were to do this exercise again, I would prepare more of my own questions and bring those to class as well. There was a bit of repetition in the student’s questions, i.e., more than a few students asked specifically about the “totality of the circumstances” factors, or about a particular factual weakness in plaintiff’s case. Also, some students prepared very confusing questions which were unnecessarily difficult to answer (though not unlike facing a judge who is unfamiliar with your case or the relevant law). Overall, the excellent level of preparation exhibited by the students when they argued before the Honorable Justice George (me), convinced me that the exercise actually did put my students on the right “real lawyer” track. ♦

Using Federal Rule of Civil Procedure 11 to Teach Statutory Construction

Amy Montemmarano,
Rutgers-Camden Law School

Rule 11 of the Federal Rules of Civil Procedure is well suited to an early-semester exercise in teaching statutory construction. Not only does the statute diagram well, but it also serves as an early introduction to the students’ professional responsibilities.

For this exercise on statutory construction, I tell the students to bring a copy of Rule 11 to class. I tell them how to find it in the library using the index to the United States Code. Finding the statute teaches them a few things:

(1) it develops their understanding of the different sources of law, and how to find those sources in the library; (2) it brings to life a real source of law—the federal statutory code; and (3) it shows them that many of the rules of law they are learning in their first-year civil procedure class are not amorphous concepts, but instead are actually written down somewhere and arranged in a particular order.

At first glance, Rule 11 at 665 words, four subsections, seven sub-sections, and four sub-sub-sections, can seem as complex and impenetrable as some of the cases the students have been reading. In class, I immediately ask a student to tell me what the statute says. I usually get a few quickly raised hands, and a few answers that start off strong before petering out, their organization lost. Then, I suggest diagramming the statute to break it down into its essential terms. I draw columns on the board: Elements, Causal Term, Result, and Exceptions or Conditions. The students call out terms as I place them in the proper column. Within a few minutes, the students have an aha! moment about how the statute works: Any document filed with the court must be signed by the attorney; that signature means the attorney is making four very important representations about the integrity of that document; and if those representations are untrue, the court can punish that attorney, which includes imposing monetary sanctions.

This is how Rule 11 can be diagrammed:

Elements:

- Any document filed with the court
- Must be signed by attorney or party
- Signature = four representations ((1) no improper purpose; (2) warranted by existing law;

(3) allegations have evidentiary support; and (4) denials have evidentiary support)

Casual Term:

- If court determines that representations are untrue

Result:

- Court may impose sanctions (on attorney, party, or firm)
- May include nonmonetary directives, penalty to court, and payment to opposing party

Exceptions or Conditions:

Conditions:

- Party must notify other side before filing and give opportunity to withdraw
- Limited to what is sufficient to deter similar conduct

Exceptions:

- Cannot impose monetary penalty on represented party for ignorance of law
- Court cannot impose monetary penalty on its own initiative after party dismisses
- Does not apply to discovery violations

After a bit of classroom discussion about judicial oversight of a lawyer’s behavior, the students have another, more sobering “aha!” moment. They realize the serious obligations they are about to accept, and the scrutiny with which the judiciary holds them to those obligations. When we discuss the monetary sanctions that courts can impose for violations of Rule 11, a student always asks, the court can’t fine me *personally*, can it? When I answer that yes, courts can and do just that, it is in that following moment of quiet disbelief that I hope they are starting to feel a little bit more like lawyers, and less like graduate students. I tell them their obligations under Rule 11 start now.

Maybe it sticks, maybe it doesn’t. I recently ran into a former student who had just finished a federal clerkship and is off to begin work at a large law firm in Philadelphia. He told me, unsolicited, that the Rule 11 exercise from my class remained a vivid image for him, and that during his clerkship, the first thing he did before confronting a set of briefs was to diagram the statute or rule at issue. I am glad the diagramming exercise helped him, but I suppose, too, that if any statute is going to “stick” in the mind of a law school graduate about to begin practicing law, Rule 11 is not a bad image. ♦



Linking Oral Argument With Brief Redrafting to Communicate the Importance of a Persuasive Theory of the Case

Tracy L. Bach, Vermont Law School

Many advocates will tell you that having a persuasive theory of your case is important. This foundational “idea” for judicial decision-making presents “a view of the facts and law—intertwined together—

er—that justifies a decision in the client’s favor and motivates a court to make that decision.”¹ The theory of the case must convey the “big idea” or “core of [the] case” in a clear and focused manner. ² Steven Stark sets the scene well:

