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Building Bridges: Fostering Collaboration in Legal Writing and Beyond

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LWI Policy Statement on Law Faculty
Adopted March 2015

The Legal Writing Institute is committed to a policy of full citizenship for all law faculty. No justification exists for subordinating one group of law faculty to another based on the nature of the course, the subject matter, or the teaching method. All full-time law faculty should have the opportunity to achieve full citizenship at their institutions, including academic freedom, security of position, and governance rights. Those rights are necessary to ensure that law students and the legal profession benefit from the myriad perspectives and expertise that all faculty bring to the mission of legal education.

Dear LWI Colleagues,

At our 18th Biennial Conference this summer at Marquette University, we returned to a law school venue for the first time in ten years. Our plenary speaker, Dr. Corey Seemiller, talked to us about our incoming Generation Z students, who grew up using every form of social media available—texting, Twitter, Snapchat, Instagram, Facebook, and more—and, at the same time, want to work hard to make the world a better place for future generations.

The Discipline Building Working Group led an interesting discussion on how legal writing scholarship can build and reflect our values as a community, stay fresh, and combine theory and practice in the pursuit of justice. The Professional Status Committee presented the results of its recent informal survey and reported that employment conditions for most of us appear relatively stable. We also celebrated the thirtieth anniversary of the *Journal of the Legal Writing Institute*, which has given legal writing scholars a voice where we might not otherwise have had one, conferred value on our scholarship, and helped grow our discipline.

Representatives from all legal writing publications, *Legal Writing: The Journal of the Legal Writing Institute*, *Legal Communication & Rhetoric: JALWD*, *LWI Lives*, the *Monograph Series*, *Scribes*, *The Second Draft*, #Appellate Twitter, and various blogs also met to discuss challenges for building and maintaining our readership in a digital world. Several ideas came out of that meeting, one of which is to formalize our collaboration with a standing committee to continue the discussion.

DISCIPLINE BUILDING AND PROFESSIONAL STATUS UPDATES

As we enter this new biennium, LWI will continue to focus on discipline building—promoting excellence in teaching as well as scholarship—and improving the status of legal writing faculty across the country. With regard to discipline building, One-Day Workshops will be held at eleven law schools between November 30 and December 14. Check the LWI website for details and updates. Regional conferences will also be posted on the website, “We Write” retreats will continue, and we hope to host an interdisciplinary symposium with articles to be published in the *Journal*.

With regard to status, the Professional Status Committee is at work on a number of projects, including publishing the story of our citizenship statement and a position paper on ABA Standard 405(d). It is also putting together a number of tool kits that will be available to help members facing security of position challenges and programs in transition. A list of schools with tenure eligibility for legal writing faculty



and schools with autonomous programs is now available on the website under “Status-Related Advocacy.”

DIVERSITY AND INCLUSION

In addition to these ongoing efforts, LWI will work toward implementing the recommendations of the 2016-18 Diversity and Inclusion Committee to promote diversity of perspectives in the legal writing classroom, increase hiring and retention of faculty of color, create safe spaces for and combat prejudice against LGBTQ faculty and students, and assess the challenges facing legal writing faculty with disabilities. The Board is currently working to set priorities and an action plan. LWI also hopes to partner with the Association of Legal Writing Directors to address together these issues, which affect our community as a whole.

NEW COMMITTEE INITIATIVES

New committees this year include an **Academic Support Committee**, chaired by Renee Allen and Jarrod Reich, which will gather information on the nature of academic support programs in law schools and recommend ways in which LWI can partner with ASP faculty to further LWI’s mission. Also new is the **Public Relations and Social Media Committee**, chaired by Ruth Anne Robbins, which will advise the Board on improving LWI’s visual identity and presence in social media. The **Website Maintenance and Updates Committee**, chaired by Dan Real and Neil Sobol, will develop procedures for keeping our new website current. Finally, our **Teaching Resources Committee**, chaired by Heather Baxter and Michelle Cue, will work to resolve problems with the functioning of our Teaching Bank.

ALWD/LWI SURVEY

As you know, the report of the 2016-17 survey in its new format was released in April 2018. The institutional portion of the 2017-18 survey was sent out in June, and the new portion of the survey seeking individual responses will be sent out as institutional surveys are returned. Please be sure to answer the survey when it shows up in your mailbox.

UPCOMING CONFERENCES

Mark your calendars! The Seventh Applied Legal Storytelling Conference will be held next summer at the University of Colorado from July 9-11, 2019, sponsored by LWI, CLEA, and the Rocky Mountain Legal Writing Scholarship Group. Plans are already underway with the gala dinner to be held at the Colorado Chautauqua Dining Hall, in existence since 1898 and with spectacular mountain views. Be on the lookout for the call for proposals coming out soon. The following year, we will host the 19th LWI Biennial Conference at Georgetown University Law Center from July 15-18, 2020.

COLLABORATIONS

Apropos of this issue, LWI introduces a new collaboration with the ABA Standing Committee on the Law Library of Congress. LWI Board member Iselin Gambert will serve as a liaison member of this committee as we work with them to educate faculty, students, and the general public about the wealth of resources the Library of Congress has to offer. We will also continue to collaborate with SALT, as Kim Chanbonpin becomes LWI's affiliate member of the SALT Board, and CLEA, which co-sponsors the Applied Legal Storytelling Conference.

CONGRATULATIONS

Once again, welcome to our new LWI Board members Kirsten Davis, Shakira Pleasant, and Anne Ralph. Congratulations to our newly elected officers: President-Elect Kim Holst, Treasurer Jason Palmer, and Secretary Rebecca Scharf. And a final congratulations to the 2017 Teresa Godwin Phelps Award winner, Linda Edwards, and the 2018 Golden Pen Award winner, Terri LeClercq.

If you have any questions or comments about any LWI-related matters, please do not hesitate to contact me or any other member of the Board. I wish you an enjoyable and productive fall semester,

Sincerely,



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Collaborative Case Development for the First-Year Legal Writing Problem



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First-year legal writing problems can feel like open floor plan houses. Simple facts hang on prefabricated structures populated by “cardboard clients”¹—entirely devoid of messy nooks and crannies. Even when simulations are “rich and highly realistic,” they cannot replicate the complexity of representing an actual client.² Real client problems are rarely tidy. Real clients seek legal assistance when they face complex, three-dimensional, dynamic challenges.³

Collaborative case development infuses the traditional hypothetical model with the dynamism of real-life legal problem solving. Beginning with merely a short prompt, students work in small, heterogeneous teams (“firms”) to build the “case file.” This case file becomes the basis from which students individually draft objective memos or persuasive briefs.⁴ Requiring students to develop (rather than merely accept) the factual record helps them to hone critical lawyering skills by including them in each stage of problem solving.⁵ Additionally, driving legal research and writing assignments with collaborative case development harnesses student curiosity, sparks motivation, and increases deep learning.⁶ Finally, completing the case development tasks in firms subverts the traditional teacher-centric model while fostering a collaborative learning environment that

helps students to develop core problem-solving, communication, and professionalism skills.

TEAM WORK IS LEGAL WORK: USING FIRMS TO DEVELOP THE CASE

In practice, lawyers work together to solve complex and challenging problems.⁷ Beyond their colleagues, lawyers also work with clients, other members of the bar and bench, and government employees (just to name a few). Yet the foundational first-year law school experience often discourages collaborative work. High-stakes summative assessments in doctrinal classes and heavily-weighted memo assignments in first-year legal writing classrooms pit students against one another for the few coveted spots on the high end of the grading curve.⁸ Consciously or not, many students buy into the notion that law school itself is “an ultra-competitive game.”⁹ There is little sense that a common goal exists or that it even could. Countering this norm is a daunting, yet important task. Forming small permanent firms in which students work together on a series of case development tasks encourages students to hone collaborative problem-solving and communication skills.¹⁰ Additionally, when students work in their firms to develop the case file, they participate in knowledge creation and have the opportunity to build relationships while thinking creatively and leveraging one another’s strengths. Strategically forming permanent teams can help avoid barriers to cohesiveness while mitigating the social-loafer/free-rider issue, where certain students perform the majority of the group’s work.¹¹

In my Law Practice Skills (“LPS”) course, to maximize collaborative interaction, students work in their law firms for an entire semester and complete a number of group assignments. These include a short in-class presentation, an e-mail to the supervising attorney summarizing a legal issue, and a memo proposing client interview questions. While these products are not graded, student participation in their firms is a key component of their course professionalism grade.

PROVIDING JUST ENOUGH INFORMATION: LEAVING HOLES

A legal writing problem utilizing collaborative case development should strike a balance: students need just enough information to pique their interest and inspire further curiosity. They should feel like they need more. Rather than a complete file, I send my students a short e-mail from their “supervisor” that sets out general facts like those an attorney might find in an initial intake form¹² and a preliminary legal problem or task. Of course, especially in the early law school days, a problem with too many holes can leave students adrift and unable to process the problem they have been presented. To avoid this issue, relevant fact “holes” should have a definite answer that students can reach after a reasonable amount of research.¹³

BUILDING THE CASE FILE: FINDING THE HOLES

Like the lawyers they are training to become, after receiving the initial e-mail assignment, students work in their firms to identify additional information they might need to accomplish the assigned task. I ask students to identify the “holes” and brainstorm where they might find the additional information. For example, are legally significant facts missing? Do they want to know more about the client’s goals? Are there student-knowledge holes—information in the preliminary material that a student doesn’t understand—or other issues that need clarification? Asking students to discuss what they don’t know and to clarify what they do generates a robust discussion about the client. It also creates a space where “not knowing” isn’t a deficit but is part of the problem-solving process.¹⁴

In firms, students draft a document identifying the additional information they seek, explaining why it is relevant, and proposing how the firm can obtain

When students work in their firms to develop the case file, they participate in knowledge creation and have the opportunity to build relationships while thinking creatively and leveraging one another’s strengths.

this information. These “holes” often illuminate preferences, stereotypes, and other mental shortcuts and groupings that impact the students’ perceptions and affect how they make sense of the legal writing problem. I use this exercise as an opportunity to discuss metacognition, cultural sensibility,¹⁵ and the ethical duty of competence. In addition to exercises, videos, and readings, I also use a polling platform that allows students to express a range of responses anonymously. Once a range of information has been submitted anonymously, students process the responses in their firms first and then as a class. Responding anonymously helps to generate a broad response and creates space within the classroom to discuss potentially challenging topics, especially those that involve issues of power and prejudice.

CREATE AND ITERATE: FILLING THE HOLES

Leaving holes in the case file and then asking students to find and fill those holes helps students take an active role in problem solving. After identifying missing information, students work in their firms to develop and implement research plans based on the intake document(s) and their group discussions. This includes designing legal research questions, considering which legal sources to consult, and identifying other possible sources of information. My students use shared google documents and folders that allow them to generate, interact with, and store collaborative work.

Even the most masterful legal writing problems still involve hypothetical people with hypothetical issues, but locating the issue in a “real” context enables students to practice case development skills by leveraging the same technology they would use in practice. For example, students can use Google Maps to “walk the land”¹⁶ by measuring the distance between a witness and a crime scene, evaluating

whether a location is heavily trafficked or vacant, and identifying street lamps and other landmarks.¹⁷ They can also conduct internet research to find news articles, images, and videos that may inform how they approach solving their legal problem. For example, as part of a predictive memo assignment involving an arrest for disorderly conduct following a 2016 demonstration in Boston, students in my LPS course found news articles, images from Twitter and Instagram, as well as YouTube videos. They also used Google Maps, with its satellite and Street View functions, to evaluate where the arrest took place and the distance between the arrest and the witnesses.

Once students conduct initial fact and legal research they begin to grasp the legal rules that govern their issue and soon realize that they cannot possibly predict a legal outcome or advocate for their client without getting even more information. At this stage, students begin to synthesize what they know. Even without adding extrinsic grade-based motivation for these assignments, students work diligently to fill the gaps in their knowledge (both factual and legal) to better understand and evaluate their client's legal problem. By figuring out what they need to know, determining how to find it, locating the relevant information, and then evaluating what they have found, students practice critical legal skills and experience legal problem solving as an iterative process.

Creating holes that can be filled with a client or witness interview provides additional depth to the legal writing problem. While a full interview simulation might not be possible, firms can create and submit annotated interview plans in which they identify the information they are seeking and explain why this information is necessary. Asking students to justify their requests by citing to legal authority or to other course materials encourages them to apply what they are learning. This type of formative assessment also provides the professor with valuable feedback about whether students understand the legal framework governing the problem.

In my LPS course, I have used client interview e-mail memos submitted by each firm for the basis of a simulated client interview, which I conducted live during class. This type of exercise serves numerous functions. For example, as the "lawyer," I modeled ethical, client-centered interviewing. During the interview, students practiced active listening and note taking. After the interview finished, the students

returned to their firms to discuss what they learned and to create an interview summary that reflected their collective understanding. Relying on questions from each firm-generated interview plan, I was able to validate the work that the students produced, which fostered a supportive learning environment.

Relying on firms to build the case file is part scavenger-hunt, part Bermuda triangle. It requires that professors cede some control of the problem and step into the role of supervising attorney. Unlike a "canned problem," which has been reverse-engineered by "working from the legal authorities, the analysis, and the arguments, back to the facts,"¹⁸ the collaborative case development method relies on a story: thorny facts with a compelling client narrative. Firms invariably seek and find information that the professor has not considered. Rather than derailing the problem, this process simulates legal problem solving with real clients. After completing collaborative assignments and simulations, students rely on the case file that they have produced collectively to draft their individual writing assignments.

SMALL CHANGES: BIG RESULTS

Pedagogical goals in the first-year legal curriculum are ambitious, especially considering few students enter law school with a deep understanding of the legal profession and of what lawyers do.¹⁹ While some law professors embrace the live-client model for their legal writing classrooms, it is possible to get students practicing legal problem-solving skills in the first year without turning the curriculum on its head. Whether focusing on predictive problem solving or persuasive advocacy, engaging students in collaborative case development is a small but powerful addition to the syllabus.

