LEGAL WRITING INSTITUTE

The Second Draft

Volume 12, No. 1 • November 1997 **Bulletin of the Legal Writing Institute**

From the Editors...

Many thanks to everyone who contributed to this issue of The Second Draft. The essays show how creative and thoughtful we are as a group—and provide us all with great teaching ideas.

Program notes...The next "theme" issue of the Second Draft will be the Spring 1999 issue. Because of the length of this issue (and the constraints of our budget), the Spring 1998 issue of The Second Draft will be short and informational. If you would like to submit news or information, please send it by March 1, 1998, on disk and in hard copy, to Prof. Joan Blum, Boston College Law School, 885 Centre Street, Newton, MA 02159. Or, you may send it by email (but not as an attachment) to <blum@bc.edu>. Looking ahead to next fall's issue, we plan to include in it primarily reports from the Board after the next summer's biennial conference of the Institute.

...Jane Gionfriddo & Joan Blum
Boston College Law School

The President's Column

Context and connection. These two words capture the essence of teaching in the first year of law school. Students must develop a new context in which to understand the law because for most of them little in their background has prepared them to really think like a lawyer. As first year teachers we help them build the context by helping them connect the new to the old; we help them connect what we are teaching to what they bring to us. To do this, we must understand their frame of reference, their context, their approach to understanding.

Context and connection. We must take the same concepts and the skills we use to reach our novice charges and use them to reach beyond our legal writing profession to the larger law teaching community and to the legal community in general. To be truly effective within our respective schools we need to understand the world view of the other faculty and we need to see how to connect what we do to that context. If we really want our doctrinal colleagues, and even our clinical colleagues, to understand what we are about, we need to understand it ourselves and we need to understand what they think they are about, and we then need to help them make the connections between their view of law and law teaching and ours.

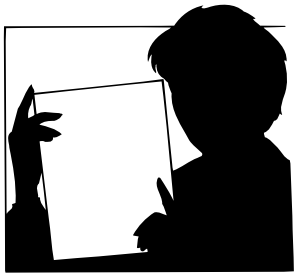
Context and connection. As we reach outside of our maturing group, we must be bold enough to come to understand the context in which we work so that we can work the needed changes in legal education. We need to impart the gifts and knowledge we possess to others, but to do so we must use those same gifts and knowledge to learn what the target group knows, what their context is, so that we can tailor our individual and collective efforts to more effectively connect to their contextual understanding, and then to change it.

Teaching Techniques

Essays by Members of the Institute

Teaching Legal Analysis

Briefing a Case in Reverse



Brenda See
University of Alabama
School of Law

In the first class of the fall semester in Legal Writing, I give the students a simple fact situation for which there is no precedent. They become judges who must decide the case and render an opinion.

Fact situation:
Lewis v. McDonald

The McDonalds took Jeanine Lewis, a fifteen-year-old girl, along with them on their family vacation to the beach to baby-sit for their three children. They agreed to pay Jeanine $150 for the week. During the week the family went out to eat several times and to an amusement park. They paid for Jeanine's food and for her entrance to the amusement park but Jeanine bought herself a T-shirt as a souvenir.

One day the family and Jeanine went to a horse barn. Mrs. McDonald asked Jeanine if she wanted to ride for an hour with Mrs. McDonald while Mr. McDonald took the children elsewhere. Mrs. McDonald bought tickets for each of them. Later, when Mrs. McDonald paid Jeanine for baby-sitting, she explained that she had deducted $20 for the horseback riding. Jeanine thinks Mrs. McDonald should pay her the full $150. (This fact situation is adapted from an episode of The People's Court.)

After reading the facts, the students break into groups and discuss (1) reasons why Jeanine should win; (2) reasons why the McDonalds should win; (3) who wins the case (holding); (4) policy implications of the decision; and (5) the resulting rule of law. After the groups discuss all the questions, each group presents one part of the discussion via a transparency on the overhead projector. Other groups add additional reasons or policies. Some students have even written dissenting rules.

The rule is usually stated something like "where a contract has expressed terms, the parties to the contract must mutually agree beforehand to modify the contract."

After the students have committed to the rule, I ask them to decide another case using Lewis v. McDonald as precedent.

Bowen v. Edwards

Ron Bowen, a twenty-five-year-old law student, had baby-sat for the Edwards' two children a few times when they went out for the evening. They had told him to "help himself to whatever was in the fridge" and he had on occasion eaten food from the refrigerator and from the pantry. The Edwards asked him to baby-sit at their house one weekend while they took a trip out of town. They agreed to pay him $200. Ron told them that he usually met with a study group on Saturday nights. They said the group could meet at the house since the children would be in bed by 8:30. When the Edwards returned, they found that liquor from the liquor cabinet was missing and deducted $50 from Ron's check. Is Ron entitled to the full $200?

Some don't want to follow the precedent because the reasons for giving a fifteen-year-old her paycheck don't settle well with compensating a twenty-five-year-old law student who has drunk liquor while baby-sitting. They discuss concerns: they want to know what he had eaten on prior occasions; maybe his friends drank the liquor; he shouldn't get full compensation because he wasn't fulfilling his job responsibilities if he was drinking; the children were asleep and were unharmed; perhaps the liquor was his compensation. The students have to follow the rule unless there is good reason or policy to depart from it or unless they can distinguish this case from Lewis.

Because of time constraints, we usually discuss this decision as a whole group. Then I ask them to report their decision to Ron Bowen. Someone portraying Ron comes in and as the students tell him, I write down what they say on a transparency. Usually, the students recap the decision briefly but leave out several things we talked about. They explain the decision with no order to it. They may give one main reason. They may give several reasons why he shouldn't win and none about why he should win. They may neglect to explain

the reason for their decision.

After "Ron" leaves, I explain that they have just briefed a case in reverse since a case starts as a fact situation, then goes to a tribunal for decision/appeal. The opinion may not be written in case brief form. (I show them how they "wrote" the decision in Bowen.) Moreover, law professors may excerpt cases before the student reads them, causing the opinions to make even less sense than a complete and well-written document. Thus, although a student should read an opinion looking for the issue, facts, holding, etc., the student should also read around the opinion for what should be there but isn't.