Say a judge is sitting in chambers and a colleague asks what your case is about. The judge describes the case in one sentence. Then the colleague asks who should win. The judge responds with another sentence, maybe two. Your whole brief is an attempt to control the substance of those two or three sentences.³

I communicate the difficult concept of developing a persuasive theory of the case by structuring the drafting deadlines in a way that brings to life the more theoretical advice. Specifically, I overlap the practice oral argument with the two-week period between the conference on the critiqued first draft and the final product’s submission deadline. In this manner, students have a real—even stark—look into their audience’s concerns, as articulated by the bench. By listening to the questions and fashioning responses that both offer the specifics and relate them to the overarching persuasive themes of the case, my Appellate Advocacy students return to their redrafting with new ideas for organization and emphasis, as influenced by their theory of the case.

First, some context. Vermont Law School has a three-semester writing program that begins with a two-credit introduction to legal research, analysis, and writing in the first semester. It then progresses to a three-credit Legal

Writing II course that moves from predictive to persuasive writing. In the third semester, we focus exclusively on persuasive writing, by having students argue a pending United States Supreme Court case. Hence, our third-semester law students have been exposed to rhetorical concepts about persuasion for a year. Often summer work reinforces these ideas. Nonetheless, it can be difficult to get students to rise above the admittedly difficult task of mastering the factual record and relevant case law and think more broadly about the underlying themes that could influence a court to rule in their client’s favor.

The insights that oral argument questions provide can confirm a persuasive theory, root out an unpersuasive one, or suggest how to fine tune one somewhere in between. My Appellate Advocacy students have an opportunity to discover these insights as they prepare to present their first moot court argument. I play the role of judge, along with another pair of student advocates, who will argue the case next. I deliberately ask an array of questions, ranging from broad policy concerns to application of case law to nitty-gritty facts. I keep notes on their responses and videotape the sessions, which students are required to view. After both pairs of student advocates have argued, I give individual feedback to all four students, pointing out common strengths and areas for improvement, often using elements of individual arguments to illustrate my specific points. Most importantly, I point out when students have persuasively enunciated a theory of the case and done so by linking it to specific facts, case law, or both. Because this practice session requires students to judge as well as argue the case, they experience

this lesson in stereo.

The 2005-2006 academic year marks my first decade of teaching Appellate Advocacy at Vermont Law School. During these ten years, I have repeatedly heard students say that the light bulb went on when they argued the case orally. I have watched first drafts metamorphose from solid recitations of applicable law and fact to persuasive *tours de force* as students reorganize arguments and sharpen their well-reasoned arguments to bring home the “big idea.” By linking oral argument with written argumentation, I help students to see the link between the bread and butter law and facts and the indispensable theory of the case. In other words, to communicate this difficult concept, I let *their* actions speak louder than *my* words. ♦

¹Richard K. Neumann, Jr., *LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE* 305 (5th ed. 2005).

²Steven D. Stark, *WRITING TO WIN: THE LEGAL WRITER* 64 (1999).

³*Id.* at 65.

Teaching Difficult Concepts: Teaching Students To Write Specific, Detailed Analogies

Julie A. Baker,
Suffolk University Law School

Having taught legal writing for more than five years now, I have found that one of the most difficult skills to teach students is how to write specific, detailed analogies in the “A” sections of their memos or briefs.¹ Over time, most students become very good at articulating rules and explaining how those rules work in detailed “E” paragraphs. But then, they rush through the application of those

rules to the facts of the case, often stating only conclusions, with no analysis or explanation of how they have reached those conclusions. I had always thought that this was primarily a “1-L problem,” which would resolve itself as the students got more practice and became more experienced legal writers. But when I began teaching Advanced Legal Writing and Drafting, I discovered that my upper-level students were struggling with the same inability to write detailed, fact-specific analogies in the argument sections of their appellate briefs.