NOTES

1. Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731, 1732-39 (1993) (discussing how various law school classes rely on a one-dimensional “cardboard client” that avoids the ambiguities and complexities of “real” clients); Michael A. Millemann & Steven D. Schwinn, *Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year*, 12 CLINICAL L. REV. 441, 454, 456 (2006) (describing the “canned” legal hypothetical as “a highly simplified environment, free of many of the complications of practice” and arguing that “[i]n simulations, fictional clients become unnaturally sanitized, stripped of social context, and denied complexities that make live clients and actual matters interesting, challenging, and real.”).
2. Millemann & Schwinn, *supra* note 1, at 448.
3. Although some first-year legal writing courses use a live-client model, the vast majority of law students are not exposed to real clients or legal work in their first year of study. See EDUARDO R.C. CAPULONG ET AL., THE NEW 1L: FIRST-YEAR LAWYERING WITH CLIENTS 3-4 (2015).
4. While my students individually draft and submit their predictive memos and persuasive briefs, collaborative case development could also be used in team drafting assignments.
5. See KATHLEEN ELLIOTT VINSON ET AL., MINDFUL LAWYERING: THE KEY TO CREATIVE PROBLEM SOLVING 89-91 (2018) (discussing the stages of problem solving).
6. See SUSAN AMBROSE ET AL., HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING 66-90 (2010) (discussing how students’ motivation determines, directs, and sustains what they do to learn); Shailini Jandial George, *Teaching the Smartphone Generation: How Cognitive Science Can Improve Learning in Law School*, 66 ME. L. REV. 163, 186 (2013) (explaining when students’ attention is captured they are better able to process, interpret, and remember information).
7. See, e.g., Neil J. Dilloff, *Law School Training: Bridging the Gap Between Legal Education and the Practice of Law*, 24 STAN. L. & POL’Y REV. 425, 439-40 (2013) (discussing the importance of learning teamwork).
8. Olympia Duhart, “It’s Not for a Grade”: *The Rewards and Risks of Low-Risk Assessment in the High-Stakes Law School Classroom*, 7 ELON L. REV. 491, 500-06 (2015) (discussing how high-stakes summative assessments impede deep learning and negatively impact student well-being); see also AMBROSE ET AL., *supra* note 6, at 70-74 (explaining how performance goals like getting a good grade in class or appearing intelligent can hinder deep understanding).
9. Duhart, *supra* note 8, at 491.
10. Melissa H. Weresh, *Uncommon Results: The Power of Team-Based Learning in the Legal Writing Classroom*, 19 LEGAL WRITING: J. LEGAL WRITING INST. 49, 56-58 (2014) (discussing the benefits of using strategically-formed permanent teams); see also Sophie M. Sparrow & Margaret Sova McCabe, *Team-Based Learning in Law*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 153, 196-97 (2012) (discussing how to strategically form a permanent team).
11. Weresh, *supra* note 10, at 57 (explaining that permanent groups encourage students to demonstrate commitment to the group).
12. For example: https://www.americanbar.org/content/dam/aba/events/homelessness_poverty/intake_2015_veteran_legal_clinic.auth-checkdam.pdf.
13. Creating problems with which students have some familiarity can also help to reduce cognitive overload. For example, the legal research and writing assignment can be based on a scenario that students are exploring in another course or on current events. Cognitive scientists suggest that students can process and store new information more easily when they are able to connect it to data that is already stored in their long-term memories. See George, *supra* note 6, at 174-75.
14. Problem solving is a messy process. For an exploration of employing a “failure framework” in the classroom to support student learning see Kaci Bishop, *Framing Failure in the Legal Classroom: Techniques for Encouraging Growth and Resilience*, 70 ARK. L. REV. 959, 991 (2018) (“By contextualizing some kinds of failure as praiseworthy, we can encourage our students to take risks in their thinking, ask questions, try out different hypotheses about the reasoning or holding in a case, and push the bounds of their understanding of the law. As we remind them that we expect them to fail and flail, and that doing so enhances their learning in law school, we can show that by engaging in these praiseworthy failures, they can be more creative and effective in their representation of clients in their work as attorneys.”).
15. Andrea A. Curcio et al., *A Survey Instrument to Develop, Tailor, and Help Measure Law Student Cultural Diversity Education Learning Outcomes*, 38 NOVA L. REV. 177, 184-89 (2014) (discussing the evolution from cultural competence training to cultural sensibility education and explaining that a “cultural sensibility framework focuses on students’ understanding that culture is a complex compilation of numerous influences and emphasizes developing students’ understanding of how culture, in turn, influences interactions or knowledge.”).
16. I attribute this phrase to my 1L Property Professor, Zygmunt Plater, who routinely admonished his students to do more than review the documentary record.
17. In addition to those examples, my students have also created maps that traced a police officer’s path prior to arresting their client.
18. See Millemann & Schwinn, *supra* note 1, at 457-58 (describing the process for creating a “canned problem” where the “question” for the students is defined by the pre-determined “answer” and there are a “limited number (perhaps just one) of pathways for the students to follow.”).
19. See, e.g., Sheldon Krantz & Michael Millemann, *Legal Education in Transition: Trends and Their Implications*, 94 NEB. L. REV. 1, 10 (2015); see also Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques*, 40 CAP. U. L. REV. 149, 153 (2012) (acknowledging that most students who enter law school have little or no experience or skills in the minimal competencies necessary to enter the legal profession, including critical thinking, problem solving, legal analysis, legal research, writing, and communication).

Drafting in Tandem: Enhancing Collaboration Through a Novel Classroom Set-up



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As legal writing professors, we have long known the value of collaborative and cooperative learning¹ and have incorporated group work into our classrooms. The benefits are numerous and varied. For example, collaborative and cooperative learning techniques help students develop skills such as critical thinking, analysis, problem solving, listening, conflict resolution, and negotiation, in a way that can reduce anxiety and fear.² The group atmosphere allows students to “share knowledge, hear different opinions, [] learn how others write and learn,”³ and develop a stronger sense of community.⁴ There are also benefits to the professor, such as increasing both in-class participation and subject-matter interest.⁵

Collaborative learning techniques can—and should—be incorporated in most types of law school classes, but they are generally used more often in skills courses.⁶ One reason may be that skills courses often aim to teach students those practical skills most used by lawyers—and effective teamwork is a key skill for today’s lawyers,⁷ owing to “the growing complexity and integrative nature of client issues.”⁸

It is for all of these reasons that I, like so many other legal writing professors, include collaborative learning exercises in my classrooms. I do so to an even greater extent in my upper-level contract drafting and negotiating course, where my students are required to work in pairs and small groups for both in-class exercises and graded assignments. During class, my students work in small groups of about four students on a variety of drafting exercises. For some of these exercises, I ask them to rewrite poorly drafted or ambiguous form-contract provisions by applying the principles of effective drafting that we covered in class. For other exercises, I may provide them with a prompt and ask them to draft a contract provision from scratch. In terms of graded assignments, my contract drafting students are required first to negotiate the consideration for a settlement agreement⁹ in pairs, and then to collaboratively draft that portion of the agreement.¹⁰ A percentage of each student’s grade is based not only on the effectiveness of the drafted term, but also on whether it reflects thorough and effective negotiation of behalf of their respective client.

However, I have often felt that these endeavors, particularly the in-class drafting exercises, weren’t as successful as they could be. Often times, one or two students would take control and do all, or most, of the work. Or even when that didn’t happen, there was regularly at least one student in the group who did not become engaged or did not contribute meaningfully to the group’s efforts. Other times, the students failed to actually collaborate on the exercise; instead, each student would complete the assignment independently

and then discuss their results with the group. In this scenario, at best, some of the students may have made slight revisions to their own work product as a result of the group discussion. But more often than not, the students did not work collaboratively to complete the exercises in the way that I had hoped.

Fast forward to the summer of 2016, when the Sandra Day O'Connor College of Law relocated from ASU's main campus in Tempe, Arizona into a brand-new building on the downtown Phoenix campus. Our new building boasts many modern elements, but the one feature that I was most excited about was the "interactive classroom," and I immediately requested that my contract drafting course be scheduled in that room. The key characteristic of this classroom is that it is organized into seven separate tables or "pods," as shown in the below photo. Each pod has a dedicated display for local discussion, small group work, and sharing. The professor mediates the control of pod displays, which can function in three primary ways: she can either (1) display the professor's material from the teaching station to each pod simultaneously, (2) allow each pod to connect to their own display and work as a group, or (3) share a specific pod's source to all other pod displays as well as the classroom projector.



Students collaborate while looking at a monitor while working at a pod station. Photo credit: Lynn French, Sandra Day O'Connor College of Law.

To take full advantage of this new classroom technology, I decided to incorporate even more in-class group work. Every week, my students worked on drafting exercises in their pods—in groups that remained together for the entire semester. One student would connect a laptop to the display at their table and each group would produce a single answer, whether it was a revision of a poorly drafted form-contract term or a contract term drafted from scratch. While I assigned the same types of exercises that I

Because the group of students within each pod worked so closely together all semester—both in terms of their physical proximity to each other as well as their level of collaboration—they seemed to unite into more cohesive groups than in the past.

previously used, I did so more often and thus, towards the end of the semester, my students were drafting larger portions of a contract in class. For example, in one exercise, I asked them to collaboratively draft terms for inclusion in a professional sports player's contract relating to off-the-field conduct, including the related recitals, definitions, and damages provisions. Typically, after the students completed the exercises in their pods, I would display one or two pods' answers to all of the other pod displays, as well as the classroom projector. Then, as a class, we would evaluate and discuss how to revise the sample answers.

Using this new classroom set-up, I immediately began noticing significant improvements in how the students worked and interacted in their groups. Instead of one or two of the students doing a large majority of the talking and the drafting, every member of each group seemed much more engaged and involved in producing the final work product. I heard them listening to each other and debating word choices while they drafted. Gone was the scenario where my students worked independently and reviewed their answers collaboratively—they actually drafted in tandem! I was able to witness the benefits of collaborative learning that I had read about: my students were sharing knowledge, hearing each other's different opinions, and learning how their peers think and write.¹¹ They even began to form a sense of community and "ownership" of their pod's work product. Those students who seldom volunteered to answer questions posed to the class—and even those students who seemed somewhat uncomfortable publicly speaking—were engaging with their groups. As a result, both the level of student participation and the quality of the work product increased exponentially.

Upon reflection, there seem to be several characteristics of the interactive classroom that led to the increased student engagement in the collaborative activities:

- **Real-time viewing and editing.** The pods enable the students to connect with each other in real time and on a screen that every member of the group can see. Also, the professor is able to instantly share the work of the pods with the broader class, which, in turn, allows for every class member to participate in providing feedback on that work product. This classroom setup also made it much easier for me to keep track of how many times each pod was called upon to share answers with the class, thus ensuring a more even distribution of contribution by the groups.
- **Building small-group identity.** Because the group of students within each pod worked so closely together all semester—both in terms of their physical proximity to each other as well as their level of collaboration—they seemed to unite into more cohesive groups than in the past.
- **The tech effect.** Lastly, the innovative classroom structure seemed to appeal to my tech-savvy Millennial students, who are accustomed to using novel technology both academically and personally.

Unfortunately for me, word spread and now many professors at ASU ask for their classes to be scheduled in the interactive classroom. That means that I won't always get to use it for my legal writing and contract drafting classes. But I now know firsthand that the benefits of collaborative learning can best be achieved when my students are fully engaged as a group in the in-class drafting (or other types of legal writing) exercises, and I believe that can still be achieved outside of the specific, unique context of the pods. For example, working in dedicated pairs or small groups, students can draft together on a single laptop, thus enabling real-time collaboration. Or our tech-savvy students can use applications like Google Docs, Zoho, and Dropbox to work as a group to draft a single answer while still using their own devices. Regardless of the method, there are a variety of ways that the professor can share one or two sample answers by displaying them on the classroom projector, such as connecting a laptop to the classroom projector or using email to forward the students' work to the professor. None of these may be as instantaneous or innovative as the unique pod

set-up, but they can be used to encourage the same type of engaged collaboration and group cohesion. So whether or not I can convince my colleagues to allow me unfettered access to the interactive classroom, I will forever aim to have my students learn collaboratively by drafting in tandem.

NOTES

1. While often grouped together, cooperative and collaborative learning have different aims. “[C]ooperative learning focuses on individual mastery of the subject via a group process,” while collaborative learning focuses on a final product produced by the whole group. Clifford S. Zimmerman, *Thinking Beyond My Own Interpretation: Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 961 (1999).
2. See Elizabeth L. Inglehart, et al., *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 185, 188 (2003); see also Roberta K. Thyfault & Kathryn Fehrman, *Interactive Group Learning in the Legal Writing Classroom: An International Primer on Student Collaboration and Cooperation in Large Classrooms*, 3 J. MARSHALL L.J. 135, 148 (2009).
3. Zimmerman, *supra* note 1, at 1000.
4. See Inglehart, *supra* note 2, at 196.
5. See *id.* at 188.
6. See Sophie M. Sparrow, *Can They Work Well on a Team? Assessing Students' Collaborative Skills*, 38 WM. MITCHELL L. REV. 1162, 1163-64 (2012).
7. See Janet Weinstein et al., *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36, 40 (2013) (“Increasingly, clients expect firms to work effectively across departments, offices, and even jurisdictions.”) (quoting Julia Hayhoe & Larry Richard, *The Secret Lives of Teams*, THE AM. LAWYER, July 2006, at 5).
8. Susan Azyndar, *Work with Me Here: Collaborative Learning in the Legal Research Classroom*, 1 LEGAL INFO. REV. 1, 6 (2015-2016) (quoting Heidi K. Gardner, *Effective Teamwork and Collaboration*, in MANAGING TALENT FOR SUCCESS: TALENT DEVELOPMENT IN LAW FIRMS 145 (Rebecca Normand-Hochman ed., 2013)).
9. The students previously independently drafted employment agreements from the perspective of either side of the transaction. For this assignment, the employee has terminated her employment agreement and plans to work for a competitor allegedly in violation of a covenant not to compete.
10. In order to ensure that the students engage in meaningful negotiations, I require that at least a portion of the consideration not constitute a monetary payment. For example, it may include the parties' agreement to a revised covenant not to compete, or the employee may agree to train her replacement for the employer.
11. See *supra* notes 2 and 3.

Amplifying Diverse Voices: Strategies for Promoting Inclusion in the Law School Classroom



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INTRODUCTION

The lack of diversity among lawyers is well-documented. An American Bar Association survey in 2017 revealed that 85% of American lawyers are white, and 65% are male; only 5% are African-American.¹ Among law professors, the numbers are no better. A 2009 survey conducted by the Association of American Law Schools (AALS), the last such report produced by the organization, estimated that nearly 75% of all law professors in the United States were white, and approximately 62% of them were male.² Women of color accounted for only 7% of this population.³

These numbers are impacted, in part, by historically low representation of minority students in law schools. In 2017, of the 42,300 students admitted to ABA-approved law schools in the United States, only 15,720 were students of color.⁴ Enrollment and retention of law students of color is so problematic that the Law School Admission Council (LSAC) recently awarded five law schools a grant of \$300,000 each to prepare underrepresented college students for law school.⁵ LSAC President Kellye Testy hopes this initiative will increase representation; “[t]he schools that are the recipients of the PLUS grants have designed programs that introduce students from diverse backgrounds to the rigors and rewards of a career in law.”⁶

And for minority students who are qualified enough to be admitted, getting into law school is only the first hurdle they will face as they prepare to enter the profession. Studies show that law students of color, especially Black and Latin-x students, face other internal and external challenges that affect their academic performance and thus limit their access to prestigious programs, such as law review membership and judicial clerkships, that are prerequisites for many legal jobs, including positions in the legal academy.⁷

Recently, a number of national movements, including #BLACKLIVESMATTER, #MeToo, and #TimesUp, have brought the discussion about diversity and inclusion

to the forefront. These movements, aimed at elevating the experiences of minorities in America, are often led by women, students, and Millennials who are representative of the population we teach in our law schools today. It is not surprising, then, that even at the most prestigious law schools, which are not historically known for their diversity, students are demanding that their institutions actively recruit faculty and students of color to better reflect the communities and the nation in which they will practice.⁸

This mandate presents an exciting opportunity to bring the broader national discussion about promoting inclusion and diversity into the realm of legal education. This article focuses on one strategy that law schools (especially those that lack diversity in their administration and faculty) can implement to elevate diverse voices and thus provide a more inclusive environment for students of color and minority students: the strategy of *amplification*.