This exercise introduces several concepts which we continue to discuss in later weeks: relevance of facts, comparison and contrast of facts, difficulty of applying the rule of law to a case where the reasoning in one case doesn't fit another case, policy implications, judicial bias, desire to be fair instead of following the rule of law, writing a rule to fit the present case or future cases.

Rules of the House
Donna Hill
Hofstra University
School of Law

"The common law is an evolutionary system of rule-making dependent on precedent and changing and developing with the facts of each individual case but ever mindful of the legal principles that have been enacted thus far." Try saying that to a group of eager-to-learn first years' in their first class of law school. Their eyes should glaze over or their hands should be vying to keep up with the information coming at them. But the concept, and many other big concepts in law, needs to be introduced in an orientation week if the students are going to be able to understand how all their doctrinal classes fit together. I cannot conceive of lecturing on such broad themes as the difference between common law and statutory law; the purposes behind civil and criminal law; the role of the judge and jury-basic questions of federalism, precedent, and constitutional law; and, perhaps most importantly, how law fits into, shapes or is created by the society of which it is a part.

So I devised an exercise to teach these sorts of themes that I call "Rules of the House." The house is a metaphor for society and the exercise is designed to show students how law develops and grows and how it helps to shape or reflect societal needs. The exercise is very simple. Five adults live together in a house with no rules except for one: no one can ever move out. Of course, problems arise. The housemates create rules designed to eliminate the problems. The students then face situations that require an interpretation of those rules. For example, is eating pizza in one's room a breach of the rule against eating food outside the kitchen or an application of the rule that anything that does not hurt the others may be done in an individual's private space? The situations allow the class to analyze language and purpose in rule-making. They also provide an opportunity to discuss the role of courts in interpreting statutes. Aside from interpreting the meaning of the rules, the class has an opportunity to think about remedies for rule breaking. Should the sanction be "punitive" — a fine or room lock up — or should it be "compensatory" — the cost of someone to exterminate if eating outside of the kitchen causes bugs? Thus, the first part of the exercise deals mainly with statutory construction but gets us into other conceptual areas.

We then move into situations not dealt with by the rules for an introduction to common law. For example, two of the people agree to do work for each other. (Laundry for dishes.) One breaches the agreement. We discuss the evolution of common law rules, especially those related to contract principles. The class eventually decides that it is probably a good idea to enforce contractual agreements through use of some remedy. That precedent sets the stage for a new situation, akin to a gift, that has not been decided by the prior case. The students can then see how an individual case can be related to earlier ones but not actually governed by them. We talk about how common law precepts evolve from this sort of case-by-case decision making and discuss, somewhat, the concepts of analogy, distinction, and "gaps" in the law.

A new conceptual issue arises: a tort problem. Here, the class recognizes immediately that our house has no rules to govern the situation, but I tell them that the house across the street has had a similar situation that has been decided in a certain way. We think about whether we like that rule and its reasoning. We talk about whether our house has to do what the house across the street does. And we move into variations on the idea of precedent and its limits through differences in our facts as well as in what we wish to accomplish in creating our own precedent.

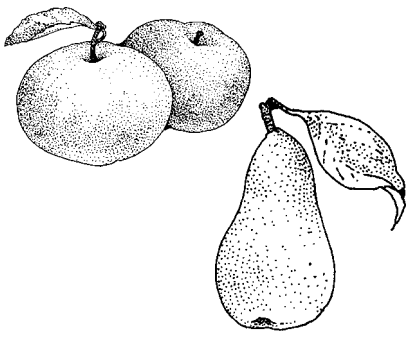
Then we set the house into the fictional "Hofstra" country with its safeguards for individual rights. When a dispute arises, ostensibly resolved by the rules, the defense argues that "it's a free country, I can do what I want." We talk about how the Constitution can prevent legislatures from creating unconstitutional rules and that courts are called upon to interpret and apply constitutional principals.

We finish the exercise with a burden of proof, fact/law distinction situation. Here, the person appears to be caught red-handed possessing food in his room and is accused of breaking a rule that requires food to be eaten only in the kitchen. A court makes a legal decision that the rule does not apply to "possessing" food, only eating it. The "defendant" says that he brought the food into his room, he did not "eat" it there. But it is half-eaten, and some people saw it whole while it was in his room. Who decides whether or not he "ate" in his room? How does a fact finder make such a decision?

This exercise is fun. It teaches the students a lot about the broad themes of law and starts to introduce them to some of its vocabulary, but it accomplishes more than that. They come to law school expecting to be ignorant — they read cases they do not understand and get more confused as they walk into many of their classes. This exercise reminds them that their lives before here and the knowledge they have acquired in those lives are useful tools for learning about law. They also learn that they can participate without peril — there is no case hanging over them that contains the "right" answers. All they are being asked to do is think. By participating in the class discussion, they learn also about the interactive nature of law learning. Thus, the exercise provides a valuable tool for a first law school class.

Contact Donna Hill at <lawdlh@hofstra.edu> if you would like a copy of the exercise.

<u>Using Fruit to Teach Analogy</u>



Jane Kent Gionfriddo
Boston College Law School

One of my very creative colleagues, Lis Keller, came up with the following exercise to introduce students to the correct method of comparing precedent cases with the client's case in an objective memorandum. We had been frustrated that students seemed to think that comparing the "facts" of a precedent case with the "facts" of the client's case, without more, was sufficient. Too often we would get analysis like, "The court would view doing laundry in our case as similar to watching TV in the case of 'X.'" And as much as we would tell students that comparing "facts" with "facts" was just the first step in predicting what a future court would do, they didn't seem to understand what the problem was.

Of course, we had already discussed the analytical process that students were doing in what we call the "application-prediction" section of an objective memo. We had worked through the process in the abstract and even in the case they were working on. "You're tracking the reasoning of the future court," we had said, "and to do that you must show WHY, using the court's reasoning in prior cases, that the future court will view the facts of precedent cases as similar or dissimilar to the facts of your client's case." But still students didn't seem to catch on.

So Lis decided to come up with an exercise that would take this complicated analytical concept and simplify it. She felt that a simple exercise was a good first step because it would help students intuitively see why a "facts to facts only" comparison was analytically insufficient. "What about fruit?" she asked, and constructed the following exercise.