After writing “too conclusory” and “more facts” in the margins of the first drafts and getting only frustrated stares in response, I developed an exercise intended to walk the upper-level students through each step of writing a detailed, fact-specific application paragraph.² The exercise started with a sample E paragraph explaining two cases on one point of law. Then, the students were asked to complete a series of steps:

- Step 1: Write a thesis sentence stating the argument to be analyzed / proved in this A paragraph.
- Step 2: List all the facts of your case that are comparable to the facts of Case A. Then, list any contrasting facts.
- Step 3: Repeat Step 2 for Case B.
- Step 4: *Now*, you are ready to begin writing the analogies to Case A and Case B.
- (a) Write a sentence BROADLY identifying

the point of comparison / contrast between your case facts and the facts of Case A (e.g., Like in Case A, where _____, here _____).
(b) Then, write as many more sentences as are necessary to discuss / analyze / argue *ALL* the facts of your case that you identified in Step 2 as comparable or contrasting to Case A’s facts.

Step 5: Write a sentence concluding the analogy to Case A.

Step 6: Repeat Steps 4 and 5 for Case B.

When we did the exercise in

Essentially, they were boiling down their analyses to the single, bare-bones statement of the comparison or distinction, and ending the analysis where it should have started.

class, all of us—including me—made an amazing (legal writing-wise) discovery. Going in, I was convinced that the students had simply not thought broadly enough about the key facts of the case and how they could persuasively argue and analyze each of those facts in light of the applicable law. I thought that by first having to *list* all those facts in Steps 2 and 3, before being told to actually *write* the analogies, they would see that those were the facts they needed to detail in Step 4(b). Then, I thought, the problem would be solved.

What I found out, though, was that they were completely sur-

prised that there *was* a Step 4(b)! I had them working in groups, and I watched as each group diligently listed their facts in Steps 2 and 3, struggled with writing a fact-comparison sentence in Step 4(a), and then stopped as they reached Step 4(b) and said—some of them out loud—“Oops. Now she wants us to put more facts here?! Like what?” When I realized that they were all stuck and asked why, they told me that they thought that the entirety of the fact comparison was, and should be, made in the single comparison sentence that I was calling Step 4(a); and that any facts that they couldn’t jam into that single sentence should just be abandoned. Essentially, they were boiling down their analyses to the single, bare-bones statement of the comparison or distinction, and *ending* the analysis where it should have started.

Once I understood the problem, I explained to the class that they should go back to Step 4(a) and state the initial point of comparison as the launching-off point for analyzing all the facts that they had listed in Steps 2 and 3, and then write as many more sentences as were necessary to discuss and analyze all of those facts. Then, and only then, should they proceed to applying the reasoning and concluding the analogy. We ran out of class time before they completed the exercise, but I thought that the students left with a better understanding of what I meant when I scribbled “too conclusory” and “more facts.” And I finally understood why, despite my repeated scribbles, they had not been able to add more facts and be less conclusory in the past.

The proof, they say, is in the pudding, which in this case was the students’ rewritten appellate briefs. Of course, the A paragraphs weren’t perfect: there was still

room for more facts; and there was still a tendency for the students to focus only on their affirmative arguments, without distinguishing negative facts or dealing with counterarguments. But I am happy to say that the level of detail and discussion of the facts was much, much better—apparently, because they finally believed that it was “O.K.” for them to write more than one comparison sentence. I am now trying to make use of my new understanding in my first-year teaching. While I still teach analogies as a step-by-step process of identifying comparable facts and then explaining how those facts matter, I’m trying to be more flexible in how I describe each of those steps to the students. And I plan to use this exercise, or a modified version of it, at some point during this fall semester, when the ILs are fairly comfortable with the Rs and Es, and when, in past years, I would have begun scribbling “too conclusory” and “more facts” in the margins of their drafts. ♦

¹ In our program, we use the “CREAC” paradigm for legal analysis: Conclusion, Rule, Explanation of rule, Application of rule, Conclusion.
² I would be happy to provide a copy of the full exercise to anyone interested.

Teaching Citation Thoroughly: A Case for Using Classroom Assessment

Tamara Herrera, Arizona State University College of Law

I am always a bit insecure about how I communicate difficult material to my students—especially in the first semester when all skills are new. I am never sure if the stu-

dents understand what I am saying, especially when I first teach citation. Usually I spend fifteen minutes explaining the rule regarding citation frequency only to look out at a sea of faces staring blankly back at me. Fortunately, I used a classroom assessment technique this semester to change this scene.