The term *amplification* was made popular by Washington Post writer Juliet Eilperin in a September 2016 article describing how women in the Obama administration struggled to gain a voice among their male counterparts.⁹ According to Eilperin, women staffers reported being overshadowed by male aides who often spoke over them in meetings, took credit for their ideas, or ignored them completely. To combat this, the women adopted a “strategy of amplification.” Whenever one woman made a suggestion or offered an idea, another woman amplified it, repeating the idea to the room and giving credit to the woman who had voiced it.¹⁰

Below I describe three concrete amplification strategies that I have used successfully in my legal writing classroom, all of which would work equally well in any law school class.

STRATEGY 1: DIRECTLY AMPLIFYING MINORITY VOICES IN THE CLASSROOM

The practice Eilperin described in her article—women in the Obama administration consciously and directly amplifying each other’s voices—holds great promise as a tool for women in the workplace. But it also holds great promise for law schools wishing to support students suffering the effects of the “triple threat”: “the solo status that accompanies being a member of

an underrepresented group, the stereotype threat that accompanies being a member of a stereotyped group, and the challenges that attend lacking a background in the law before beginning law school.”¹¹ Many law students find themselves operating under this “triple threat,” including women. Although women outnumber men in law schools,¹² there are twice as many male lawyers as female lawyers in the United States.¹³ Encouraging direct amplification in the classroom can be transformative and empowering for these students, their classmates, and their professors.

Eilperin’s article was published in the middle of the fall semester of my first year as a legal writing fellow. I had structured my classroom to be interactive and lively. I didn’t cold call. I wanted students to *want* to participate in their learning, and I encouraged them by allotting points for classroom interaction, professionalism, and other participatory activities. Even so, some students rarely spoke. They clearly understood the concepts, as evidenced by their stellar papers, but they were reluctant to voice their thoughts and ideas. These students generally had one thing in common: they were women.

During individual conferences, I spoke with several women about their hesitation to speak in class. I affirmed the importance of their ideas to our class discussions, and I asked whether there was anything I could do to further support them. Each woman gave a variation of the same answer: “I was going to say something, but he said it first,” or “He said what I was going to say.” Having anticipated this response, I was ready to share the concept of direct amplification with them. We discussed the strategy and its usefulness, and I encouraged each student to practice it in class.

Direct amplification can take many forms within the classroom. It can happen from peer to peer, where a minority student repeats or “amplifies” the ideas of a fellow minority student to the larger group, giving credit back to that student for the idea and ensuring that it resonates with the entire class. It can also happen across groups, where a majority student amplifies the ideas of a minority student.

Here is a common scenario illustrating the power of amplification: In a class discussion, Stephanie, an African-American student who leans toward introversion, suggests that a particular case would be best used as rule authority instead of illustrative authority. The comment is largely ignored by the class.

Stephanie rarely speaks, although her written work suggests she has a clear command of the concepts. Isaiah, a white student, hears Stephanie's suggestion, and says, "Stephanie thinks the case should be used in our rule paragraph, instead of as an example, and I think that's a good idea." Isaiah has just amplified Stephanie by recognizing her idea, giving her credit for it, and ensuring that it is not lost in the discussion.

In legal education, and specifically in legal writing, we can amplify the voices and experiences of minority students by incorporating windows and mirrors into the problems we draft and assign.

Faculty members can also participate in amplifying minority students' voices by praising their classroom contributions, thereby affirming the value of those students and dispelling harmful stereotypes. In the scenario above, the professor could further amplify Stephanie by praising her idea, confirming its value to the discussion, and asking students how they might apply Stephanie's logic when deciding how to use cases. This direct amplification by professors may have the most transformative effect on students who operate under the "triple threat," ameliorating the impact of their isolation and performance anxiety.¹⁴

In my legal writing classroom, intentionally practicing the direct amplification strategy led to a noticeable transformation. The women spoke up more often, amplified the contributions made by their fellow classmates, and began to challenge the men in class, sometimes in twos and threes. The strategy not only empowered the women to be more assertive; it helped male students recognize the value and importance of women as indispensable members of the team, an essential lawyering skill if ever there was one. At the end of the term, I smiled widely as one of my formerly shy female students took top honors in her oral arguments and classroom performance. "I am woman. Hear me roar."¹⁵

STRATEGY 2: CREATING WINDOWS AND MIRRORS

Part of creating inclusive learning environments for students is having minority representation in front of the classroom. But, with the low numbers of women and minorities in the legal academy, how can law faculty support inclusion and diversity? Enter the concept of windows and mirrors—the notion that "education needs to enable the student to look through window frames in order to see the realities of others, and into mirrors in order to see her/his own reality reflected."¹⁶

In legal education, and specifically in legal writing, we can amplify the voices and experiences of minority students by incorporating windows and mirrors into the problems we draft and assign. Unlike law school examinations, which allow students to interact with the subjects of their hypothetical problems for only a few hours, legal writing assignments allow students to dive deeply into the experiences of a hypothetical client for weeks, months, or perhaps an entire semester. If our assignment centers on a Latina mother facing eviction, or a transgendered woman forming a business, or an Egyptian refugee facing deportation, we give majority students windows through which they can understand the experiences of others, and we give minority students mirrors through which they can see their own lifestyles and realities reflected.

When students see themselves represented in their classrooms, either at the podium or in the assignments they work on, it reinforces their value and improves their perceptions of the curriculum and their overall classroom performance.¹⁷ Intentional amplification can also improve students' feelings of belonging and importance within the educational community.¹⁸ So perhaps it is time to ditch the traditional "businessman gets defrauded by his partner and seeks damages" problem and replace it with something more relevant, like "successful Black female television executive has her coveted 'TGIF' slot threatened in alleged breach of contract." Much better; surely, if a student must spend ten weeks or more researching and writing about a legal problem, that problem should be empowering as well as interesting!

STRATEGY 3: USING CLASSROOM TECHNOLOGY TO ENCOURAGE PARTICIPATION

In creating classrooms that are collaborative and representative of the diversity in our community, we should not overlook one final group of students: the introverts. The Myers-Briggs Type Indicator (MBTI) categorizes takers into two categories, introverts and extraverts.¹⁹ Introverts are energized by individual, quiet reflection, while extraverts prefer external interaction with others.²⁰ According to studies conducted by attorney and Ph.D. Larry Richard, 64% of all attorneys are introverts, while 36% are extraverts.²¹

Assuming these figures can be extrapolated from attorneys to law students, the majority of law students lean towards introversion. These students may find it difficult or intimidating to actively participate in a class that relies heavily on the Socratic method or other teaching techniques requiring them to process information out loud. In addition to the strategy of direct amplification by faculty discussed above, another strategy for encouraging introverts to use their voices in the legal writing classroom is the incorporation of online technology.

For example, free programs such as Poll Everywhere²² give students a voice without requiring them to speak up. Students can ask questions anonymously, share how they are feeling about an upcoming assignment, take a quiz, or give live feedback on a piece of legal writing they are working on as a class. They can even respond on their cell phones through text—perfect for today’s Millennial students! Poll results can also lead to lively discussions as the responses are displayed in real time, allowing all students to participate at once.

In my classroom, we use Poll Everywhere on a weekly basis. I begin every class with music, and I use the program to collect song choices from my students. I also use it to engage students in creative writing exercises. For example, I ask, “Describe the first year of law school in six words,” and I give a prize to the student with the most creative response. I ask, “Describe your favorite movie in six words” (a sample response: Blonde wins over Harvard Law School).

I also use Poll Everywhere 🗳️ solicit feedback from my students about various aspects of the courses I teach. In the past, I’ve asked questions such as “Using just emojis, how are you feeling about your upcoming trial brief?” and “What are some things Professor Atkins can do in class this semester to help you master legal analysis?”

Because of its anonymity, I find the program especially useful for question and answer sessions preceding written assignments. Before I began using Poll Everywhere, a few brave, and likely extraverted, students raised their hands during these Q & A sessions, but there were never many. When I incorporated Poll Everywhere, I began receiving dozens of questions, some complex and others so basic that no one would have felt confident raising them in class. Using the live polling feature, I can address basic misconceptions and points of confusion before students submit their papers and receive their grades (some of which will be less than stellar), and I can avoid causing the classroom anxiety that many students experience when they are singled out.

CONCLUSION

Amplification, as I view it, is the intentional act of elevating the voices and experiences of minorities in large group settings. In describing the strategies for amplification, this article focuses on certain minority groups; however, each of these strategies can, and *should*, be applied broadly, to enhance the inclusion of all diverse perspectives and voices. By providing spaces where diversity is celebrated and normalized, we can better prepare our students to work collaboratively in the legal profession, and we can make strides toward improving overall minority representation within our profession.

NOTES

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Plain English for Grammarians



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WOWED OUT OF THE ROOM

Years ago, I took a graduate course in critical literary theory. The first day, the professor opened class with a discussion of “physical and narrative space.” Her first proposition was for us to visualize how “readers” in a two-dimensional universe might encounter a three-dimensional narrative object, specifically in reference to the role of the subjective self in the post-Althusserian Marxist response to cultural hegemony. The professor must have read some of our blank expressions, and to help us, she told us to read Marx’s *Das Kapital* Volume 1, weighing in at 1152 pages.

I dropped the literary theory course after the first meeting because I didn’t see much hope in spanning the chasm of knowledge I imagined between where I was at the time and where my professor wanted me to be to fully participate in the discussion. Reflecting on this experience now, I’m discouraged by how easily I was impressed. My initial thought was that I had no idea what the professor was talking about, which meant she must be brilliant. To understand her, I needed something to which I didn’t have access. As I’ve relayed the story to colleagues over the years, some are “wowed,” as I was, but most merely roll their eyes and groan, impatient with what could have been a simple message wrapped in opaque layers of unnecessarily complex language.

That experience did nothing to educate me. I was impressed by the depth of my professor’s knowledge, but I was more stupefied than edified. I was “wowed” out of the room. And, to be honest, I’ve seen this exact reaction from countless students during office hours when I relied too heavily on terminology or jargon to describe something that might be familiar to the student if described another way. Instead of simply saying, “You need a comma before this part that begins with an -ing verb,” I might say, “Your participial phrase is modifying the object when you want it to be modifying the subject.”

Much like my classmates in the critical literary theory course, law students have varied reactions to this unprompted grammatical assault, but most leave the experience either overwhelmed or discouraged. It’s the rarest of students, in my experience, who will commit to research and learn these terms and then apply those concepts to the writing assignment. In short, as a teacher, my goal in making the comment is at odds with the outcome I hope to instill in my student. Instead of empowering the student to work to master an objective, I’ve driven a wedge of technical language between the student’s current self and the self who wants to be the best legal writer possible.

TECHNICAL LANGUAGE, TECHNICAL USES

Writing teachers from all disciplines are concerned over their perception of the lack of basic grammar instruction; if you hang out with teachers long enough, you will invariably hear that “students don’t learn basic grammar anymore.” In my experience, what these teachers are lamenting is more often the decline in formal written grammar instruction, not the ability of their students to speak English. No one is a “native speaker” of written language, but well before first-language speakers reach physical maturity, almost all have adapted to the language’s complex rules, negotiated most of its idiosyncrasies, and earned full participation in the culture as a speaker. These speakers may not know the names for all of the linguistic structures they are using, like parts of speech, types of clauses, connections between those clauses, and so forth. Yet in a conversation, it would be difficult to immediately distinguish these students from equally academically well-qualified students who have had more formal training in grammar. The student who had the benefit of serious study of the language has mastered a secondary vocabulary—a discourse—that enables that student to communicate more effectively with other experts.

Specialized language, by design, drives a wedge by creating insiders and outsiders, winners and losers. Within law, legalese had created a bar, and a purposefully high one, for entry into the elite language community. Legal writing’s own Plain English movement sought to correct this imbalance created by the exclusivity of specialized legal language: state things simply, accessibly, and accurately.

We must ask ourselves about our goals for our students as legal writers. We have limited time and must make hard choices about what we will cover in a course. Do we teach the secondary language of descriptive grammar to help students understand and describe a phenomenon in which most students are already quite proficient, namely spoken English? Or is there a way to impart the same outcomes—namely sensitivity to the nuances of language that arise from structure—using tools already at our students’ disposal? We don’t have the time to teach our students all of English grammar, but we do have the time to teach them to use the skills they naturally have as fluent speakers of English to maximize their efficacy at creating legal documents. There are many potential ways to enhance future lawyers’ sensitivity to language to help them negotiate the many language-related challenges faced by law students and legal professionals without getting bogged down in technical grammar jargon.

AN ASSET-BASED APPROACH

In order to avoid some of the pitfalls of needing an entire descriptive language to map on top of an already fairly functional and effective ability of spoken English, I have worked to create plain-language labels to describe the common grammatical phenomena that come up in legal writing. The approach focuses on the assets and strengths that students bring with them to law school, notably a strong command of spoken English and familiarity with college-level writing. Interestingly, this asset-based approach is quite common among legal writing professors when it comes

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to teaching CREAC or analogies and distinctions, but, in my experience, grammar instruction is somehow immune. Whenever possible, I introduce grammatical concepts by their official names and then replace the names with a more descriptive label. For example, when we discuss avoiding sentence fragments and ways to combine independent clauses, I replace the grammatical term “sentence fragment” with “incomplete sentence” and the term “independent clause” with “complete sentence.” While these terms do not capture the full grammatical meaning of the phenomenon they attempt to describe, students feel empowered because the terms we’ve used do not require the acquisition of new technical terminology.

Another example is replacing the myriad terms used to describe bits of language that precede an independent clause with the functional label “introductory material.” Functionally, introductory prepositional phrases, introductory transitional adverbs, introductory subordinate clauses, and introductory participial phrases function the same from an outsiders’ perspective: they come before and introduce additional material that follows. Given the option, most students would be able to place a comma between the introductory material and the main clause in the following examples, regardless of their ability to label the constituent parts:

- Although the record was unclear[,] the court found the defendant had modified the ID card.
- In light of these facts[,] the court will likely rule in favor of the plaintiff.
- Finding several suspicious devices on the workbench[,] the officer detained Mr. Samsa.

As an editor and proofreader, knowing the distinctions among different types of introductory materials is helpful, but my first-year students have more modest goals during the fall semester: they mostly want to create effective and persuasive documents that are free of common and visible errors. The technical terms can certainly follow, but starting with the students’ strengths—their familiarity with how the language sounds and looks on the page—can yield fruitful discussion that empowers their goals of producing persuasive and error-free documents without putting too high an emphasis on the need for a new technical language.