We come into class with four objects—a basket (my meager contribution), and several real or

"silk" pieces of fruit—a Granny Smith apple (which, if you remember, is green), a MacIntosh apple (red), and a Bartlett pear (green).

Holding up the MacIntosh apple, we say, "The court finds that this object belongs in the basket." Holding up the Bartlett pear, we say, "The court finds that this object does not belong in the basket." Then, holding up the Granny Smith apple, we say, "this object is now before the court. Predict: Will the court find that it 'belongs in the basket,' or not?"

Of course, given the simple and visual nature of this demonstration, all students are immediately clear that they can't predict unless they come up with the court's reasoning concerning why the MacIntosh apple did belong in the basket and the Bartlett pear did not. Was it concerned about the *color* of the object? Then the court would view the Granny Smith apple as similar to the Bartlett pear and find that it doesn't belong in the basket. But if the court's ***reasoning*** was based on *kind of fruit* or *shape of object*, then it would view the Granny Smith apple as belonging with the MacIntosh apple in the basket.

We've found that this exercise so clearly introduces this concept that students are much better prepared to handle the more complicated process of comparing the facts of legal precedent to their client's facts in figuring out what a future court would conclude for their client. Moreover, the fruit exercise becomes a wonderful vehicle as we give written feedback to students who continue to make inadequate comparisons in their memos. When the student writes, "doing laundry in our case is similar to TV watching in case 'X,'" it becomes so easy to write, "but WHY? Remember the fruit. You know you can't figure out whether the court would view a Granny Smith apple as like or unlike a Bartlett pear until you figure out what the court was concerned about—kind of fruit, or color of object, or shape of object, or something else. The same is true for 'doing laundry' and 'watching TV.' Only the courts' ***reasoning*** in the precedent cases—'activities that go on inside a home'—shows WHY the future court could see 'doing laundry' and 'watching TV' as similar activities." The "fruit exercise" then becomes a short-hand way throughout the year, both in class and in written feedback, to get students to think about the analytical process they are "capturing" in spelling out a comparison of precedent and client's facts in an objective memo.

Drawing Persuasive Comparisons

Ben Brown
John Marshall Law School

Drawing analogies is a very commonsensical activity. Since it seems so natural, students often fail to make their analogies persuasive by systema-tically comparing facts in their memorandums. They often rely on mere assertions to prove that their memo facts and the precedent facts are comparable or distinguishable. This exercise is designed to encourage a discussion about what makes a factual comparison persuasive. This exercise is often most effective after the students have attempted at least one memorandum project. The ultimate lesson here is that factual comparisons, to be persuasive, must be specific, direct and comprehensive. After each example in the exercise, I encourage students to discuss the strengths and weaknesses of the attempt to make a persuasive comparison.

Reasoning by Analogy: Since reasoning by analogy is a unique way of deciding crucial issues, it is not often taught. As a legal writer, you need to give some thought to how best convince a sophisticated reader that your analogy is, indeed, sound.

The basic rule is: The more direct, specific and comprehensive you can make the comparison, then the more persuasive it will be.

Example:

I am trying to convince you that a professor's commute to school is longer than a student's commute to school.

First — I could just assert it.

The professor has a longer commute then his student.

Does this convince you?

If I am in a position of power, you might accept this statement as true; thus courts can get away with this type of sloppy analogizing. But if you have no compelling reason to trust me — that is, if you are a skeptical reader as you must assume all legal readers are — then the mere assertion will not suffice to convince you of this proposition.

Second — I could add some general facts that support my claim.

Since professors make more money then most students, they can afford to live in the suburbs and thus take longer to get to school. Generalities might add some

weight to the claim, but generalities have so many exceptions that the skeptical reader can easily think up many exceptions to this general claim.

What are some exceptions that you can imagine that would make this general claim unpersuasive?

Some possibilities:

—Students might be living with their parents and thus also be in the suburbs.
—Living might be cheaper in the suburbs than in the city, so students with lesser income might live in the suburbs.
—Students might actually be more affluent than penurious professors.

So the general claim might make the statement somewhat more believable, but will not prove the claim to a skeptical reader.

So, we need specific information.

Add a detail — The professor's house is six miles from the school, and the student's apartment is four miles from the school.

Does adding this specific fact convince you?
This information helps make my claim more persuasive, but the skeptical reader is still left wondering if distance is the only factor that controls the length of time for a commute -what about means of transportation, traffic patterns, etc.

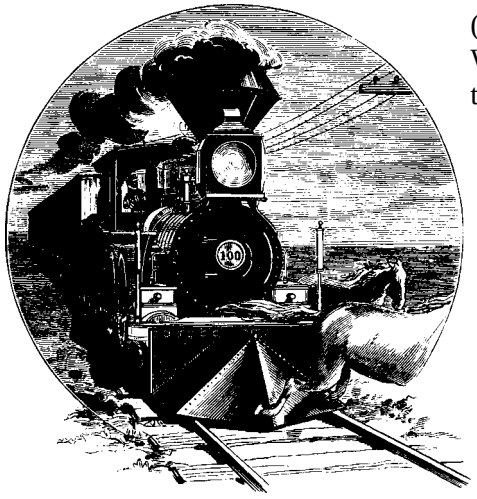
The information given is specific, but not comprehensive.

So make it both specific and comprehensive.

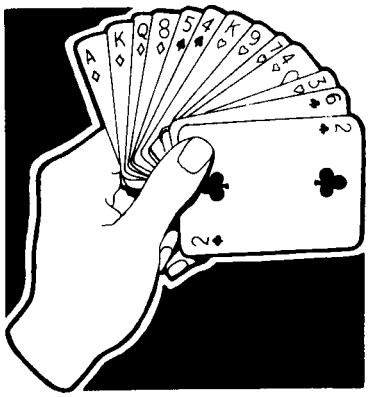
Student's commute: 5 minute walk to El — El every 8 minutes during prime commuting hours — 17 minute ride on the El — 3 minute walk to school. Maximum time — 33 minutes; average time — 29 minutes.

Professor's commute: Seven minute drive to train — trains every 12 minutes — train ride from 35 - 45 minutes, walk to school — 2 minutes. Maximum time — 66 minutes; average time — 55 minutes.