I first learned about classroom assessment techniques during Colleen Barger’s keynote presentation at this year’s Rocky Mountain Regional Legal Writing

By looking out at a sea of colored index cards, instead of the sea of blank faces, I was able to quickly ascertain whether the students understood the citation frequency rules.

Conference. I found her suggestions for techniques designed to give the professor immediate feedback to be best for teaching difficult new skills, such as citation. The technique I chose to use this semester was “polling.” To use this technique, I gave each student a green index card and a pink index card. Then, I presented a legal memorandum on the projection screen; the memorandum contained no citations. The instructions for the exercise were simple: after I finished reading each sentence of the memorandum, I would ask the students if a citation was needed for that sentence. Subsequently, the students would hold up a green card for “yes” and a pink card for “no.” By looking out at a sea of colored index cards, instead of the sea of blank faces, I was able to quickly ascertain whether the students understood

the citation frequency rules. In addition, I was able to stop the exercise when students had varying answers and go over the material again or in more depth; I could even ask the students about their difficulties with a question at the exact moment the students were struggling with it.

Frankly, I was surprised at first when the students’ answers were not unanimous, which happened often. What I rather reluctantly realized was that after five years of teaching, I am not as good a judge of the difficulty of first-year skills as I used to be when my first year of law school lived fresher in my memory. By using a classroom assessment technique designed to give immediate feedback, I learned just as much as my students learned. I learned what skills and vocabulary confuse the students during my lectures, and the students learned the difficult skills and vocabulary that I presented. More importantly, however, we all learned an invaluable, yet unintended, lesson. As evidenced by the “thank you” emails I received after class, the students learned that I care about whether they understand citation frequency. I learned that this is a scene I definitely intend to repeat in the future! ♦

[Not Just] For New Teachers: My Dinner with IRAC
Ken Swift, Hamline Law School

When I introduce new concepts to my class, I usually try to give students an example that they can relate to from their everyday life. One concept that I have success with is introducing and explaining IRAC through a restaurant analogy.

I begin my discussion of IRAC with the rule of law section. After

the usual explanation and examples, I explain that we all have self-imposed “rules” which guide our lives, from dating to wardrobe to restaurant preferences. I then put students in small groups and ask them to come up with a list of factors that they consider when rating a casual restaurant dining experience.

The students always come up with extensive lists, which I put up on a whiteboard. From there, I refer back to our discussion of how we generally organize legal rules of law to start with the broad, basic rules and then develop and define the key terms. For example, students are usually able to come up with a broad rule statement such as: “A good dining experience requires good food and service and a pleasant facility.” From this basic rule statement, we begin to organize into pertinent categories the students list of factors considered when rating a casual dining experience. For example, under “good food,” statements relate to preparation, portion sizes, and selection, among others.

Next, we move on to the discussion of case illustrations to prove the rule. After the lecture and examples, we move back to the restaurant exercise. I ask each student to write a paragraph or two describing a good dining experience and another describing a bad dining experience. Without prompting, most students naturally follow the structure and terms of the rule of law we have just created “A good dining experience requires good food and service and a pleasant facility.” We then refer back to the purpose of case illustrations so that the students can see that they have just created examples of how the rules of law are applied to a given fact pattern. I then collect the “case illustrations” and ask for volunteers to have dinner at a restaurant and

provide me with a summary of the experience prior to the next class. A shortage of volunteers is never a problem.

Prior to the next class, I take the students’ case illustrations notes from our restaurant rule of law and select one good and one bad dining experience and create the rule explanation for our restaurant exercise. I also add in the students’ recent dining experiences as our “facts” section of the memorandum.

I begin the next class by introducing the concepts of case law analogies and rule-based arguments. I then ask the students to read the facts (their classmate’s recent restaurant visit) and note the similarities and differences with the good dining experience and then do the same with the bad dining experience. Next, I ask students to look through the facts to see if factors listed by the student exist that are not comparable to either the good or bad dining experience, but that are relevant, based upon the rule of law, as to whether the student had a good or bad dining experience. Finally, I tell them to write their conclusion as to whether the student had a good or bad dining experience. We then conclude by reviewing legal structure, noting the similarities with the document that they have just created.