But what about more complex grammatical issues? As examples, sentence fragments and introductory material are relatively straightforward. Most law students instinctively know when a sentence isn’t quite a sentence, and most can intuit the break between an introductory clause and a main clause because of the natural pause that occurs in most dialects of spoken English. However, restrictive

and nonrestrictive clauses and phrases are notoriously difficult to teach, particularly the that/which distinction. In my experience, law students run into trouble because of the very technique that allows them to identify the break between the introductory clause and the main clause: most students pause whether the commas need to be there or not.

Years ago, my attempts to teach restrictive and nonrestrictive clauses and phrases weren't delivering the results I hoped for. I began noticing that many of my students were reversing the rules, putting punctuation around restrictive material and omitting punctuation around nonrestrictive material. After talking to a few students, a familiar theme emerged: they were bringing their understanding of the term "Restrictive" from vernacular English, not grammar. To some of them, the term evoked a tight or binding feeling, as it might apply to strict, stifling rules or tight, "restrictive" clothing. In their minds, the punctuation that visually matched these "restrictive" feelings were the samples that contained commas. I revised my approach by beginning the workshop on restrictive and nonrestrictive material by presenting the technical grammar terms first, but I quickly replaced these terms with the plain language phrasing "distinguishing" and "non-distinguishing." Students did much better answering questions of "do we need this information to distinguish the noun that precedes it?" as opposed to "do we need this information to restrict the noun that precedes it?" For most students, this is a breakthrough moment in their understanding of language, particularly how using commas that "feel right" might accidentally change the legal meaning in a statute or contract.

To drive the point home, I end the lesson asking students to imagine that they are first-year associates at a law firm and have been asked to update the website language for a class action case. Then I show them the following sentence, which turns distinguishing information into non-distinguishing information and accidentally creates a new, unanticipated meaning.

- Class action claimants, **who qualify for full damages**, shall be awarded the full sum of \$50,000.

Most students confess that before attending the workshop, they would have surrounded the bolded phrase with commas. They audibly gasp when they realize the potential consequences of such a mistake.

DRAWBACKS AND ASPIRATIONS

While I advocate that this "plain language" approach to grammar is helpful for students and their writing, it is not without its drawbacks. This approach is not the end of the discussion on formal language features in writing; it is the beginning. The more comfortable students become with the structures of writing, the easier it is to develop more advanced discussions. To draw from an example above, once students are comfortable with "introductory material" as an inclusive label, some professors might opt to differentiate between those introductory elements that begin with prepositions, subordinating conjunctions, and words ending in -ing. Eventually, students might benefit from distinguishing between phrases and clauses, but the benefits of this skill might outweigh the costs in most law students' busy first year.

The asset-based approach starts with their strengths—what students already know about spoken language when they arrive to law school—and uses that asset as the basis to continue learning.

There is undisputed power in labeling, and those who have mastered specialized or technical languages end up in positions in which they may critique others. My own pedagogy attempts to balance expertise and openness. My goals are to help students to feel competent and powerful, not impressed by my authority and competence. It's a difficult balance as an instructor.

Most legal writing professors would not advocate that all students must understand the subjunctive mood in order to advocate effectively on behalf of future clients. Certainly, some arguments require advanced knowledge of grammar and language. For example, in *D.C. v. Heller*, 544 U.S. 570 (2008), both the government and Heller relied on trained language experts to help interpret the language of the Second Amendment in a light most favorable to their positions. The legal profession still needs elite copyeditors and proofreaders, much like journalism, but that is a highly-specialized skill taught primarily to those with a desire to study it. For most practicing lawyers, possessing a functional set of language and editing skills that support the work they do will do more good than trying to train every future lawyer to be a professional copyeditor.

Legal writing professors shouldn't avoid teaching grammar, but we should try to meet our students where they are to bring them to where we want them to be. Empower what they *do* know as a bridge to what you want them to know.

The Holy Grail? Designing and Teaching an Integrated Doctrine and Drafting Course



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I've long considered teaching doctrine and skills together in a single course to be the holy grail of legal education. If we could do so successfully, we might make significant strides in providing a legal education that better prepares our students to be practicing lawyers. In spring 2016, my colleague Professor April Cherry and I took the plunge, and collaboratively offered a course entitled *Estates and Trusts: Doctrine and Drafting* at our institution, Cleveland-Marshall College of Law. This essay describes our experience and lessons learned pursuing the holy grail.¹

THE GREAT DIVIDE

In law school, it's not unusual for doctrinal and skills courses to have little to do with one another. The traditional Socratic law school class pushes students to examine, understand, and apply legal doctrine. But that class may not require students to apply the law outside of a hypothetical question or a final exam essay. Students rarely negotiate a contract in Contracts class or draft a will in Estates and Trusts. In many instances, students emerge little prepared to practice in the area of law they've spent a semester or a year studying.

In contrast, in the typical skills course, instruction focuses on developing practice skills such as legal research and analysis, trial advocacy, and transactional drafting. Since students must know the law to effectively analyze and argue legal issues or draft enforceable documents, some coverage of the substantive law is indispensable. Still, the law remains a secondary aspect of the skills-focused course. Students may gain relevant practice skills but only have an incomplete understanding of the underlying body of law.

These are broad generalizations, and fortunately there are exceptions.² However, the Great Divide was certainly more the rule than the exception at my institution when I began teaching legal writing and even as I embarked on this collaborative project many years later.

SILOS, STATUS, AND HISTORY

The siloing of doctrinal and skills courses is often accompanied by status differences between tenured and tenure-track "casebook" faculty and lower status (often long- or short-term contract) skills faculty. These status inequalities complicate the prospect of collaboration. Some lower status skills professors feel trepidation at the prospect of collaborating with a higher status colleague unless there is absolute trust and mutual respect.³ Otherwise, the lower status professor runs the risk of becoming the sole or primary workhorse in the partnership.

Furthermore, the tension between doctrine and skills in the curriculum reflects a longstanding historical tension in legal education itself.⁴ In the years following the Carnegie Report and as the profession has increasingly demanded law graduates to be practice ready rather than ready to learn, we remain largely attached to the old ways. I knew I wanted to move toward more integrated instruction, but short of overarching curricular reform, I wasn't sure where to begin.

STARTING SMALL

I finally found my inspiration when I taught my school's Legal Drafting course for the first time. My version of the course focused on transactional drafting, including drafting a contract and a will. While all my students had studied contracts, only some were familiar with estate planning law. I had to teach the law of wills in our jurisdiction in order to advise them on their will drafting assignment. While I incorporated a research component and the assignment was a success overall, I realized there had to be a better way.

I decided that Estates and Trusts would be a good laboratory for integrating doctrine and skills. I preferred to attempt integration in an upper level course because students would enter with the foundational skill set from their first-year experience. It seemed more feasible to attempt integration in an individual course rather than within the relatively fixed first-year curriculum. I wanted to start small, offering students the option to take a traditional subject in a non-traditional way. With my expertise in drafting but not in estate planning, I needed to find the right partner willing to embark on a co-teaching adventure with me.

CHOOSING THE RIGHT COLLABORATOR

In light of the need for compatibility and a relationship of equals, I knew I had to approach the right potential partner. I reached out to my colleague Professor April Cherry, who had taught Estates and Trusts as a traditional doctrinal course. I didn't know April very well at the time, but what I knew, I liked a lot. She's an accomplished scholar⁵ and teacher without an ounce of off-putting egoism. She speaks up when it's important, and she supports both students and colleagues. I knew we both had quirky, artistic kids. Most importantly for me, she had always treated

contract status faculty as equal and valued colleagues. I invited April to meet me for breakfast. We discussed the idea of an integrated course, and I asked if she would consider co-teaching with me.

April, very graciously, agreed. I later learned that she was hesitant at first, because estates and trusts wasn't her preferred teaching area, but one she had been pulled into when other faculty departed. Those faculty had since been replaced, and she had not taught the course in several years. At the same time, she was interested in trying something new, and she had had a previous positive experience co-teaching a course with several colleagues. In addition, lucky for me, she was interested in getting to know me better. I was thrilled to have April on board as a collaborator. Our next step was to design the course and propose it to our Curriculum Committee.

DESIGNING THE INTEGRATED COURSE

We decided at the onset that we wanted to give the doctrine and skills components of the course equal weight. We chose to use both a traditional doctrinal textbook⁶ as well as a skills-focused textbook from the Skills & Values series.⁷ Grading would be equally weighted between exams and writing assignments. We proposed a 5-credit course, compressing the 4-credit Estates and Trusts course with the 2 credits typically assigned to upper-level writing courses, as we anticipated that the drafting assignments would help to reinforce the underlying legal concepts. Because of the intensive teaching and grading requirements, we capped enrollment at 20 students.

We planned to be in the classroom together for the duration of each class session, to share instruction and contribute to the discussion. We would cover the traditional estates and trusts syllabus as well as incorporate a selection of research and drafting assignments, so that students could learn doctrine and then apply the law in a realistic and practical way.

TEACHING THE INTEGRATED DOCTRINE AND DRAFTING COURSE

As the semester of our first collaboration began, April and I developed a routine. We met on Fridays at a local coffee shop to review the previous week and plan the next week's classes. April shared how

Through this experience, [we] learned how important it is to collaborate with a compatible partner. We anticipated that we would work well together, and we were right.

much she expected to cover of the doctrinal material, and I proposed coordinated research and drafting assignments. In addition, we both planned in-class active learning exercises for the class sessions. Most weeks we devoted approximately 60% of class time to doctrinal instruction and 40% to drafting, with some overlap for discussion.

Our teaching styles evolved as we taught this collaborative course. In a traditional course, April would have used a combination of lecture, Socratic discussion, case and statutory analysis, and group work, the latter to review the material she had covered. With our smaller class and reduced time for doctrine, she wasn't sure how to fit in all of the material. Over time, she moved from relying primarily on lecture and PowerPoint slides to also incorporating active learning techniques such as in-class problem sets designed to teach content in the first instance.

My challenge was that I almost always gave the second presentation in our lengthy class session.⁸ While I might have relied on some lecture, I knew I couldn't keep the students' attention that way for long. I needed to incorporate more in-class activities to keep the students engaged. Some of these I could draw from the Skills & Values textbook, and others I created. As a result, in every class, students were actively learning both law and relevant practical skills. They engaged in such exercises as drafting descriptions of inheritance schemes in plain English, revising a poorly drafted durable power of attorney, and completing a graphic organizer to outline the distribution of trust assets in preparation for drafting trust provisions.

April and I each had a clear role in teaching the course, particularly with respect to graded assignments and exams. April prepared and graded the midterm and final exam based on the doctrinal content of the course,⁹ and I prepared and graded the research and drafting assignments. The assignments, governed by state law, included completing probate filings, drafting a will and a cover letter to the client, preparing a durable power

of attorney, and drafting a set of trust provisions. Since it would be impracticable to have a writing assignment to accompany every doctrinal subtopic, we relied on the in-class work to fill the gaps.

One of the most valuable aspects of co-teaching was being able to contribute throughout the class session. If April was discussing a subject that suggested a drafting challenge, I raised it. If we needed to clarify a difference between Ohio law and the same subject's treatment under the Uniform Probate Code, April chimed in. We were comfortable asking questions of each other, and that contributed to the students' comfort level in discussion as well.

TEACHING THE ADD-ON VERSION OF THE COURSE

April and I were both happy with the experience of teaching the integrated course for the first time. It was a great deal of work, however, as well as more time in the classroom for both of us. After learning what worked well and what could be improved, we wanted to teach the course again soon, so we could continue to apply lessons learned. However, personal and professional circumstances intervened, and we agreed the following spring would not be the best time for us to teach the course again. Our administration, though, felt strongly that students should have the opportunity to take our class, and we were asked to offer the course.

Because of our individual time constraints, we compromised and offered the course in a different configuration. In this version, April taught all of the enrolled students a traditional estates and trusts class. I then taught an add-on drafting section to about half of the class. April had the full 4 hours (100 minutes each class, twice a week) of the traditional doctrinal class. The add-on drafting section was only one additional hour per week, so I now faced the issue of reduced time for coverage. We adjusted grading accordingly, weighing students' grades in the drafting section 70% on exams and only 30% on writing assignments. We weren't in the classroom together. I didn't have the benefit of hearing April's lectures and discussions, and she wasn't present for my explanations and discussions of the assignments and in-class exercises. We still met regularly to coordinate the course.

We concluded that this divided class was far from the ideal integrated course we had envisioned. Half of the students weren't part of the drafting course at all. On the surface, drafting appeared to be a lesser component. I struggled to fit in-class work into one short session each week. I missed being in class for April's instruction, both for the interplay of ideas and for her expertise on doctrine. Similarly, April felt less equipped to answer questions regarding how the doctrine and drafting fit together. We had lost the in-class interaction that eased the connection of theory and practice for students and for ourselves.

STUDENT EXPERIENCE

Overall, we received positive feedback from students on both versions of the course. Students were excited for the opportunity to learn doctrine and skills together. Our first course was fully subscribed, and it was a challenge for our associate dean to direct some students into the doctrine-only section the second year. We consistently found students to be very engaged in the material because they had to grapple with it more practically. In the integrated course, we had ample time for in-class exercises to reinforce specific concepts, enhancing student learning. Despite the shortcomings of the divided course, we saw benefits. April found that students who were enrolled in the drafting section "asked better, more insightful questions about the law" and outperformed their peers on exams.¹⁰

There were difficulties, as well. Students embraced the 5-credit integrated course at first, but having one grade for 5 credits ultimately caused anxiety for some.¹¹ They found the lengthy class sessions tiring, and some expressed a preference for moving the drafting portion to another time in the week; however, I expect this would have reduced some of the benefits from the interplay of teaching doctrine and drafting in the same class session.

ADMINISTRATIVE MATTERS AND OTHER CHALLENGES

Some challenges arose outside of the classroom. We didn't anticipate the need to clarify prospectively how much teaching credit each of us would individually receive for the 5-credit course. While our law school doesn't follow a strict credit banking system, there is a procedure for obtaining a reduced course load

after teaching an overload of credits. We discovered later that the administration took a different view than we did of the credits we each taught, despite the extra preparation and classroom time inherent in our innovative new course. We also had the sense of being victims of our own success when we tried to postpone teaching the course the second year, but were assigned to teach it nonetheless.

Resources may also be a concern. The full-time legal writing faculty at Cleveland-Marshall is responsible for teaching all sections of the first-year legal writing course. In any given semester we may lack sufficient numbers of full-time legal writing faculty to teach more than a course or two in our upper level writing curriculum.¹² Innovation requires resources of both time and personnel, and those can be in short supply in the current law school climate.

In addition, while this type of innovation is celebrated by many of our colleagues, it makes others uneasy. A legal writing colleague expressed concern that my activities would lead to all legal writing faculty being required to teach combined courses with doctrinal faculty. In the broader historical context of the place of legal writing in the legal academy, my colleague's concern is not entirely unfounded. There's a recurring temptation in law schools to "innovate" via their legal writing programs, in ways that burden lower status legal writing faculty and largely absolve their tenured colleagues of the hard work of embracing curricular change.¹³ But forced partnerships run the risk of lacking the compatibility, shared commitment, and mutual respect that were essential to our successful collaboration.