This comparison is direct, specific and comprehensive, and, therefore, persuasive. The comparison is direct because the comparison uses the same or directly comparable facts, such as the El ride and the train ride. It is specific because it gives the most detailed information that the two sets of facts allow. And it is comprehensive because it covers all the normal contingencies of a commute. A skeptical reader could still imagine some outlandish cases that would undermine the comparison, but the comparison covers the most likely areas of distinction.

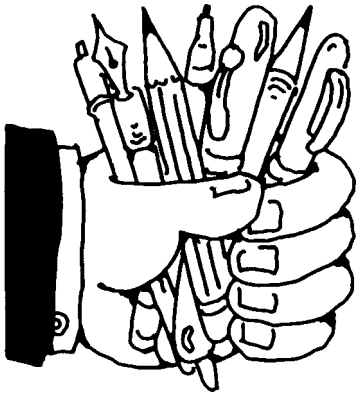


<u>"ACE OF SPADES"
Checklist for Brainstorming About a Legal Issue</u>



Kate Lahey
University of Utah College of Law

What **A**rea of law is involved? Contracts? Torts? Both? Any statutes?
What **C**auses of action derived from case law, statutes or constitutions?
What **E**lements
Or
Factors for each cause of action? Any applicable defenses?
Any **S**tatute of limitations issues?
Any **P**leading or Procedural Problems involved?
Any **A**ttorney's fees provisions involved? What
Damages are the parties entitled to recover?
Any **E**quitable principles involved (laches or estoppel, e.g.)?
What **S**tory or theme best captures the client's theory of the case?



Teaching Case Synthesis in Living Color

Joan Blum
Boston College Law School

Teaching legal writing to first-semester law students is in large part teaching case synthesis. In the relatively simple problems these students write on, they have to use precedent cases to predict how a court would decide their client's case. To figure out what "law" the court would apply to the client's case, and how the court would apply it, the students have to understand what these cases are saying *as a group*. Many students have difficulty looking at cases as a group in part because in their subject courses the focus tends to be on one case at a time. This makes students lean toward case briefing as opposed to case synthesizing.

Over the many years that we at B.C.L.S. have taught together, we have used a terminology that helps the students see the cases important more as a group than as individual documents. Rather than discuss cases in terms of "rules" and "holdings," most of us discuss cases in terms of the following parts of legal analysis: facts, the court's decision on an issue in a case (or "result"), explicit reasoning, and implicit reasoning. The pot of gold at the end of the case synthesis rainbow is, of course, the implicit reasoning that accounts for the result in each of the precedent cases, as well as for the result that the memo predicts for the problem case.

To get to the pot of gold, a student has to use all the parts of legal analysis. The explicit reasoning—what the court actually *says*—-together with the facts and results in the cases, leads to an understanding of what is implicit in the cases, that is, what is really going on in the cases as a group. When the analysis of the law in an objective memo omits one or more of these parts of legal analysis, the reasoning is superficial or mechanical. This kind of reasoning is evidence of incomplete case synthesis, and thus of a prediction that is not well supported.

I use highlighters in four colors to identify the parts of students' analysis so they can see where their analysis is incomplete. I do this in an "interim" assignment about three weeks into the first semester. The first objective memo assignment has three subissues. After working in class with the synthesis of the cases on one of the issues, I assign a draft of the analysis of the law on that issue and the application of that law to the facts of the client's case. As I read the papers, I highlight explicit reasoning in blue, implicit reasoning in yellow, facts in pink, and results in orange.
When I hand back the drafts, I include a color key to the highlighting along with the usual margin notes and end comment. Students report that the visual impact of the different colored highlighting helps them see what they are missing in analyzing the law and applying it to their client's case. For example, this fall a student came to my office and said, "I didn't get any yellow on my "use" assignment. Now I see what steps I was missing." And throughout the year I see papers that organize the analysis around ideas instead of around cases and support the analysis effectively with explicit reasoning, implicit reasoning, facts, and results.

Teaching case synthesis

Steven D. Jamar
Howard University School of Law

I use two exercises to teach case synthesis. The first involves simplifying cases to their factual and legal essences. The second involves issue synthesis by using a simple grid.

1. Case Handles.

I suggest to the students that each case is like a bag or box with two handles, one fact and one law. The handles are compact single sentences which call to mind what the case was about. Ideally the handle will bring a cascade of ideas and connections, but at least it should remind one of the facts, rules, and holding of the case. These handles make cases easier to carry around and manipulate mentally. Requiring students to dramatically simplify cases like this forces them to think about them and articulate their meaning.

2. Synthesis Workshop.

When I do the exercise in class (I call it a workshop), I put a grid on the board (or on an overhead - especially a computer generated one so one can type in responses). Across the top I put the names of cases. On the lefthand side I put the issues to be addressed. (This assumes the synthesis is aimed at

something, like a client problem that needs to be addressed.) Then I have the students articulate two things about each case - a fact, and a rule of law - which relates to the particular issue. I continue this process until we have a number of facts and rules for each issue for each case. (Sometimes a case will not address a particular issue, and sometimes there are few rules in a given case.)

After this, I ask the students to compose two things: a list of facts to look for with respect to a particular issue (taken from the facts mentioned in the cases); and a rule which combines all of the rules from the cases with respect to each issue. The fact list becomes helpful in analogizing and distinguishing cases and in ensuring that the rule takes into account these facts. The rule developed through this process is the rule to be used to apply to the facts in the hypothetical situation to solve the problem.

This process must be kept artificially simple to be effective. It does not capture all that we do, but it does capture some of it and makes it more accessible to some students. It does not reach all students. Often the brightest students find it irritatingly restrictive - which it is, if one is already seeing the depths. But for the weak to strong students it seems effective. It tends to be over the heads of the weakest students, unless it is done much more slowly than I will take time for it in a general class.

Teaching Methods

Need a Career Change? Try Modeling.

David D. Walter
Mercer University Law School

To effectively teach legal research, analysis, writing, and oral advocacy skills, most law teachers use a wide array of classroom teaching methods. To name a few, we use lecture, discussion, role play, and even the Socratic method.