This exercise is both a good introduction to IRAC and a useful reference tool to use when students are having difficulty structuring their legal analysis. At the very least, I get to spend a couple of class sessions talking about food, which is never a bad thing. ♦

Beyond “Maybe” and Why: Identifying Arguments, Counter-Arguments, and a Sound Conclusion

Rebekah Hanley, University of Oregon School of Law

Some of my students struggle to get beyond “maybe,” perhaps lacking the confidence to arrive at a legal conclusion. Other students jump into an advocate’s role, failing to address important counter-arguments in their analysis. This year, I tried a new in-class exercise to help students in both of these groups develop a thorough, objective analysis and strong conclusion.

After they read the facts and legal authorities in their closed memorandum universe and we briefly discussed the main issues and the operative rules, I put them in groups of three. I asked them to brainstorm together about potential “arguments.” I suggested that they collaborate to make two lists for each issue: one list of arguments, based on the relevant authorities, that supported a “yes” conclusion, and another list of arguments, also based on the relevant authorities, that supported a “no” conclusion. I drew a chart on the white board to guide their group work.

Issue 1	
Yes	No
Argument	Argument
Authority	Authority

Once they completed their lists, I asked them to evaluate the relative strength of each list. How many arguments supported each potential conclusion? How con-

vincing was each argument? How important were similarities and differences they identified between the client’s facts and the facts in the precedent cases? How close was the connection between each argument and the relevant legal authority, and what was the weight of the authority upon which each argument relied? How well did each argument hold up against common sense or the straight-face test?

I told them that their list evaluation revealed their conclusion: if more or stronger arguments supported the “no” conclusion than supported the “yes” conclusions, “no” was their conclusion. If the “yes” list was also fairly developed, the boldest conclusion students could comfortably reach might be “probably no”; if the “yes” list was short, perhaps students might assert a stronger conclusion.

I continued by suggesting that the items listed below the “no” conclusion were their arguments, and the items listed below the “yes” conclusion were, therefore, the counterarguments that they might anticipate. And I reminded them that to persuade their memorandum readers that their analysis is thorough and their conclusion is sound, they need to explicitly mention the potential counterarguments they considered in reaching their conclusion.

My goal was to encourage them to think creatively, thoughtfully, and thoroughly about potential arguments advocates on both sides might advance before deciding what a court would likely hold. The students seemed to enjoy the exercise. I’ll know later this semester whether it helped improve the quality of their written analysis. ♦

Starting With the Familiar: Using the Desegregation Cases to Learn About Extracting the Law from Cases

Danielle Shelton, Drake Law School

As attorneys-to-be, our students need to learn early on how to identify and extract the law from cases. But how do we teach this essential, yet difficult, skill? I teach students that when they read through a case, they are looking for the law in two different forms: the case’s law-centered interpretations, and the case’s fact-centered holdings. The desegregation cases, including *Brown v. Board of Education*, 347 U.S. 294 (1955), provide lively and accessible examples of these two different yet important ways that courts tell us about the law.

I teach this class during the third week of school. At this point, my students have learned that original sources of law—the Constitution, statutes, and common law—are the starting point for all legal inquiry. I want my students to become familiar with the ways in which courts “process” the original rules of law through cases, and to identify the difference between law-centered interpretations and fact-based holdings. All too often, a student will dismiss a case because it has “no new law” in it, when in actuality it provides an informative and useful example of how the existing law was applied. Similarly, students often will be faced with a straightforward rule application, but instead will attempt to redefine the law. The sooner my students grasp the two different ways a court can process a rule, the better.

Most students are familiar with *Brown*, and I ask someone to briefly recall it for us. I next ask the students what the original source of law is that underlies the *Brown* decision. I explain that it all started

with the Fourteenth Amendment and, in particular, the Equal Protection Clause. I read the edited clause to the class: “No state shall ... deny its citizens the equal protections of law.” I ask them, if they were back in 1895, what advice they would give a client who complained of state-sponsored segregation. Our discussion comes around to the fact that before an original rule of law is processed, we have very little idea about what it means or how it applies.

Next, I introduce *Plessy v. Ferguson*, 163 U.S. 537 (1896). Usually a student already has volunteered (incorrectly!) *Plessy* as the original rule of law. In *Plessy*, the Court upheld state-sponsored racial segregation of railroad passengers, finding that separate rail cars for “White” and “Blacks” were objectively equal. I ask the students what the processed rule of law is coming out of *Plessy*: what do we now know about what the Equal Protection Clause language means in light of *Plessy*? The students understand that *Plessy* defined for us that “equal” under the Fourteenth Amendment means “equal in tangible and objective criteria.” Moreover, “equal does not require integrated facilities” because “separate but equal” is sufficient. We conclude that *Plessy*’s ruling was (at least in this regard) a law-centered interpretation.