LESSONS LEARNED

Through this experience, April and I learned how important it is to collaborate with a compatible partner. We anticipated that we would work well together, and we were right. We were also fortunate to become great friends in the process.

We learned that it's a lot of work to innovate, and the commitment to do so should be encouraged and rewarded institutionally. Professors planning to engage in such a collaboration should work with their deans ahead of time to reach an understanding regarding the efforts involved and how they will be acknowledged and credited by the institution.

Our course demonstrated that student demand exists for integrated courses. I believe the best pedagogical innovations arise through individual and joint initiatives within an atmosphere of academic freedom. “Top down” innovation likely would be less successful. At the same time, a successful experiment suggests further experiments and applications should follow. We learned that we will expand our students’ experiences and opportunities when we continue to enjoy the freedom to try new pedagogical approaches.

Finally, is collaboration necessary? Could one professor teach the integrated course on her own? Certainly one well versed in both doctrine and drafting could do so with success. But collaboration itself holds inherent value. We found that the more we taught together, the more opportunities we had to learn from one another and enhance the overall educational experience for our students. Collaboration brings a richness of expertise and perspective to the classroom beyond what one faculty member can accomplish alone.

NOTES

1. This essay draws liberally from the presentation by April Cherry & Claire Robinson May, *The Holy Grail? Designing and Teaching an Integrated Doctrine and Drafting Course*, Southeastern Regional Legal Writing Conference, Stetson University College of Law, April 22, 2017. I am grateful to Professor Cherry for her invaluable contributions to the course, our teaching partnership, and this essay.
2. See, e.g., Sherri Lee Keene, *Legal Writing Professors Without Borders: Exploring the Benefits of Integrated Teaching of Legal Writing, Doctrine, and More*, SECOND DRAFT, Fall 2016, at 36; Michelle S. Simon, *Teaching Legal Writing Through Substance: The Integration of Legal Writing With All Deliberate Speed*, 42 DEPAUL L. REV. 619 (1992).
3. The hesitation to collaborate may be mutual. See J. Christopher Rideout & Jill J. Ramsfeld, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 82 (1994): “Creating a joint assignment is not a venture between equals in many schools, and that may cause problems. Some professors may not wish to work with legal writing professionals or may make them too keenly aware of their lower status.”
4. See generally Linda H. Edwards, *The Trouble with Categories: What Theory Can Teach Us About the Doctrine-Skills Divide*, 64 J. LEGAL EDUC. 181, 197-204 (2014).
5. See, e.g., April L. Cherry, *Shifting Our Focus from Retribution to Social Justice: An Alternative Vision for the Treatment of Pregnant Women who Harm their Fetuses*, 28 J.L. & HEALTH 7 (2015); April L. Cherry, *The Rise of the Reproductive Brothel in the Global Economy: Some Thoughts on Reproductive Tourism, Autonomy, and Justice*, 17 U. PA. J.L. & SOC. CHANGE 257 (2014).
6. JESSE DUKEMINIER & ROBERT H. SITKOFF, *WILLS, TRUSTS, AND ESTATES* (9th ed. 2013).
7. ROGER W. ANDERSON & KAREN BOXX, *SKILLS & VALUES: TRUSTS AND ESTATES* (2009). The texts in this series are designed to help professors incorporate practical skills into their courses. The Skills & Values text has an accompanying web course that we were able to adapt as our comprehensive course page.
8. Because April taught another class immediately after ours, she generally presented first though she stayed for the entire class.
9. We considered incorporating a practice section into the final exam (similar to the Multistate Performance Test on the bar exam), but decided against it as too labor intensive for our first time teaching the course.
10. Cherry & May, *supra* note 1.
11. In some cases, the stress affected students’ professionalism. We once came to class to find an anonymous note on the board requesting that we move either the midterm or the current drafting assignment’s deadline.
12. Typically, Cleveland-Marshall hires adjunct legal writing faculty when needed to teach additional sections of upper-level writing courses. Adjunct faculty are less likely than full-time faculty to develop or teach a collaborative integrated course, due to time constraints.
13. In some instances, this approach may reflect a misapprehension regarding the academic freedom of non-tenure track faculty. Tenure is a means of protecting academic freedom, but not a prerequisite for holding it. See American Association of University Professors, *Recommended Institutional Regulations on Academic Freedom and Tenure*, <https://www.aaup.org/report/recommended-institutional-regulations-academic-freedom-and-tenure>, (2013 revision) at § 9(a) (“All members of the faculty, whether tenured or not, are entitled to academic freedom as set forth in the 1940 Statement of Principles on Academic Freedom and Tenure, formulated by the Association of American Colleges and Universities and the American Association of University Professors.”).

Using Job Application Cover Letters to Introduce Persuasive Writing Skills: A Collaboration Between a Legal Writing Instructor and a Career Services Director



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INTRODUCTION

At DePaul University College of Law, one document that all first-year law students draft is a trial brief in support of (or in opposition to) a motion. The trial brief encompasses many of the legal writing world's best practices: briefs must be well-organized, well-edited, well-written, and factually and legally correct. Briefs must also be persuasive: their goal is to lead the brief's reader (a judge) to the natural conclusion that the author's (or perhaps more accurately, the client's) position is the best result for the case.³

Another document that all first-year DePaul law students draft is a job application cover letter.

A cover letter touches on many of the same best practices as a trial brief: cover letters must be well-organized, well-edited, well-written, and factually correct. Cover letters must also be persuasive: their goal is to lead the letter's reader (an employer) to the

natural conclusion that the letter's author is the best person for the job.⁴

Because of their similarities, these documents offer an exciting opportunity for collaboration between legal writing professors, whose job it is to teach best practices regarding trial briefs, and career services professionals, whose job it is to teach best practices regarding cover letters. This article explores how one associate director of a legal writing department (Jody Marcucci) and one director of a career services office (Shannon Schaab) worked together to ensure that one group of first-year law students received consistent and sound advice about best practices for drafting persuasive job application cover letters and about how this advice would also help them produce stronger and more persuasive briefs.

THE COLLABORATION

Last spring, Jody was faced with a rare situation: she had some open time in the class period that first introduces persuasive writing skills. She was looking for a short, engaging, and persuasive document to present as an example in class. As many law students are in the midst of job hunting in the spring semester, she thought an employment cover letter might be a "real world" document students would relate to and would therefore be interested in learning more about.

She envisioned that the strategies students would learn for enhancing their persuasive letter-writing abilities would transfer directly to the task of writing a persuasive brief.

Jody has some practical experience working with cover letters. In her previous job as a law clerk at the Illinois Appellate Court, she often did the first read-through of job applications, both from licensed attorney applicants and from law student applicants. Through her service work at DePaul, she has also met with students to discuss their cover letters and how to make them stronger. However, before she introduced the subject of cover letters during her legal writing class period, she thought it best to consult an expert. So she invited Shannon Schaab, the Assistant Dean and Director of DePaul's Law Career Services Office, for coffee.

Jody wanted to address several concerns with Shannon: Would she be overstepping into Law Career Services territory? Would her presentation be consistent with Law Career Services' message? Would her presentation be consistent with best practices for crafting cover letters?

At their meeting, Jody's concerns were quickly dispelled. Shannon enthusiastically welcomed the opportunity to reinforce Law Career Services' messaging in a legal writing class. The Career Services team was introducing cover letter drafting strategies to students through Preparing to Practice, a new mandatory 1L professionalism course taught by that office. Shannon viewed Jody's proposal as an ideal way for those best practices to be reinforced through the traditional law school curriculum.

As one would hope, Jody and Shannon's views about how to best create persuasive documents were consistent and in line with best practices. Their discussion led to the creation of an in-class exercise centering on examples of former students' cover letters and highlighting common drafting errors. These best practices and the in-class exercise are described below.

BEST PRACTICES FOR CRAFTING COVER LETTERS

From working with legal employers, Shannon knew that the cover letter is often the first writing sample employers see from student applicants.⁵ In fact, it may

be the only writing sample they see, since many law student employers do not request formal legal writing samples in their application processes. As a result, Shannon and her team of career advisors work with students to approach cover letters as they would a formal legal writing sample. The following principles guide that process:⁶

- The **goal of a cover letter is to persuade** the reader that you are the right candidate for the position. Cover letters are not objective memos.
- Cover letters should demonstrate your ability to **write like an attorney**. You should use your cover letter to argue why the skills you have will allow you to excel in the position. Those arguments should be supported by evidence from your experience.
- It is important to **keep in mind the audience** for your cover letter. Tailor your cover letter to the skills/experience sought by the employer. Use the job description/posting or your knowledge of the job requirements to guide the arguments in your cover letter.
- Each **substantive paragraph should begin with a persuasive topic sentence** about what makes you an excellent candidate for the particular position.
- If the cover letter has two substantive paragraphs, you should include **a roadmap of the arguments in the introductory paragraph and a summary of the arguments in the conclusion paragraph**.
- Employers want to see **clear and concise writing** in cover letters. You should avoid using legalese in your cover letters.

THE IN-CLASS EXERCISE

Jody presented the in-class exercise⁷ as part of her legal writing class that introduced persuasive writing skills. The exercise consisted of evaluating three drafts of a cover letter: a first "weak" draft; a second draft that highlighted many of the first draft's errors; and a third draft that was a revised, stronger letter. The first draft was comprised of parts of former students' letters. As evidenced by the comments and edits included on the second draft, the first draft included many common drafting mistakes: not understanding who the audience is; focusing on why the job is a great fit for the student, as opposed to why the student is a great fit for the job; and not editing carefully to find

[We] envisioned that the strategies students would learn for enhancing their persuasive letter-writing abilities would transfer directly to the task of writing a persuasive brief.

issues with organization, tone, clarity, and punctuation. The third draft offered drafting solutions to many of these issues.

To begin the exercise, Jody presented the students with the first example, the “Weak’ Cover Letter” draft. She gave them about ten minutes to read the letter and comment on it. She encouraged students to discuss the draft with those around them. After this initial reflection period, Jody called the class back together to hear students’ views on the letter. Some found the letter disorganized, abstract, and hard to follow. One student was astounded that writing could be “that bad.” However, many students found the letter to be well-organized, well-written, and persuasive.

Jody then pointed out some issues with the letter, many of which were included in the comments to the second example. Those issues related to the letter’s overall organization, tone, and clarity, and whether the letter’s author was writing for the appropriate audience. For example, she pointed out how the letter might not be addressed correctly, as appellate-level judges in Illinois are referred to as “Justice,” rather than “Judge.” She highlighted how these errors diminished the letter’s persuasive value. She discussed how the letter’s introductory paragraph lacked clarity because the reader could be confused about what type of clerkship the candidate was applying for—for example, a full-time professional clerkship or a student-extern one. She pointed out how the author waited until the middle of the second paragraph to present why she was a strong candidate for the position, when this important statement deserved a more prominent place in the letter.

As the discussion progressed, Jody provided students with the second example, the “Weak’ Cover Letter with Edits/Comments.” Providing this document allowed the students to follow along with the discussion and included many of the “weak” letter’s issues addressed during the class discussion. Finally, Jody provided students with the third example, the “Revised (But

Never Perfect) Cover Letter,” and gave the students a few minutes to read the letter and discuss it with their classmates. The class then discussed how the edits and changes resulted in a far better—and more persuasive—letter. Jody then asked the students whether they thought all issues were fixed or if they found any others. Jody stressed that the language in the title of the document was there to remind students that a cover letter is always a work in progress and that students should routinely re-read and re-edit their letters before submitting them.

The exercise took about twenty-five minutes to complete in class. The feedback from students was positive. As expected, many liked the idea of working with a document that was more directly tied to their own lives. Many also appreciated another opportunity to evaluate their cover letter writing abilities. Going forward, Jody may try to introduce the exercise earlier in the semester to reach more students who are in the job application process.

CONCLUSION

This lesson on crafting persuasive cover letters provided a welcome opportunity for collaboration between a legal writing instructor and a career services director. The lesson ensured that students received a consistent message about a shared goal: that students present their best arguments in a persuasive and professional manner.

Example 1 “Weak” Cover Letter

Evelyn S. Navarro
212 West Dragonfly Street, Apt. 12B
DePaulia, Illinois 60604
(123)-456-7890
esn@provider.com

March 1, 2017

The Honorable Bernice R. Wells
DePaulia Court House
312 Main Street
DePaulia, Illinois 60604

Dear Judge Wells:

I am a third-year law student at DePaul University College of Law and wish to apply for the open clerkship available with your chambers.

I am seeking a judicial clerkship for three reasons. The foremost reason is a bit idealistic, but I believe a judge’s institutional role is to defend against majoritarian encroachments on individual rights. I’ve had the opportunity to see and study this in the academic setting, but want to actually participate in this defense by working in the judicial branch. Understanding that the vast majority of cases don’t involve such weighty issues, the second reason is a more practical one. I thoroughly enjoy legal research and writing, and I received a CALI award in my LARC III class. As someone relatively new to the law, I love discovering new facets of the law and figuring out how they all interrelate to form a coherent network. Thirdly, I want the intellectual challenge and engaging debate that comes with deciding legal issues and writing judicial opinions in an impartial setting.

Thank you in advance for considering my application. Should you require additional information, please do not hesitate to contact me.

Sincerely,

Evelyn S. Navarro

APPENDIX IN-CLASS EXERCISE

Jody Marcucci & Shannon Schaab

Example 2 “Weak” Cover Letter with Edits/Comments

Evelyn S. Navarro
212 West Dragonfly Street, Apt. 12B
DePaulia, Illinois 60604
(123)-456-7890
esn@provider.com

March 1, 2017

The Honorable Bernice R. Wells
DePaulia Court House
312 Main Street
DePaulia, Illinois 60604

Dear Judge Wells:

I am a third-year law student at DePaul University College of Law and wish to apply for the open clerkship available with your chambers.

I am seeking a judicial clerkship for three reasons. The foremost reason is a bit idealistic, but I believe a judge's institutional role is to defend against majoritarian encroachments on individual rights. I've had the opportunity to see and study this in the academic setting, but want to actually participate in this defense by working in the judicial branch. Understanding that the vast majority of cases don't involve such weighty issues, the second reason is a more practical one. I thoroughly enjoy legal research and writing, and I received a CALI award in my LARC III class. As someone relatively new to the law, I love discovering new facets of the law and figuring out how they all interrelate to form a coherent network. Thirdly, I want the intellectual challenge and engaging debate that comes with deciding legal issues and writing judicial opinions in an impartial setting.

Thank you in advance for considering my application. Should you require additional information, please do not hesitate to contact me.

Sincerely,

Evelyn S. Navarro

Know your audience. In Illinois, judges on the appellate court are referred to as “Justice.” This varies from jurisdiction to jurisdiction, so do your research.

Clarity/Precision. This is ambiguous. Full time? Externship? Don't assume the reader knows. The judge may be looking for full-time clerks and student externs at the same time.