One underused method is modeling, which has also been referred to as "demonstration," "observational learning," and "teaching by example." Alas, while a teaching method such as modeling may not be quite as exciting (or pay quite as well) as a modeling career, it can certainly spice up a law teaching career.

Psychologists describe modeling in broad terms to include any learning or imitation that results from observing others. Applied to legal skills teaching, we use modeling techniques when we distribute examples of good writing, when we show drafts of good student-written memos in class using an overhead projector, and when we show a videotape of a good oral argument.

Modeling significantly benefits the student because the good example paints a vivid picture and allows the student to easily visualize what the student is expected to do for the next memo or oral argument.

The students can gain even greater benefits from modeling when law teachers take modeling one step further and as serve as the models themselves, explicitly laying out THEIR thought processes and THEIR reasoning. For example, in teaching my Legal Writing I students to analyze full text opinions, I talk them through an opinion (which is displayed on the overhead and provided to them in hard copy) and detail my thoughts as I do so. I include the expected information about the value and limitations of headnotes and syllabi, but I also explain my case reading method (which involves jumping from headnotes to the legal discussion, back to the case facts, and then proceeding through the full opinion) and my reasoning for such a reading method. I also offer the students my substantive impression about the court's reasoning, the depth of the court's discussion, and the arguments that can be generated for our legal writing memo problem based on the case. I encourage the students to ask questions about my thought process and my method, and I frequently include phrases in my comments that indicate to the students my doubts, questions, and concerns about the case.

There are several benefits when the law teacher serves as the model. The student directly receives the benefit of the teacher's years of experience in performing the particular task — although I have taught legal writing for only six years, I have been reading and analyzing cases for almost twenty years. Modeling is particularly helpful to the student when the teacher points out the pitfalls and mistakes that the teacher has made during those years of trial and error. Second, modeling also gives

the student a better understanding of all the steps in the thought process; without an explicit example it is easy to miss the subtle steps. Finally, modeling can help build a strong sense of collaboration in the classroom (with the teacher as a fellow collaborator) and increases the dialog between the student and the teacher.

There is a downside to the law teacher modeling method, however. When using the method we must keep in mind that we are teaching the students to think like good lawyers, not law teachers. We also have to keep in mind that they are novices; steps that are apparent to us are not readily apparent to many students. The method also requires detailed preparation to make certain that all of the steps in our thought process are set out. And finally, because we are setting out our thoughts in detail, our analysis is vulnerable to criticism.

Accordingly, it certainly helps to be self-confident, have a sense of humor, and have the students' respect before trying the method.

If you have not tried serving as the "model" before, I suggest using short examples until you are comfortable with the method. Whether you use short or long examples, I think you will find that modeling will add some spice and variety to your array of teaching methods.

Variety—The Spice of Teaching Life

Nancy Soonpaa
Albany Law School

A hallmark of my teaching is to use a variety of teaching methods in order to engage all of my students. I use variety for a number of reasons:

* to appeal to various learning styles,
* to subtly use repetition to convey new ideas, and
* to incorporate multiple lessons into any activity.

1. Using a variety of teaching methods helps to ensure that all students will learn by a method that reinforces personal learning styles. People learn in one of three primary methods: by reading or seeing, by hearing, or by doing activies/interacting with information. For any significant teaching goal, I try to make sure that students use all three methods.

For example, I recently taught Shepardizing. I had each student 1) read about Shepardizing, 2) come to class, where we discussed the process of Shepardizing, and 3) work through exercises that required them to actually Shepardize. I also made available a video for those who still needed more reinforcement. Some students used all of the methods, and some (either intentionally or because of time constraints) used only a couple. But they all met my goal for them: they all know how to Shepardize.

Along with appealing to various learning methods, variety adds "the spice of life" to the classroom. Most first-year law students sit through doctrinal courses taught through lecture and Socratic method, so a course that incorporates a variety of techniques gives them a welcome break. In any one class, I try to use some combination of lecture, discussion, group exercises, drafting sessions, short student presentations, and hands-on examination of materials.

2. Another advantage of variety is that it allows repetition—necessary for students to absorb new information—without blatancy. Moreover, each way that I teach—and each time that I offer information in a different way—I can emphasize a different aspect of that skill or topic. For instance, the first time that I talk about issue statements, my goal may be to offer an overview, rather than a significant amount of detail. That detail may then come from an assigned reading. After the reading, students may work on in-class exercises that focus on potential problem areas. Assigning a formal draft pulls together all aspects of the learning experience, and subsequent class discussion and critiquing offer reinforcement. By the time that students turn in a final draft, they have worked with the issue statement a number of times and in a number of ways.

I also used repetition when we recently discussed how to organize notes and study for an upcoming research exam. After addressing basic note-taking and outlining and grid charts earlier in the semester, I went over developing flowcharts as a way of organizing and understanding research sources. The students perked up as they watched the process of researching legislative history unfold, flow-chart-style, across the board. Seeing the relationship between Statutes at Large and U.S.C.C.A.N., linked by arrows and proximity on the board, reinforced for many of them a relationship that was not clear from simply reading about official and unofficial versions of session laws. That repetition of information also demonstrates a third advantage of variety, the ability to incorporate multiple lessons into any one activity.

3. Almost every teaching activity that I do with my students has more than one learning goal. While students are always aware of some of the lessons that I intend them to learn from a particular part of the course, they seldom recognize all of them.

For example, my research path may ask students to use the West digest system to find a particular case, read it, then explain how that case seems relevant in light of their facts. Inevitably, many of them "explain" by simply quoting a rule. That incomplete response leads into a discussion of what a lawyer actually does with a case, what a judge expects to see in a brief, and why, exactly, the students are looking for precedent. Although all of those ideas would be in the repetition phase by that point, the reinforcement would all spring from the intentional use of the word "explain," which would also lead to a discussion of what it means to read carefully and assign specific meaning to each word and not make assumptions. All of that would be hard to do if their learning about digests came solely from lecture, rather than a variety of activities.