Next, we discuss the types of cases that arose after *Plessy* but before *Brown*. I tell them to imagine a case—it could have been one of many—in which an African-American brought a constitutional challenge against state-sponsored segregation where the segregated facilities were not tangibly equal. I describe the hypothetical case as one in which the “Black Only” public facilities were objectively inferior to the comparable “White Only” facilities: the “Black” rail car did not have as much room per person, nor did it have a restroom facility

like the “White” one did. In such a case, the court would have ruled that the segregation violated the Fourteenth Amendment because the facilities were not objectively equal. I ask the students what type of ruling that would be: law-centered or fact-centered? If someone answers law-centered, I ask what new interpretation of the law we would learn from that case. The answer is none, so we come around to the conclusion that the holding would be purely fact-centered. The court would take the established rule from *Plessy* and simply apply it to a new fact pattern. I remind the students that even though this hypothetical case would not have established “new law,” it would have helped us understand the existing legal standard by showing how that standard applies.

Finally, we get to *Brown*. A student gives us a brief description of *Brown*, and I ask for the processed rule from the case. At this point the students are starting to understand the distinction between a law-centered interpretation and a fact-centered holding, and someone will usually ask me which I want. I tell them I want both. We first explore what the law-centered interpretation is. Contrary to the rule established in *Plessy*, we now have a new interpretation of what “equal” under the Fourteenth Amendment means: “Equal means more than just objective and tangible qualities. Equal considers the impact that the segregation has on the persons involved.” Next, we explore the fact-centered holding as the answer to the legal question posed: Did the Topeka Board of Education violate the law when it denied African-American children the right to attend public schools with white children? Yes, the school-sponsored segregation was unlawful because it stamped a “badge of inferiority” on African-American children. We conclude our discussion with *Brown* itself providing an effective

example of the distinction between law-centered interpretations and fact-centered holdings within a single case.

The in-class exercise has many positives. First, when we finish, my students really seem to understand the distinction between law-centered interpretations and fact-centered holdings. This helps them properly read cases and lays a solid foundation to help them begin to understand the process by which lawyers select cases for a memorandum. They start to learn the questions lawyers need to ask about cases: Does this case contain a helpful interpretation of the original rule of law? If not, is this case helpful because it shows how the law applies to facts that are analogous to the client’s situation? These questions further help my students in organizing their analysis in their written work.

Second, the exercise itself is accessible to students. Students come into the exercise with some familiarity with this area of law, so we do not need to spend class time reading the cases. (This allows the entire exercise to take less than thirty minutes.) Because this exercise is in a legal context, it has the added benefit of helping the students to build confidence early on regarding their ability to analyze the law. Last, the exercise helps raise issues of social justice in my class. Many law students feel a disconnect between the values that brought them to law school in the first place, and the relatively narrow “thinking like a lawyer” they are required to do in their first-year classes.¹ If I can subtly remind them that the latter can be a tool for the former, I have helped them with more than their legal writing.

¹ Lawrence S. Krieger, *The Hidden Sources of Law School Stress: Avoiding the Mistakes that Create Unhappy and Unprofessional Lawyers* 7 (2004).

NEWS

Publications and Promotions

Kari Aamot (Chicago-Kent) has been given a long-term contract and is now an Assistant Professor of Legal Research and Writing.

Linda Anderson (Franklin Pierce) has been appointed Visiting Professor and Acting Director of Legal Skills as of July 2004.

Angela Passalacqua (Rutgers-Camden) was appointed Dean for Career Services.

Suzanne Ehrenberg (Chicago-Kent) has been promoted to Professor of Legal Research and Writing and given a long-term contract.

Anne Enquist (Seattle) was promoted to Associate Director of the Legal Writing Program and is also Co-Director of the law school’s new Faculty Development Program. As the Co-Director of this program, Anne is helping both new and established faculty with their scholarship. Keep your eye out for some great articles from Seattle University faculty.

Michael Frost (Southwestern) published a book, *Introduction to Classical Rhetoric: A Lost Heritage* (Ashgate 2005).