Persuasion. Use this opportunity to persuasively introduce why you are a strong candidate for the job.

Organization. This paragraph is mainly about what the clerkship experience will do for this student. It shouldn't be. It should be about what the student can do for the judge.

Clarity/Precision/Tone/Persuasion. What does this mean? Also, what if the judge has a different view of the role of the judiciary?

Tone. “[A] bit idealistic” may be a bit too chatty for a cover letter.

Tone. Do not use contractions in formal documents.

Precision. Comma usage? Judges (and the clerks who read your work first) care!

Know your audience. This may turn some judges off. All cases involve “weighty issues” for the parties involved. Judges understand this.

Organization. This should be the first reason the author raises. But the focus should be on why the student is good at it instead of only that she enjoys it.

Persuasion. Here the student does offer evidence to support that she is a strong legal writer. But the persuasive value is lost. Not everybody knows what a CALI award is. And it is a top honor, so present it that way. This is better: “I was awarded for my top performance in a required course that focuses on appellate research and writing.” And don't bury it in the middle of the paragraph.

Tone. To a judge, a law student is brand new to the law.

Clarity. What does this mean?

Tone. “love” is not a professional word choice here.

Tone. Be deferential. This isn't.

APPENDIX IN-CLASS EXERCISE

Jody Marcucci & Shannon Schaab

Example 3

Revised (But Never Perfect) Cover Letter

Evelyn S. Navarro
212 West Dragonfly Street, Apt. 12B
DePaulia, Illinois 60604
(123)-456-7890
esn@provider.com

March 1, 2017

The Honorable Bernice R. Wells
DePaulia Court House
312 Main Street
DePaulia, Illinois 60604

Dear **Justice** Wells:

I am a recent graduate of the DePaul University College of Law and newly admitted attorney of the Illinois bar. With great interest, I am writing to apply for the full-time judicial clerkship position available with your chambers.

My legal writing ability and experience drafting opinions at the Illinois Appellate Court make me a **strong candidate** for a clerkship with your chambers. During my last semester of law school, I served as a judicial extern to the Honorable Juan K. Morrison. **Working at the appellate court allowed me to sharpen my research and writing skills and increased my knowledge of both civil and criminal procedure. While working at the appellate court, I had the opportunity to draft a Rule 23 order dealing with the post-conviction petition of a defendant alleging police torture at the hands of Lieutenant John Smith and his subordinates. I received positive feedback on my work.**

I believe I would excel as a clerk for you. Thank you for your consideration. **I** look forward to hearing from you soon.

Sincerely,

Evelyn S. Navarro

Know your audience. Correct Title

Clarity. Notice that this letter uses short, direct, and clear sentences.

Persuasion. In this intro sentence, "strong candidate" is the key term. The rest of the paragraph shows why she is a strong candidate. She is doing more than just saying she would be a good clerk, she is offering evidence to support it.

Organization/Persuasion. Here the author is able to highlight her key accomplishments relevant to the job. Notice that she accomplishes this without simply reciting her resume.

Word Choice. "Analyzing the merits of" may be a better choice than "dealing with."

Know your audience. Some people will find working on this case to present an exciting opportunity for social justice. Others will be reminded of a terrible chapter of local history. Which side does this judge fall on? Consider whether she has a history with the Public Defender's Office or with the State's Attorney's Office. It may be better to use more general language instead.

Tone. A polite deferential closing.

Precision/Persuasion. This is a writing job. Show you know how to use a semicolon!

NOTES

1. Senior Professional Lecturer and Associate Director: Legal Analysis, Research, and Communication, DePaul University College of Law; 312.362.7465; jmarcucc@depaul.edu.
2. Assistant Dean & Director: Law Career Services, DePaul University College of Law; 312.362.8387; sschaab@depaul.edu.
3. Gerald Lebovits, *The Legal Writer: Write to Win in Court*, 89 N.Y. ST. B.J. 64, 47 (Mar./Apr. 2017) (“Written briefs are the first and best opportunity to persuade the court. Sometimes they’re the only way to persuade the court.”); Mark K. Osbeck, *What is “Good Legal Writing” and Why Does it Matter?*, 4 DREXEL L. REV. 417, 426 (2012) (“Likewise, a judge reads a lawyer’s pre-trial brief in order to obtain information about the case and in order to understand the parties’ arguments. This in turn helps the judge decide how to rule on a motion.”).
4. JO ELLEN DARDICK LEWIS, *TELLING YOUR STORY: A STEP-BY-STEP GUIDE TO DRAFTING PERSUASIVE LEGAL RESUMES AND COVER LETTERS* 81 (2017) (“A cover letter is also the first writing sample an Employer will read even before your resume and needs to reflect your excellent writing skills. It should be concise, clear and convincing”); Nichole M. Velasquez, *Why Should I Hire You? Essential Cover Letter Tips for Students*, NAT’L ASS’N FOR L. PLACEMENT BULL. (Sept. 2010) (“Cover letters should answer the most important question from an employer’s perspective: why should I hire you?”).
5. DARDICK LEWIS, *supra* note 4, at 81; Joel A. Holt, *Cover Letters: 7 Steps to Creating a Great True First Impression*, NAT’L ASS’N FOR L. PLACEMENT BULL. (Aug. 2011) (“A cover letter should present a persuasive argument for why an employer should select the applicant for an interview [The] cover letter is the first and possibly only writing sample that the legal employer will read.”).
6. Holt, *supra* note 5; Mark Weber, *Do’s and Don’ts for Resumes and Cover Letters*, ABA FOR L. STUDENTS: BEFORE THE BAR BLOG (Sept. 1, 2015), <https://abaforlawstudents.com/2015/09/01/dos-and-donts-for-resumes-and-cover-letters/>.
7. The materials used in the exercise are included in the Appendix to this article.

Collaboration with Doctrinal Faculty to Introduce CREAC



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When legal writing professors introduce CREAC (or IRAC, TREAT, etc.), our examples necessarily use some area of substantive law to demonstrate how the pieces of legal analysis fit together. And when we ask students to try drafting a CREAC analysis, they also have to learn the relevant substantive law first. Students might be asked to analyze whether a worker is an employee or independent contractor or whether the elements of a tort claim are satisfied. But that means that students need to learn the relevant substantive doctrine while they are also grappling with the basics of CREAC. In the language of learning pedagogy, that imposes an extraneous cognitive load¹ that hampers their ability to focus just on understanding the pieces of CREAC.² Inspired by examples from other disciplines,³ I realized that students could better learn how and why the pieces of CREAC fit together if I gave them an assignment for which they already knew the substantive law and court decisions. To do that, for the past several years I have been collaborating with doctrinal colleagues to use material from their classes to help students learn the fundamentals of CREAC.

HOW THE COLLABORATION WORKS

First, some background: I use three steps to introduce my students to CREAC analysis before they write their Closed Memo. Each step uses a separate set of materials (a fact pattern and several cases) to analyze a client's legal claim. I give my students multiple opportunities to work with the parts of CREAC using different sets of material, to enhance their

understanding of how CREAC works and enable them to transfer that understanding to new situations.⁴

1. First, I assign my students a series of videos I created that walks through CREAC using a case file they read ahead of time.⁵ The case file contains a fact pattern that suggests our hypothetical client might have a self-defense claim, and four short court opinions about self-defense. In the videos, I demonstrate how I use those materials to draft a CREAC analysis of the elements of the claim, breaking down each step of the analysis and writing. The first video provides an overview of CREAC. The remaining videos provide in-depth discussion and illustration of the Rules, Explanation, and Application parts of CREAC, with each part serving as the subject of one video.
2. As I discuss in detail below, in class my students then practice using the CREAC approach I demonstrated in the videos. They use a different fact pattern and set of cases, and work in groups to draft Rules, Explanation, and Application for a memo analyzing a legal claim.
3. Finally, my students each draft a CREAC analysis using yet another set of materials, drawn from the Closed Memo assignment. The Closed Memo requires them to analyze a multi-factor test. At this stage, each student drafts a CREAC analysis for one factor, and meets with me to discuss their work so I can ensure they are on the right path before they draft their complete memo.

It's step #2 of this process that involves significant collaboration with one of my doctrinal colleagues. During the in-class activity, students have their first opportunity to practice analyzing a legal claim using CREAC and drafting the analysis. To enable them to focus on just the CREAC analysis—and not have to simultaneously learn new doctrine—I use cases they are already familiar with. To do so, I began working with my colleague who was teaching my students Torts to develop the materials for the in-class activity. He was covering Intentional Infliction of Emotional Distress (IIED) the week I introduced CREAC. I read the three cases he had assigned our students, went to his class, and worked with him to develop a fact pattern that asked students to analyze whether a client had a valid IIED claim.

As a result [of collaborating with doctrinal colleagues], I am able to introduce more sophisticated analytical and organizational strategies earlier in the year, while drawing closer connections between the doctrinal and skills aspects of my students' education.

When our students came to my class, I had them work in groups to put together parts of the CREAC analysis using only the cases they had already read for Torts and the fact pattern I wrote. In other words, the cases weren't new; the only new thing was how students worked with them. In one class, they drafted Rules and organized them into a skeletal outline of an IIED memo. In the next class, they drafted parts of the Explanation and Application sections. During those classes, after students had worked in their groups for 15 minutes, I asked each group to post what they'd written to a Google Doc we could all see on the screen. I then solicited comments on each group's work and provided my own feedback and suggestions.

I have now run this collaboration five times with three different colleagues—two who teach Torts and one who teaches Contracts. Because I work with whatever material my colleague happens to be covering the week I introduce CREAC, I have used this approach with several fact patterns I've written, all with similarly successful results.

ADVANTAGES AND CHALLENGES OF THIS APPROACH

This collaboration with doctrinal colleagues has several major advantages. First, students are able to focus on the fundamental legal writing and analysis skills I want them to learn because they are already familiar with the case law. Second, students see the connections between what they learn in their other classes—both legal doctrine and underlying analytical skills—and what I teach in my Legal Practice course. And finally, my doctrinal colleagues develop a better understanding of what I teach and how my class marries substantive doctrine with practical skills.

I invite my doctrinal colleagues to join my CREAC classes to observe what our students do with the material they covered in the doctrinal class, and we often debrief afterwards.

There are a few hurdles to overcome to make these classes work. Most significantly, my syllabus doesn't offer much flexibility in when I introduce CREAC, so I have to work with whatever doctrine and case law my doctrinal colleague is covering that week. And because I teach these classes during the second week of the year, some of my doctrinal colleagues aren't covering material that would work for the CREAC classes. For example, last year my colleague who taught my students Civil Procedure was enthusiastic about collaborating on a CREAC problem, but during the relevant week she was still covering broad themes around which that course would be centered. The cases she planned to assign didn't lend themselves to the kind of rule synthesis and application I needed to make the CREAC classes work. Fortunately, my colleague who was teaching my students Contracts was equally enthusiastic and was covering material that worked well for the collaboration.

The specific cases my doctrinal colleagues assign also sometimes pose challenges. The CREAC classes work best when students have at least three cases to work with, so they can practice synthesizing information across court opinions. Given the way common-law casebooks are set up, that often means I am working with at least one case that is quite dated. And the cases frequently show the development of the doctrine over time instead of simply illustrating how different courts used the same principles to reach different results. I can usually manage those difficulties by thinking carefully about the fact pattern I draft, ensuring that it enables students to pull relevant threads out of the cases they have to work with and synthesize rules instead of merely parroting language from court opinions.

When I initially started this collaborative approach, I worried that I might unintentionally confuse students about the substantive doctrine or cause them to focus on details that were unimportant for their doctrinal exam. And I didn't want to hamper my colleagues' ability to cover the material in the way that made sense for their classes. Fortunately, those concerns have proved unwarranted. I work closely with my colleagues to write the fact pattern, and we discuss

the Rules and Application students might draft and the Conclusion we expect them to reach. The only concern my colleagues have raised is that students who were not in my Legal Practice sections (but who were in the larger doctrinal class) might feel *disadvantaged* by not having additional exposure to the doctrine I covered in my CREAC classes.

THE RESULTS

One of my major teaching objectives in the first weeks of the year is to cement the fundamentals of CREAC in students' minds. Collaborating with colleagues in the way I describe here has resulted in significant improvements in how quickly my students develop facility with CREAC. Most students now turn in Closed Memo *drafts* that are comparable to the *rewrites* I used to see. As a result, I am able to introduce more sophisticated analytical and organizational strategies earlier in the year, while drawing closer connections between the doctrinal and skills aspects of my students' education.

NOTES

1. See Terri L. Enns & Monte Smith, *Take a (Cognitive) Load Off: Creating Space to Allow First-Year Legal Writing Students to Focus on Analytical and Writing Processes*, 20 LEGAL WRITING: J. LEGAL WRITING INST. 109, 111 (2015) (noting that extraneous cognitive load is "unnecessary to the immediate learning objectives and interferes with learning").
2. *Id.* at 111-12 ("[T]he educator's goal is to permit the amount of [cognitive] load that optimizes learning by paying careful attention to a learning task's intrinsic cognitive load and deliberately reducing the extraneous load.").
3. See generally SUSAN A. AMBROSE ET AL., HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING 91-120 (2010) (providing examples—from fields as diverse as acting and math—of how breaking down a complex skill into component parts, and allowing students to focus on just one part at a time, helps them develop mastery).
4. See PETER C. BROWN ET AL., MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING 51 (2014) ("[V]aried practice [i.e., practicing the same skill using different models or materials] . . . improves your ability to transfer learning from one situation and apply it successfully to another.").
5. The videos I created are available here (videos 2.01-2.04): https://www.youtube.com/playlist?list=PL7g_CQSIG4S8LNHbB7SErpyL6h-Kxx17o0. If you would like copies of the written materials that accompany the videos, please email the author of this article at wilensky@umich.edu.

Leaving the Land of Tweets, Texts, and Emojis: The Collaborative Writing Skills Assignment, a Vehicle For Reinforcing Grammar and Punctuation Rules



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INTRODUCTION

Technology has transformed much of ordinary communication into written rapid-fire shorthand. More time is devoted to tweets and emoji-laden texts, and less time is spent talking on the phone.¹ Capitalization and proper punctuation are often abandoned in modern-day communication, and abbreviations such as FOMO, fear of missing out, and YOLO, you only live once, abound.² First-year law students are experts in this new style of writing, adept at the grammar and punctuation shortcuts that pervade tweets and texts.

Although informality is largely accepted in the land of tweets and texts, it has not taken root in legal writing. Informality and writing shortcuts may cloud the meaning of the message, and murkiness undermines the effectiveness of a legal document. Therefore, to become proficient legal writers, law students must leave the land of tweets and texts and embrace the conventional rules of grammar and punctuation. I designed a collaborative writing skills assignment³

to help first-year law students make that leap; it challenges them to work together and take a deep dive into the rules of grammar and punctuation. They learn that lawyers are professional writers and that good writing is fundamental to good lawyering.