An assignment with one purpose often yields the opportunity to address other issues as well. While I don't intentionally build frustration into assignments, I try to assess what frustrations will inevitably arise so that my students can learn from them. Warnings that arise awkwardly without experiential context—don't procrastinate, don't hog the books, don't wait to print out your memo until ten minutes before it's due—seem apt and helpful when discussed with a classroom of students who have just suffered the fallout. "Start early with your assignment" beforehand gets those weary "Yeah, yeah, we know the drill" responses at the beginning of a task. A classroom of students who have just fought for resources and are sleep-deprived because they all put off completing an assignment is ripe for a discussion of professional behavior and time management.

Variety. I use it because it helps me to reach all of my students, because it allows for subtle repetition, and because it allows me to layer my goals for each aspect of my teaching. I also use variety selfishly: it allows me to be creative, and it makes teaching more fun.

Using Simulations to Provide Context

<u>Breathing Life into the Facts</u>
Henry Wigglesworth
Seattle University School of Law

The Statement of the Facts often gets scant attention when Legal Writing professors design problems. Or rather, the presentation of those facts gets scant attention. The typical manner in which facts are transmitted to students is through the ubiquitous Memo from Senior Partner, which contains notes from an interview with a client and asks the student to write a memo addressing a legal issue raised by those facts.

The problem with this mode of conveying the facts is twofold: 1) it tends to result in students parroting back the facts to the teacher, with little or no critical thinking involved; and 2) it deprives students of an opportunity to do the one thing that isn't foreign to them in law school: gather facts. Presenting the facts in a less canned way, on the other hand, engages students in the fact-finding process and, as an added bonus, keeps the professor awake as each paper now tells the story in a slightly different way.

Here are four techniques I have used to breathe life into the facts:

1. Give the students multiple documents that present the relevant facts but not in the neat, orderly way in which they magically appear in the typical Memo from Senior Partner. Transcripts, letters, memos hastily dictated by busy senior partners all require the student to play a more active role in ferreting out the facts.

2. Conduct a live interview in class with a client. Tell the students to keep careful notes during the interview but also videotape the interview so they can watch it again later. This approach works best if you conduct the interview yourself to ensure that key facts are brought out, but you can also allow the students to supplement the interview with their own questions. Students love playing lawyer and because they don't often get the opportunity in their first year classes, they usually jump at it.
3. Use video itself as the subject of

the assignment. For instance, last year I produced a TV commercial (featuring a couple of the more daring faculty) and asked students whe-ther the commercial infringed on a hypothetical client's right of publicity. To answer the question, students had to view the commercial and compare it carefully to similar infringements described in the case law.

4. Use a real-life story that has been reported in the news as the basis for the assignment. For example, I once asked my students to research whether Sen. Jesse Helms violated federal law by saying that the President would need a bodyguard if he visited North Carolina. The students had to find the facts surrounding the comments by reading newspaper accounts of the incident, either on-line or on micro-fiche. This technique works best if the facts are limited in scope and can be found through a few leading articles.

If you use your imagination, I am sure you can devise similar ways to liven up the facts underlying objective memo assignments. The students will appreciate it and you won't need as much caffeine to get through the stack of papers.

Thinking Like a Reader
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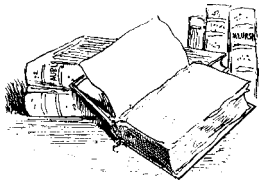


To create an effective document, a writer must understand both the purpose for which the document is written and the attributes of its target audience. Because beginning law students may never have had occasion to use practice documents and may have limited or no familiarity with the needs of their audiences, their early efforts are often disappointing, and they may feel disoriented as writers.
This in-class exercise is designed to help first-year law students better understand the purpose and audience for an in-house legal memorandum by providing them with an experience of reading a memo from the standpoint of its intended reader. First-year students are cast as "assigning attorneys" and asked to use a legal memorandum to prepare to interview and advise a client at a meeting later that day. They are also told that they will have an opportunity to talk with the law clerk who wrote the memorandum and ask any questions that they may have.

The exercise provides students with an experiential basis from which to make choices as to the degree of detail in which their analyses should be explained and how best to communicate their conclusions. By reading the memorandum for the purpose of advising a client, students experience the needs and concerns that the intended readers bring to their reading of legal memoranda and experience the vigilance with which those readers search for opposing lines of argument, flaws in logic, and practical problems that might result from relying on the analysis communicated in the document. By identifying questions to ask the law clerk, students translate their concerns into concrete form. By preparing for the client interview under time pressure, students gain understanding of readers' needs for writing that closely conforms to their expectations and therefore is easy to read. Finally, by counseling the client, they test their preparation and gain additional understanding of the requirements of an effective legal memorandum.

I use this exercise after students have written a first draft of their first memo. Here's how it goes:

Preparation

1. Find a short, clearly-written office memorandum to use as the text for the exercise.

2. Identify portions of legal analysis that often are omitted from memoranda written by beginning law students, e.g., conclusions, key facts and reasoning from precedent cases, synthesis, and step-by-step application of cases to client facts.

3. Delete from the "text memo" the passages that correspond to the kinds of analytic gaps you'd like to help students recognize in their own writing, and then make copies for students. Keep a sheet of the deleted passages for yourself.

In class

4. Distribute copies of the memo to students and tell them that they are the assigning attorneys in this matter. Inform them that the client will be coming to their office to be counseled and advised and that they will have an opportunity before the client meeting to ask questions of the associate who wrote the memo.

5. Ask the students to read the memo and then form groups of three or four to decide what advice they will give the client and what questions they will ask the memo's author.

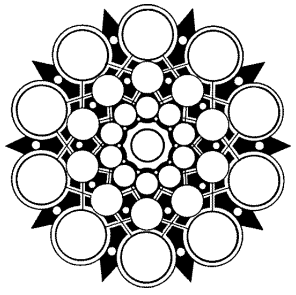
6. After the room has buzzed for a few minutes and students seem ready for the next step, it's your turn to play a role: the associate who wrote the memo and who will answer the assigning attorneys' questions. Consider hamming it up a little here: go out the door as "the teacher" and come back in as "the law clerk."

7. Students will almost certainly ask for information provided in portions of the memo you've deleted. When they do, read the passage, and, if possible, use an overhead projector to display it. They probably will ask for everything you've deleted; if they don't, you can prompt them (e.g., if the memo does not state a conclusion, as "so, do you agree with me on this?").

8. When the assigning attorneys are finished grilling the associate, let them caucus in their groups for a few minutes to prepare to advise the client and identify questions to ask the client.