Douglas Godfrey (Chicago-Kent) has been promoted to Associate Professor of Legal Research and Writing and his long-term contract was renewed.

Jill Koch Hayford and **Alison Julien** (Marquette) were recently promoted to the rank of Associate Professor of Legal Writing. Jill and Alison also made a presentation, *Teaching Research “Backwards”: Providing Context for Legal Research*, at the Great Lakes Writing Conference in May 2005.

Julie Heintz (Seattle) published a book,

Washington Legal Research (Carolina Academic Press 2005).

Joseph Kimble (Thomas Cooley) wrote a book: *Lifting the Fog of Legalese—Essays on Plain Language* (Carolina Academic Press). The book is a collection of many articles he has written.

Susan Kosse (Louisville) was selected to present her research article as a young scholar at the SEALS Conference in July 2005. Her presentation was entitled, *The Missed Opportunity to Abandon the Reasonable Observer Framework for Sacred Text Cases*.

Susan McClellan (Seattle) has been selected to head Seattle University’s new externship program. Susan has taken a two-year leave of absence from teaching legal writing to become the Externship Director.

Lisa McElroy (Southern New England) published a book, *Love, Lizzie: Letters to a Military Mom* (Albert Whitman Books) and has a children’s biography of United States Attorney General Alberto Gonzalez (Lerner Books) forthcoming in the spring.

Michael Murray (Illinois) published *Legal Research and Writing* and *Legal Research and Writing Problems and Exercises* (Foundation Press 2005), with **Christy DeSanctis** (George Washington). Michael also completed the third editions of *Civil Rules Practice* and *Jurisdiction, Venue, and Limitations*, for publication by Thomson West in 2005. Finally, he made the following presentations: *Copyright for Visual Artists and Art Lawyers*, Visual Arts and the Law Conference, Santa Fe, NM (Aug. 2005); *Collaborative Legal Writing*, New England Legal Writing Conference, Albany Law School (June 2005); *Explanatory Synthesis and Analogical Reasoning*, Rocky Mountain Legal Writing Conference, Arizona State University College of Law (Mar. 2005); *Legal*

and *Ethical Issues of Intellectual Property and Moral Rights Law: What Every Art and Design Professor Should Know and Every Artist and Designer Should Learn*, University of Illinois College of Art and Design (Feb. 2005).

Laurel Currie Oates and **Anne Enquist** (Seattle) have published the fourth book in their “Just” Series. *Just Research* (Aspen) uses a process approach to teach legal research. While it discusses both print and electronic research, the emphasis is on fee-based and free internet research.

Terry Pollman and **Jean Whitney** (Las Vegas) were recently honored with a named professorship. Terry and Jean are now the “Ralph W. Denton Professors” at the William S. Boyd School of Law (UNLV). The award includes additional funding for three years (which can be renewed), and appropriately recognizes Terry and Jean for all their outstanding mentorship of students and colleagues.

Denise Riebe (Duke) wrote a book (with Michael Hunter Schwartz), *Pass the Bar!* (Carolina Academic Press). This is a bar preparation text that provides a comprehensive overview of the bar exam and bar review process along with specific information, exercises, checklists, and reflection questions that will prepare students for success on their bar exams. Denise also made a presentation, *Bar Passage Programs*, at the Law School Admissions Council Academic Assistance Training Workshop, in Las Vegas, NV (June 2005).

Louis N. Schulze, Jr. (Suffolk) received a grant from the Association of Legal Writing Directors. This grant has funded his research leading to a law review article entitled: “*The Absence of Transactional Skills Training in Required Legal Writing Curricula: Empirical Evidence of the Need for Expansion.*” The article includes the results of a survey of over 2,000 first-year law students nationwide regarding their likely future legal career specializations.

Sophie Sparrow (Franklin Pierce) is a Visiting Professor at Phoenix International School of Law in Scottsdale, AZ.

Hollee S. Temple (West Virginia) will publish *Raining on the Litigation Parade: Is It Time to Stop Litigant Abuse of the Fraud on the Court Doctrine?* in the University of San Francisco Law Review, Volume 39, Issue 4.

Kathy Thompson (Franklin Pierce) formerly at New England School of Law, joined the Franklin Pierce Legal Skills Faculty in July 2004.