DESIGNING THE COLLABORATIVE WRITING SKILLS ASSIGNMENT

Collaborative learning, when a group works together to create a unified project,⁴ fosters critical thinking, creative problem-solving, and interpersonal skills, and it may also lessen anxiety.⁵ Underlying the collaborative learning model is the premise “that learning is an interpretive act that occurs in the context of relationships.”⁶

The collaborative writing skills assignment gives students the opportunity to work with, learn from, and teach their peers. I have found that this group work creates a sense of community among students in the class and deepens their understanding of the material.

The collaborative writing assignment targets common errors that occur in the work of neophyte legal writers. I compiled an inventory of grammar and punctuation topics for the assignment. My top ten list of topics includes: (1) subject/verb agreement; (2) pronoun/antecedent agreement; (3) apostrophes and the possessive “its”; (4) precise comparisons; (5) semicolons and colons; (6) verbosity; (7) run-ons, the comma splice, and sentence fragments; (8) parallelism; (9) misplaced modifiers; and (10) vague pronouns.

Working in self-selected teams of two, three, or four, students create a class presentation illustrating how a particular rule of grammar or punctuation works and why the rule is important in legal writing.⁷ I typically assign the topics or ask the teams to select from a list that I circulate. The collaborative writing skills assignment has four components:

1. 5-10 PowerPoint slides explaining the relevant grammar or punctuation rule or rules;
2. an interactive class exercise with incorrect examples and corrections;
3. a judicial decision, law review article, bar journal article, or other source discussing the real-life negative consequences when lawyers use incorrect grammar or punctuation; and
4. a 10-15 minute in-class presentation.

The team presentations are at the end of designated classes in the second semester. I create a schedule and require that each team email me its materials two days before its presentation, so that I may review the materials in advance. If I have suggestions or corrections, the team edits its materials. I make copies of each team's interactive exercise for distribution to the class.

On the day of a team presentation, I bring a bag of inexpensive "swag"—colorful folders, pocket U.S. Constitutions, highlighters, pencil cases, and the like. Each team member gets to pick an item after the presentation—this ends the class on a positive, celebratory note. After the presentation, the team's PowerPoint lesson is posted on Blackboard. This creates an additional resource students may use to hone their writing skills.

STUDENTS' COLLABORATIVE WORK

Students' talent for designing creative, powerful learning tools is evident in their collaborative presentations. One team, for example, crafted a class exercise involving a hypothetical statute that made the "severe improper use of grammar in a public setting" a crime; three grammar errors amounted to a felony and one grammar error lowered the charge to a misdemeanor.⁸ This team gave the class a fact pattern involving a political candidate charged with violating the statute when making a campaign speech.⁹ The class had to determine whether the accused violated the statute by using verbs that did not agree

with the subject of the sentence and, if so, whether he committed a felony or misdemeanor.¹⁰

Another team embedded a dynamic TED-Ed lesson¹¹ about semicolons in their PowerPoint presentation on colons and semicolons.¹² They also used legal issues that were the subject of different course assignments to craft examples of correct and incorrect usage. Example 1 incorrectly uses the semicolon to connect unrelated topics, the First Amendment in a free speech case and unlicensed general vending in a criminal case. Example 2 correctly uses the semicolon to connect closely related points relating to the First Amendment.

Example 1: "'Fighting words' are not protected under the First Amendment; Kai Hall's unlicensed general vending charges were dropped."¹³

Example 2: "'Fighting words' are not protected under the First Amendment; free speech protection is not absolute."¹⁴

Because all students had worked on both the First Amendment and unlicensed general vending cases, they immediately understood the context of each example. The familiar framework resonated with the class, demonstrating how the rule on semicolons works in practice.

During their presentations, students teach each other not only about the mechanics of writing, but also about the importance of good writing in legal practice. The teams explain the real-life consequences of poor writing: court-imposed sanctions, dismissal of lawsuits, disciplinary actions, legal malpractice claims, and damage to reputations.¹⁵ They discuss court decisions in which lawyers are benchslapped¹⁶ because of writing errors¹⁷ and articles devoted to the craft of legal writing.¹⁸ The class learns that a misplaced or missing comma can affect the outcome of a case,¹⁹ and that unclear language may distort the meaning of a legal document. The overarching takeaway is that good writing is indispensable in the practice of law.

CONCLUSION

The collaborative writing skills assignment gives students practice working together to produce a unified work product. They have fun sharing ideas and research, developing materials, and teaching their classmates. Students take the stage in a familiar,

*Students' talent for designing creative,
powerful learning tools is evident in their
collaborative presentations.*

nurturing environment, and working in a small group helps alleviate the anxiety that is often experienced preparing for and delivering a presentation alone.

To lead the class discussion, the teams must develop a mastery of certain rules of grammar and punctuation, becoming fluent with the rationale for and application of the rules. The mastery required to teach helps the students retain the information and apply it in their own work.

A special benefit of the collaborative writing skills assignment is that it showcases professionalism in the context of legal writing. It heightens students' appreciation for the importance of good legal writing in practice. Leaving the land of tweets, texts, and emojis is not easy, but the collaborative writing skills assignment starts students on the journey to becoming proficient legal writers.

NOTES

1. See Neil Howe, *Why Millennials Are Texting More and Talking Less*, FORBES, (July 15, 2015, 11 AM), <https://www.forbes.com/sites/neil-howe/2015/07/15/why-millennials-are-texting-more-and-talking-less/> ("A 2014 Gallup Poll confirmed a truth that has become self-evident: Text messages now outrank phone calls as the dominant form of communication among Millennials. Fully 68% of 18- to 29-year-olds say that they texted 'a lot' the previous day, which plunges to 47% among 30- to 49-year-olds and 26% among 50- to 64-year-olds. Older Nielsen data indicate that average monthly voice minutes used by 18- to 34-year-olds plummeted from about 1,200 in 2008 to 900 in 2010. Texting among 18- to 24-year-olds more than doubled over this period, soaring from 600 to over 1,400 texts a month.").

2. FOMO, OXFORD LIVING DICTIONARIES, <https://en.oxforddictionaries.com/definition/fomo>; YOLO, OXFORD LIVING DICTIONARIES, <https://en.oxforddictionaries.com/definition/yolo>.

3. The Collaborative Writing Skills Assignment is required, but not graded. It counts towards the 10% "Other Required Work" component of the final grade in Legal Practice II. I assign it in the second semester after I have had the opportunity to assess the quality of the students' writing. Inspiration for this assignment came from my students and from *Teaching Grammar: 5 Minutes a Day Keeps the Red Pen Away*, a presentation by Professor Marilyn L. Uzdavines at the 2014 Southeastern Regional Legal Writing Conference. Professor Uzdavines discussed a teaching innovation, "Morning Messages," designed to teach students one or two important grammar rules each day and move them away from text speak and Internet shorthand.

4. Elizabeth L. Inglehart et al., *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 185, 188 (2003) (defining collaborative and cooperative learning).

5. See *id.* at 191-95 (discussing the benefits of collaborative and cooperative learning).

6. *Id.* at 190. This premise also underlies cooperative learning pedagogy.

7. Allowing students to select their teams injects freedom of choice into the highly structured first year of law school. Alternatively, the professor may assign teams based on students' level of writing proficiency, creating groups composed of students performing at different levels.

8. Tracie Bentick and Andrew Weisberg, students in my spring 2016 Legal Practice II class, created this assignment. I want to thank them for giving me permission to use their work in this article.

9. *Id.*

10. *Id.*

11. Emma Bryce, *How to Use a Semicolon*, YOUTUBE (uploaded by TED-ed, July 6, 2015) <https://www.youtube.com/watch?v=th-zyfwvDdl>.

12. Briggs Fenwick-Perry, Whitney Richardson, and Elizabeth Tran, students in my spring 2016 Legal Practice II class, created this assignment. I want to thank them for giving me permission to include their work in this article.

13. *Id.*

14. *Id.*

15. See Judith D. Fischer, *Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers' Papers*, 31 SUFFOLK L. REV. 1, 37 (1997) ("No lawyer can avoid his or her professional role as a reader and writer of words. Written words pervade the practice of law . . . This article illustrates that, for the errant lawyers, consequences can range from loss of a profession to loss of credibility with the very courts they need most to impress."); Debra Cassens Weiss, *7th Circuit Slaps Lawyer for 345-Word Sentence and Briefs Full of 'Gibberish'*, ABA JOURNAL (Sept. 20, 2011, 12:33 PM CDT) http://www.abajournal.com/news/article/7th_circuit_slaps_lawyer_for_unintelligible_writing_full_of_gibberish ("A federal appeals court [was] so aggravated by the quality of an Illinois lawyer's legal writing that it . . . ordered him to show cause why he shouldn't be barred from practicing before the court.").

16. *Benchslap*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("A judge's sharp rebuke of counsel, a litigant, or perhaps another judge . . .").

17. See *Henderson v. State*, 445 So.2d 1364, 1365 (Miss. 1984) ("This case presents the question whether the rules of English grammar are a part of the positive law of this state. If they are, Jacob Henderson's burglary conviction must surely be reversed, for the indictment in which he has been charged would receive an 'F' from every English teacher in the land.").

18. See, e.g., Aida M. Alaka, *Phenomenology of Error in Legal Writing*, 28 QUINNIPIAC L. REV. 1 (2009).

19. Daniel Victor, *Oxford Comma Dispute Is Settled As Maine Drivers Get \$5 Million*, N.Y. TIMES, (Feb. 9, 2018), <https://www.nytimes.com/2018/02/09/us/oxford-comma-maine.html>.

Teaching Collaboration



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Collaboration is the new norm in the global marketplace.¹ It is the “synergistic relationship” formed where two or more parties work together and share ideas, knowledge, resources, and skills to achieve a common objective.² A collaboration dismisses the “I” and “me” and focuses on the “we.” Within a collaboration, the focus is on the group’s effort instead of on “individual abilities and contribution.”³ The parties within a collaboration work and think together as a group.⁴ Together, the group creates an end product that is attributed to its collaborative effort and is generally of superior quality and more innovative than each party could have done on his or her own.⁵

Law firms are following on the heels of other businesses and organizations and are moving towards greater collaboration.⁶ The ability and capacity to collaborate internally, externally, and across disciplines has become a necessary business decision for law firms whose financial growth and sustainability depend on their client base and the number of matters they work on.⁷ According to Heidi Gardner, Lecturer and Fellow at Harvard Law School’s Center on the Legal Profession, collaboration is an “absolute [business] necessity to clients who increasingly are requiring collaborative ability from the laws firms they hire.”⁸ In addition to requiring that the law firm with whom they do business put mechanisms in place to ensure internal and external collaboration,⁹ clients are hesitating “to give more than one or two matters to a firm whose attorneys don’t collaborate on an ongoing basis.”¹⁰

The ability to collaborate effectively is critical to survival and success in the legal and business markets. Law school graduates working at law firms, in private and governmental organizations, as solo practitioners, and in non-legal jobs need to know how to work collaboratively.¹¹ In the article *The 21st-Century T-Shaped Lawyer*, R. Amani Smathers posits

that 21st-century lawyers need more than “deep legal expertise” to be successful; they also need the “ability to collaborate across many disciplines.”¹² The need for lawyers who are able to work collaboratively has fueled a demand for law schools to train law students to collaborate internally, externally, and across disciplines.

Collaboration is good for business, and it is also good for learning. In the business environment, “collaboration can produce better-quality projects, make more efficient teams, create healthier environments, greatly increase productivity, and enable more growth in organizations than ever could have existed before the concentrated emphasis was placed on collaboration.”¹³ In a learning environment, collaboration leads to similar benefits. Collaboration also equips students with professional skills that they will need to succeed in their jobs and increases student engagement and motivation, which facilitates learning.¹⁴

TEACHING COLLABORATION IN LAW SCHOOLS

Despite the many documented benefits of collaboration,¹⁵ law schools have only recently begun to intentionally teach collaboration skills and to encourage students to work collaboratively.¹⁶ The move towards collaboration presents a paradigm shift in the legal academy and profession. Historically, law schools gave low priority to collaboration and provided no incentive and little opportunity to work collaboratively.¹⁷ They regarded collaboration skills as a soft skill that could not be taught.¹⁸ Instead, law schools embraced a culture of individualism and competitiveness¹⁹ and, as a result, rewarded students based on their individual achievements and efforts.²⁰ Law students quickly learned the art of fierce competition, which they deemed necessary to earn top grades, a high class rank, and prime job placements.²¹ Law students steeped in this culture refuse to embrace collaboration even after they graduate.²² They maintain an anti-collaborative stance in the workplace because they were not taught to collaborate or to value collaboration and, therefore, do not know how to collaborate effectively.²³

The current trend among law schools to include more opportunities for student collaboration and to intentionally teach collaboration skills is in large part a response to employers’ demand for law school graduates with effective collaborative skills and to the demand from the largest cohort of law school

Collaboration is too important a skill in the 21st century not to be given primacy in the law school curriculum.

applicants, Millennials, for collaborative learning opportunities. Millennials, also known as GenYers, make up the largest population of law students and recent law school graduates, and the largest generational group of lawyers at large and midsize law firms.²⁴ Millennials value collaboration.²⁵ They prefer collaborative learning environments and collaborative work over “advancement solely on the basis of individual contribution.”²⁶ Millennials also prefer to work in collaborative workplaces and are making this a key criterion in their job selection.²⁷

A preference for collaboration and collaborative work opportunities, however, does not equate to the ability to collaborate effectively. Collaboration skills are neither innate nor instinctive.²⁸ Therefore, like legal research, legal writing, and oral advocacy skills, law schools should explicitly teach collaboration skills²⁹ and make collaboration competency an integral curriculum goal. Collaboration skills include communication, teamwork, negotiation, conflict resolution, trust, and flexibility (discussed below), as well as decision-making and planning.³⁰

A LEGAL WRITING PROFESSOR’S EXPERIENCE WITH TEACHING COLLABORATION

I explicitly teach collaboration skills in my upper-level semester-long legal writing course, Legal Reasoning, Research and Writing: Appellate Advocacy (“LRRW II”), at Howard University School of Law.³¹ The LRRW II course is designed to mirror the operation of a law firm. In doing so, the goal is to prepare the students to enter the legal workforce by creating a work environment and experiences that closely approximate the ones they will encounter upon graduation.

Teaching collaboration requires setting clear goals and expectations.³² At the beginning of the course, I inform the students that they will be working in groups of two as co-counsel for the duration of the course. The students are allowed to choose their co-counsel.