9. Bring in the client (you can play this role, too), and ask students to advise and interview him or her.

10. Process the experience. Ask for questions, comments, and reactions. Show students where the "missing pieces" from the text memo should appear in the memo, and ask students to examine their own drafts to see if they have omitted material that their readers would find useful.



Using a Negotiation Simulation to Improve Analysis

Teresa Kissane Brostoff
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This fall semester, we are using our usual open research memorandum assignment as the basis for a negotiation/settlement conference. The purpose of simulating such a conference is to show the students how they might use a memo in context.

In addition to providing the students with experience in an important lawyering skill, we also sought to address the problem of insufficient counter-analysis that we usually find in the objective memo assignments. In this assignment, the students will begin to appreciate the predictive and educational purposes of the objective memo. In order to reach an effective settlement, the students must explore and evaluate counter-analysis carefully.

In considering what to offer and whether to accept an offer, they will also have to consider the strength of their own analyses. They also must evaluate which analysis might be more persuasive to a court. Furthermore, the students will have to consider the particular needs and desires of their client, as well as ethical issues in representing a client.

The students in the first year legal writing classes are divided into three large sections with about 70 students in each section. Each legal writing instructor teaches one of these large sections. The students in each large section have all of their classes together and have very little exposure to students outside their section. Therefore, we decided that the students in two large sections would be opposing counsel. Meeting with other law students with whom they are unfamiliar solves the problems of the "imaginary" opposing counsel or opposing counsel with whom they are extremely familiar.

We will assign the same problem from the perspective of two different clients. One section of students will represent an eight year old dog bite victim and his parents. The victim was retrieving a baseball in his neighbor's backyard when the dog bit him. The other section will represent the dog owner, who lives next door to the victim. The students will construct an 8 to 10 page memorandum discussing the dog owner's potential liability for the dog bite under the Pennsylvania Dog Law and a common law negligence theory. While the law in Pennsylvania is well-settled, the facts of the case supply material for a good analysis on both sides of the legal issue.

After the students hand in their memoranda, the two sections will meet each other and attempt to reach a settlement. We will prepare the students for this meeting by giving presentations and having class discussions about negotiating. We will instruct the students to settle the case in a reasonable way. In order to accomplish this, the students must rely on the reasoning in their open research memoranda and they must assess how a court would react if the case went to trial.

Clinical Skills

Oral Reports to Supervisors

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While in practice, I noticed that most new associates were able to communicate in writing and knew the basics of how to communicate with a court. But ask them to give a five-minute summary of their memo or research, and most were struck speechless. Even those who had enough poise not to claim they were late for another appointment, or to immediately break into a cold sweat, had no idea what to do. When I entered teaching, I understood why young attorneys did not possess this important skill - most schools do not teach it. Schools teach students how to write a variety of legal documents. They teach moot court and trial advocacy and client counseling - but not how to orally communicate with supervisors and colleagues. At Stetson, we sought to fill this void by including a class on oral reports to supervisors and an oral report assignment.

While R&W1 students are completing their first memo, we devote half of one class to oral reports. We start the class by explaining the importance of being able to communicate orally and by giving examples of situations when they might be required to give oral reports (such as when the client will not pay for a written product or when the partner is dashing to a meeting). We then emphasize that while there is no "magic formula" for a report to a supervisor, the supervisor will probably want certain pieces of information.

We then propose the following format:

1. Greet the supervisor and all others present. Sit where the supervisors directs. Try to sit so you can include all present in the conversation.

2. Wait to be seated and wait for the supervisor to ask you to speak. (The supervisor typically starts the session by greeting the associate and asking an open-ended question, such as "Tell me what you found.").

3. First, state the issue(s) you researched. You may state the issue more informally than you did in the written memo. ("This case involves . . .").

Your report is more like a conversation than a speech.

4. Highlight a few facts that are critical to the issue you researched. Do not give detailed facts, unless you are asked. The supervisor may well know the facts better than you.

5. Tell the supervisor the bottom line (akin to the brief answer in the memo).

6. Summarize your research and findings on each major issue, and then discuss your client's strengths and weaknesses on each issue. Focus more on analysis than legal authorities. Do not focus on how you researched the issue, unless asked.

7. Be ready to discuss strategic issues, such as the client's chances of prevailing, what the next research or investigative steps should be, and what the client should be told.

8. Be ready to answer any questions posed on substantive or strategic issues. If a question is asked, answer it directly, then move back to your outline.

In addition to these steps, we also teach basic oral communication skills, such as: maintain constant eye contact; don't read your memo or any other written presentation; sit still and straight; do not use uncontrolled hand gestures; etc.

Also, based on students' comportment the first time we used this assignment (several came in chewing gum or wearing caps; one student actually put his feet on my desk), we also spend time talking about professional appearance and demeanor. And, to help in this regard, we require them to wear business casual clothing to the report. This dress code dramatically affected - for the better - how students perceived and performed the assignment.

A few days after the students submit their first memo, each reports to the professor's office and gives an oral report to the "senior partner" (or, if we are working on a criminal case, the "district attorney"). The student then has 5-7 minutes to give a report and respond to questions. After the report, the professor gives a brief oral critique and follows-up with a written critique, completed grading grid, and assignment grade. The grading categories include organization, knowledge about the facts and law, ability to answer questions and discuss strategic issues, and presentation style.

This assignment has many benefits. Students are able to begin honing their oral skills; they learn a "real world" skill; they get to test their research against the professor's questions; and, the professor gets to know each student a bit better. The feedback from students and R&W instructors has been overwhelmingly positive.

Ending With a Bang: How to Get the Most from Oral Argument Debriefing

Jo Anne Durako
Rutgers-Camden Law School

Each year, as the spring semester draws to a close, I look forward to oral arguments. Many writing professors characterize oral arguments as the high point of the legal writing course. Too often, though, we are sapped of our creative juices when the first-year program winds down. We are out of ideas and the energy to think of them. We are at our low point. When the May 1997 Second Draft announced a forum for sharing teaching ideas, I had just completed oral arguments and decided to jot down some notes on the oral argument debriefing process. Here are a few ideas to file away until spring.