Kathleen Elliott Vinson (Suffolk) published *Improving Legal Writing: A Life-Long Learning Process and Continuing Professional Challenge*, in 21 Touro L. Rev. 507 (2005). In addition, at the Association of Legal Writing Directors Conference in Chicago, in July 2005, she made two presentations: “Improving Legal Writing Skills Beyond the Classroom Walls” and “How the Profession and Academia can Work Together to Improve Legal Writing.”

Marilyn Walter (Brooklyn) will publish an article, *Trafficking of Humans: Now and in Herman Melville’s “Benito Cereno”* in Volume XII, Issue 1 of the William and Mary Journal of Women and the Law.

Ursula Weigold (St. Thomas) will publish an article, *The Attorney-Client Privilege as an Obstacle to the Professional and Ethical Development of Law Students*, in the Pepperdine Law Review in the spring of 2006.

Mark Wojick (John Marshall) received the Board of Governors Award from the Illinois State Bar Association. This award recognizes “exemplary service that advances the administration of justice and the goals of the profession and bar association.” You can read a long list of Mark’s exemplary service at: <http://www.isba.org/Association/056c.htm#gen31>.

Dennis Yokoyama (Southwestern) has been granted tenure and promoted to the rank of Professor of Law.

Program News

Brooklyn Law School is celebrating the 25th year of its Legal Writing Program by hosting a Legal Writing Symposium on Friday, February

17, 2006. The theme of the symposium is: “Teaching Writing and Teaching Doctrine: A Symbiotic Relationship?” The following speakers will be presenting on the following topics:

- Professor Carol Parker (Tennessee), *Writing Across the Curriculum: Theoretical and Practical Justifications*
- Professor Pamela Lysaght (Detroit Mercy), *Developing Writing Skills in a Doctrinal Course*
- Professor Eric Goldman (Marquette), *Teaching Drafting Skills in a Specialized Context*
- Professor Claire Kelly (Brooklyn), *Teaching Scholarly Writing*
- Professor Philip Meyer (Vermont), *Teaching Narrative Skills to Enhance Advocacy*
- Professor Elizabeth Fajans (Brooklyn), *Adding a Writing Practicum to a Doctrinal Course*

John Marshall Law School, Atlanta is pleased to announce that Michele Butts, Paula Hamann, and Elfrida Scott have joined the faculty as Legal Writing Professors. Last spring, Lucille Jewel was promoted to Director of Legal Research and Writing and Kathleen Burch, the department’s previous Director, was promoted to Associate Dean of Academic Affairs.

Hofstra University has approved the titles Assistant Professor of Legal Research and Writing, Associate Professor of Legal Research and Writing, and Professor of Legal Research and Writing, in place of Legal Writing Instructor for the law school’s legal writing faculty. Hofstra has also granted the legal writing faculty the right to vote in the University faculty meetings. Barbara Barron, Kathleen Beckett, Scott Freuhwald, and Amy Stein have been promoted to Professor of Legal Research and Writing.

The Sixth Annual Rocky Mountain Regional Legal Writing Conference will be held on March 17-18, 2006, at the **James E. Rogers College of Law**, University of Arizona in Tucson.

Last spring, the faculty at **Suffolk University Law School** approved a change in title from Instructor to Professor of Legal Writing. Also, funding was made available to hire an addi-

tional professor within the department to reduce the student/teacher ratio. (Suffolk now has twelve full-time Professors of Legal Writing.)

The faculty of **Widener University School of Law, Harrisburg**, has adopted a proposal to expand the required Legal Methods program from two semesters to three.

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

The Second Draft

Next issue: proceedings issue following the LWI Conference

2006 LWI Conference

June 7-10, 2006, Atlanta, GA

Regional Conferences

"Teaching Writing and Teaching Doctrine: A Symbiotic Relationship?" Legal Writing Symposium, Brooklyn Law School, Friday, February 17, 2006

The Sixth Annual Rocky Mountain Regional Legal Writing Conference, James E. Rogers College of Law, University of Arizona, Tucson, March 17-18, 2006

AALS Conference - Washington, D.C.

LWI Board of Directors Meeting, Tuesday, January 3, 2006, 4-6 pm
Golden Pen/Blackwell Reception, Friday, January 6, 2006, 7-9 pm

LWI Elections

March 15-April 1, 2006

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