Being fully aware of the importance of grades, I address how the grades will be calculated early, during the first class. I hear sighs of relief when I explain to the students that the assignments have group and individual components and, although they will be working as co-counsel for the duration of the course, their final score will be calculated based on their group performance for collaborative work and their individual performance for individual work.³³

Co-counsel work together on a series of assignments based on a two-issue appellate problem toward producing a final Appellate Brief. The students are expected to turn in a Memorandum of Initial Findings, a Draft Fact Statement, a Billable Hours Journal, a Research Journal, and the Appellate Brief. They are also expected to participate in a Partner-Associates (“Draft Brief”) Conference and do Oral Argument based on the Appellate Brief. These course assignments account for ninety percent of their final grade; the remaining ten percent is awarded for professionalism.³⁴

Assignment	Percent of final grade	How scored	Score description
Memorandum of Initial Findings	15%	Joint score	Joint sections (heading, introduction, statement of facts, conclusion)
		Individual score	Argument section
Appellate Brief	40%	Joint score	Joint sections (table of contents, table of authorities, jurisdictional statement, statement of the issues, statement of the case, summary of the argument, conclusion, certificate of compliance)
		Individual score	Argument section
Final Oral Argument	15%	Individual score	
Research Assignments/ Draft Brief Sections/ Draft Brief Conference/ Partner-Associates Draft Brief Conference	20%	Joint score	Research assignments Draft statement of the case Draft jurisdictional statement
		Individual score	Research journal Draft argument section Partner-associates draft brief conference Billable hours journal
Professionalism/Class Participation	10%	Individual score	

The appellate brief problem has two distinct issues, for example a copyright and a First Amendment issue. This allows each co-counsel to choose, and to write individually on, a separate issue for the argument section of the Memorandum of Initial Findings and the Appellate Brief. Both assignments have individual and group components. Co-counsel collaborate on, and receive the same grade for, all sections except the argument section, for which they receive an individual

grade. For example, Students A and B are co-counsel working on the Appellate Brief, which is graded out of 70 points. The joint sections are graded out of 34 points and the argument section is graded out of 36 points. If Students A and B receive 32 points on the joint sections, and Student A receives 30 points on the argument section, Student A receives a total of 62 points out of 70. If Student B receives 32 points on the argument section, Student B receives a total of 64 points out of 70.

APPELLATE BRIEF		Co-Counsel points awarded (Student A)	Co-Counsel points awarded (Student B)
Joint Sections (34 points available)		32	32
Argument (36 points available)	First Amendment	30	
	Copyright		32
Total Score (70 points available)		62	64

Throughout the course we talk about the skills necessary for an effective collaboration, including communication, teamwork, negotiation, conflict resolution, trust, and flexibility. Co-counsel practice these skills when doing their assignments.

Communication.

Communication is an essential component of successful collaborations.³⁵ The students are generally good about communicating their expectations and plans to co-counsel, but some start off unaware of how their tone affects how co-counsel might receive the message. We talk about using an appropriate tone and also about using “we,” “us,” and “our” instead of “I,” “me,” and “you” to create rapport.³⁶ Since communication involves not only talking but also actively listening, I encourage the students to listen to their co-counsel. I emphasize that active listening is a sign of respect and shows that they value their co-counsel’s opinions.³⁷

Teamwork.

Collaboration also requires that students are willing to work as a team to achieve a common goal.³⁸ Collaborative work tends to fall apart when individual goals and interests take primacy over the team’s goals. The tendency to default to individual actions and goals seems to be second nature for some law students, even Millennials who embrace collaboration.³⁹ For the most part, it is easy to redirect the students to working collaboratively with continued emphasis that collaboration is essential to succeeding in their jobs.⁴⁰ Also, the students grow to enjoy teamwork and collaboration when they build stronger bonds with their co-counsel and when they notice improvements in their

work-product.⁴¹ Even students with a higher class rank admit to learning from their co-counsel.⁴²

Negotiation and Conflict-Resolution.

Negotiation and conflict-resolution are important components of effective collaboration. I address both early and continuously throughout the course. The students are not allowed to switch their co-counsel during the semester, which means they have to resolve any disagreements that may arise. Of the approximately fifteen semesters that I have taught this course, I have had to do mediation to resolve conflict with three different sets of co-counsel. Each time, both sets of co-counsel and I collaborated to draft a mediation agreement, which the parties then signed.⁴³ I have found that the students are more willing to work on resolving conflict when I remind the class that in the workplace, they will be judged on the quality of the end product as well as on their ability to resolve conflicts.⁴⁴

Trust and Flexibility.

Trust and flexibility are also critical components of collaboration. Trust requires a “belief in the reliability, truth, ability, or strength of someone or something.”⁴⁵ Flexibility requires a “willingness to change or compromise.”⁴⁶ A collaboration will not succeed without trust and flexibility. Some of the students have not worked together before this class; therefore, each student has to learn to trust her co-counsel and to believe that the co-counsel has the ability to do the work and will put in the effort and time to complete the tasks on time. The stakes are high because grades are involved. We talk about, and share examples of, actions that build and break trust. I have found that when trust has never been established or is broken, conflicts arise requiring conflict-resolution intervention.⁴⁷

Like broken trust, inflexibility can cause collaborative efforts to fail. In a collaboration, persons who are unwilling to make changes and to compromise are unlikely to accept ideas, views, and schedules that are contrary to their own. This impedes collaborative efforts, which require compromise to meet shared goals and objectives.

One of the things the students enjoyed most was when I shared my experiences doing collaborative work in the law firm and as a board member. The question that I least expected, but which the students asked each semester, concerned scheduling: “What do you

do when you have to collaborate on a project and the other persons on the team have a different work/time schedule?” Communication and flexibility are key here. I advise the students to encourage the group to set their goals and expectations early; the students should inform the group of any time or scheduling conflicts they may have so that the other members of the group may plan accordingly. I also advise the students to be flexible and make their best effort to accommodate the time and scheduling needs of the other members of the group.

Teaching collaboration skills benefits not only the students, but the teachers as well.⁴⁸ Teaching collaboration skills in the LRRW II course has given me the privilege of watching my students grow and mature into future lawyers who, equipped with collaboration skills, will not only survive, but will thrive in the 21st-century marketplace. They are confident, caring, and flexible, and are good at communicating, planning, and resolving conflicts.

I especially enjoy the Partner-Associates (Draft-Brief) Conference, which allows me to picture my students in a firm setting. This is an hour-long session where I meet with each set of co-counsel to talk about their progress on the Appellate Brief. Our meeting simulates an actual exchange that a law partner would have with a junior associate about the status of the brief, and allows the students to demonstrate their collaboration skills in an oral setting. I am always encouraged and extremely proud because the students come to the meeting on time and are well prepared to address their research and individual arguments as well as their shared strategy and approach to handling the joint sections.

CONCLUSION

The benefits of collaboration in the global marketplace and in the learning environment abound. Collaboration is too important a skill in the 21st century not to be given primacy in the law school curriculum. Besides, it is fun to teach.

NOTES

1. HEIDI K. GARDNER, *SMART COLLABORATION: HOW PROFESSIONALS AND THEIR FIRMS SUCCEED BY BREAKING DOWN SILOS* 20 (2016); Michael I. Meyerson, *Law School Culture and the Lost Art of Collaboration: Why Don't Law Professors Play Well with Others?*, 93 NEB. L. REV. 547, 560-61, 569, 582 (2014) (noting that globalization is causing more firms to collaborate).
2. DAN SANKER, *COLLABORATE! THE ART OF WE* 3-4 (2011).
3. *Id.* at 3.
4. Lindsay Price, *Collaboration vs. Teamwork - What's the Difference?* THEATREFOLK (July 6, 2015), <https://www.theatrefolk.com/blog/collaboration-vs-teamwork-whats-the-difference/>.
5. SANKER, *supra* note 2, at 4; GARDNER, *supra* note 1, at 1-2.
6. GARDNER, *supra* note 1, at 4; EMILY LAI, KRISTEN DICERBO & PETER FOLTZ, *SKILLS FOR TODAY: WHAT WE KNOW ABOUT TEACHING AND ASSESSING COLLABORATION* 6 (2017), http://www.p21.org/storage/documents/Skills_For_Today_Series-Pearson/Collaboration_White_Paper_FINAL.pdf.
7. GARDNER, *supra* note 1, at 20-21.
8. Gregg Wirth, *Law Firm Leaders Forum 2015: Clients, Collaboration & Living in a VUCA World*, THOMSON REUTERS LEGAL EXECUTIVE INST. (Oct. 9, 2015), <http://legalexecutiveinstitute.com/law-firm-leaders-forum-clients-collaboration-living-in-a-vuca-world/>; see also HEIDI K. GARDNER, *HARNESS THE POWER OF SMART COLLABORATION FOR IN-HOUSE LAWYERS* 1, https://clp.law.harvard.edu/assets/Gardner_Smart-Collaboration-for-In-House-Lawyers_HLS-white-paper.pdf.
9. GARDNER, *supra* note 1, at 64, 210.
10. *BTI's Law Firms with the Best Collaboration*, BTI CONSULTING GROUP 2, <https://www.bticonsulting.com/themadclientist/clients-name-the-law-firms-with-the-best-collaboration>.
11. See A. Rachel Camp, *Creating Space for Silence in Law School Collaborations*, 65 J. LEGAL EDUC. 897, 909 (2016) (noting that the modern practice of law requires lawyers to work collaboratively).
12. R. Amani Smathers, *The 21st-Century T-Shaped Lawyer*, 40 AM. B. ASS'N 4, https://www.americanbar.org/publications/law_practice_magazine/2014/july-august/the-21st-century-t-shaped-lawyer.html.
13. SANKER, *supra* note 2, at 4.
14. Camp, *supra* note 11 at 897, 907, 910; see generally Elizabeth L. Inglehart et al., *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 185 (2003) (discussing the benefits of collaborative learning).
15. Inglehart et al., *supra* note 14, at 187-88.
16. Camp, *supra* note 11 at 897, 899; see also *id.* at 902 (noting that “collaboration has been peripherally a part of the law school experience” as law students have collaborated on law journals and participated in study groups). Now, law schools across the country are intentionally teaching collaboration skills and are creating collaborative learning environments. At the January 2018 AALS annual meeting, law professors from Brooklyn Law School, The Ohio State University Michael E. Moritz College of Law, Mississippi College School of Law, and Drake University Law School shared strategies they use to intentionally teach collaboration at a panel discussion entitled *Learning Together: Diverse Models of Collaborative Learning in Law School*. AALS, ASSOCIATION OF AMERICAN LAW SCHOOLS, 112TH ANNUAL MEETING PROGRAM 41 (2017), <https://www.aals.org/wp-content/uploads/2017/12/2018AMmainProgram.pdf>.

17. Camp, *supra* note 11, at 903.
18. RANDALL KISER, *SOFT SKILLS FOR THE EFFECTIVE LAWYER* 17-18 (2017) (noting that soft skills can and have been taught successfully, and business and medical schools have integrated soft skills instruction in their curriculum).
19. Camp, *supra* note 11, at 902-03.
20. *Id.*
21. *Id.*
22. Meyerson, *supra* note 1, at 562 (noting that because of the emphasis on solitary work, law students graduate without learning to work well in groups).
23. GARDNER, *supra* note 1, at 82; see also KISER, *supra* note 18, at 138 (noting that “[d]espite lawyers’ personal and cultural aversion to working collaboratively, most attorneys now acknowledge that teamwork is essential to professional success.”).
24. Lizzy McLellan, *Where the Millennials Are: Tracking the Generations in Big Law*, *THE AMERICAN LAWYER* (Nov. 06, 2017), <https://www.law.com/americanlawyer/sites/americanlawyer/2017/11/06/where-the-millennials-are-tracking-the-generations-in-big-law/>.
25. Bill Patterson, *Gen Y and the Collaborative Workplace*, *FORBES* (May 29, 2012), <https://www.forbes.com/sites/microsoftdynamics/2012/05/29/gen-y-and-the-collaborative-workplace/#6cc2edcb3456>; Camp, *supra* note 11, at 898.
26. Patterson, *supra* note 25.
27. *Id.*
28. DEBORAH LAKE, KRISTA BAERG & TERESA PASLAWSKI, *TEAMWORK, LEADERSHIP AND COMMUNICATION: COLLABORATION BASICS FOR HEALTH PROFESSIONALS* ix (2015); Meyerson, *supra* note 1, at 582 (noting that collaboration “does not come naturally, especially to many individuals who self-select for the legal profession.”).
29. See Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 *VT. L. REV.* 459, 461 (1993) (noting that successful collaboration “involves methods and skills that must be taught.”).
30. GARDNER, *supra* note 1, at 65; Janet Weinstein et al., *Teaching Teamwork to Law Students*, 63 *J. LEGAL EDUC.* 36, 38 (2013); LAI, DiCERBO & FOLTZ, *supra* note 6, at 6.
31. We are fortunate that Howard University School of Law values collaborative work and the Honor Code does not prohibit student collaboration. Honor Codes that prohibit group work impede collaborative work.
32. Inglehart et al., *supra* note 14, at 221.
33. Interestingly, although students initially express concern about grades, as they learn to collaborate they often share research, editing, formatting and oral argument strategies with co-counsel on the components for which they receive individual grades.
34. The Professionalism score includes the students’ ability to collaborate effectively.
35. Camp, *supra* note 11, at 933.
36. JACK GRIFFIN, *HOW TO SAY IT AT WORK: POWER WORDS, PHRASES, AND COMMUNICATION SECRETS FOR GETTING AHEAD* 14-15, 18 (2d ed. 2008).
37. DANIEL GOLEMAN, *WORKING WITH EMOTIONAL INTELLIGENCE* 140 (1998) (noting that listening well is essential to succeed in the workplace).
38. A. MICHAEL DOUGHERTY, *CASEBOOK OF PSYCHOLOGICAL CONSULTATION AND COLLABORATION IN SCHOOL AND COMMUNITY SETTINGS* 10 (6th ed. 2013) (noting that “[t]he concept of teamwork is inherent in collaboration . . .”).
39. See Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice*, 74 *WASH. L. REV.* 319, 328 (1999) (noting that law students tend to exhibit traits “that may impede acquisition of collaborative skills.”). These traits exist before they enter law school and are amplified within the law school’s competitive culture. *Id.* at 348-49; Meyerson, *supra* note 1, at 555.
40. Meyerson, *supra* note 1, at 582.
41. Weinstein et al., *supra* note 30, at 61 (“[B]ecause the students are receiving a team grade, there is high motivation to help the team succeed, which generally leads to a better product, greater collaboration and more team spirit.”).
42. I have found this to be true in my classes; the students learn from each other, and even students with a higher GPA admit to learning from their peers. See Inglehart et al., *supra* note 14, at 210 (noting that working together helped the students to improve “each other’s writing.”).
43. Each co-counsel receives a copy of the signed mediation agreement, and I keep a copy.
44. Meyerson, *supra* note 1, at 582.
45. *Trust*, *OXFORD LIVING DICTIONARY*, <https://en.oxforddictionaries.com/definition/trust>.
46. *Flexibility*, *OXFORD LIVING DICTIONARY*, <https://en.oxforddictionaries.com/definition/flexibility>.
47. A lack of trust and inflexibility contributed to LRRW II’s only failed co-counsel collaboration. One set of co-counsel had to be separated and allowed to do individual work because they refused to work with each other. One student did not trust that the other could do an equally good job and was unwilling to work with that student. Their impasse disrupted the class, consumed many office hours, and spilled over into non-office hours. After several attempts to resolve the conflict and a failed mediation, the prudent thing to do was to separate them.
48. Inglehart et al., *supra* note 14, at 188.



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