The debriefing portion of oral argument is a difficult process to orchestrate. You have a group of students who are spent, but you also have a valuable teachable moment. You have faculty, alumni, and upper-level students eager to leave. You have three people on the bench who have some similar as well as differing views about the prior performances. To maximize the benefit of having several actors in the process, I have organized the debriefing by assigning different roles in advance to each participant.

The faculty member is asked to address primarily the broad function of oral argument and the general importance of oral skills for lawyers. I ask faculty to react as an appellate judge might to provide feedback on how well the students' answers helped the judges decide the case. These remarks are designed to be globally instructive. I also tell the faculty member in advance that I plan for her to leave after making her remarks. (No one has asked to stay for the remaining 40 minutes of post mortem debriefing.) I thank the professors for their remarks and participation, shake their hands, and say good-by. This helps get them out of the room.

The moot court student has a very different role. In contrast with the general comments of the faculty, this student is instructed to focus on specific presentation and speaking skills of each first-year student. I ask the moot court student to make individual comments to each student, focusing on demeanor, responsiveness, deference, eye contact, voice tone and quality, and the like. As moot court veterans, these upper-level students are well versed in these skills. They can easily keep track of stylistic comments for each oralist on a rating form and thus satisfy the first-year students' hunger for individualized feedback. I've been impressed by how diplomatically the experienced students give this critique, always complimenting the oralists and often including a funny, self-deprecating story. Finally, the moot court students make a sales pitch for moot court as an alternative to law review participation. The trips to New Orleans at Mardi Gras always get mentioned. After these remarks, I thank the student, shake his hand, and get him out of the courtroom so that I am alone with my students.

This is the last time I see my first-year students as their writing professor. That's one reason I choose to talk with them without other faculty or other students present. I take off my judicial robe. I come down off the bench. I tell them to take a deep breath. I note that no one burst into flames or fell over. (Last year, a student at another law school DID fall over and several ambulances were called.) Since this is my last opportunity to talk with my students, we spend this time doing self-evaluations and peer-evaluations - techniques we used throughout the year for our writing assignments.

I ask the students to spend a moment reflecting on their performances. I ask them to identify their high points, their low points, their opponent's best moment, their partner's biggest improvement, and their best preparation technique. Sometimes we have to get beyond the "high-point-was-sitting-down" comment, and we do. We also talk about what the opponent said that made the student's heart stop. Each student knows, often better than I do, when her opponent scored points. I am always moved by how insightful, tactful, supportive, and generous students can be. I intersperse my evaluation of each student's performance among the other comments. Students still want to know what the professor thinks. This shared experience of having survived the oral argument rite of passage presents a fine teachable moment.

I have a few closing rituals to end our debriefing. I ask to see the oral argument folders, which we jokingly rate on use of color and amount of information. This allows the students to show me how much effort they spent in preparation - at least for the folder. Finally, I shake each student's hand and say a personal farewell. I may

congratulate them on their performance, tell them that it was a pleasure to teach them, or tell them how proud I am of them. This moment marks the end of our class. As my students go off to celebrate together, I return to my office and write each a short e-mail making any comments better made one-on-one. This ends the debriefing.

Before changing schools last year, I served champagne after the last oral argument. That's another way to end with a bang.

Teaching with Technology

The Use of Web-Based Instruction in Legal Writing Courses

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The integration of web-based

instruction into writing courses has substantially enhanced the learning experience of my students. Web-based instruction allows me to communicate easily with students outside of class and give students timely feedback on their assignments. This semester, I have created web homepages for each of my classes. I also have used WebBoard, an online, web-based discussion board, to enable students to effectively critique the work of their peers. While we have encountered some difficulties implementing this technology, the benefits of the program clearly outweigh the negatives.

Students log onto the WebBoard through the internet. The URL is http://english.ttu.edu:8080/~15. You may log on as a guest to try it.

For Fall 1997, 1 established WebBoard Conferences for Transactional Practice (an advanced drafting class), Negotiation Workshop, and for Legal Practice (the first year research and writing course). Each of the courses used the WebBoard in different ways.

Transactional Practice students are required to post their "daily" writing assignments on WebBoard. On drafting assignments, they also must post a comment to three of their classmates, offering editorial comments. At first, the comments were too kind (Nice job on the contract! I like the termination clause."), but as the semester progressed, the comments became much more insightful. I provided feedback to the students either by a reply posted on the WebBoard or by e-mail.

WebBoard allowed me to easily display student drafts on a computer projection screen during class. In order to edit documents during class, I would copy the students' work into WordPerfect and project it on the screen in 24-point font.

WebBoard automatically converts links to web pages into "active links." That is, if I type: "Click here to see the contract: http://www2.tltc.ttu.edu /Zanglein/Trans/k3.html" then when my message is posted, the link will automatically turn into a hypertext link that the student can click on to visit a new web page. This allowed the class to view longer contracts in a format that looked more like the original version. Through WebBoard, students can attach documents to their message. However, although WebBoard is compatible with Netscape, students could not attach files through Internet Explorer or America On Line.

A chat room within WebBoard can be created for each class. One of the Legal Practice professors conducted weekly chats for students to discuss their writing projects. Students who did not want to participate in the discussion could listen in on the conversation. The chat room also allows participants to "whisper" to each other without being overhead by others. This feature is useful when students are working on group projects.

Because first year students initially were not motivated to use WebBoard, the professors offered them an incentive. They posted a notice that said "If you reply this message, you do not have to turn in the next assignment." After this message was posted, hundreds of students overcame their reluctance and logged onto the WebBoard. In Negotiation Workshop, we used WebBoard to continue discussions started in class. The class met once a week for two hours and so it was useful to have a means of continuing class discussions. We also made great use of the class webpage, located at http//www2.tltc.ttu.edu/Zanglein/Neg/index.htm. The homepage provides links to the syllabus, current assignments, the results of in-class negotiations, the WebBoard, and other useful links. For example, students were required to write a paper on the hypothesis that personality has a predictable effect

on negotiations. The webpage had links to various personality tests, personality assessments, and slides about personality styles. The page also contained the results of the last negotiation assignment, depicted verbally and graphically.

The homepage linked to a graffiti wall where students could post "negotiation graffiti." The graffiti wall features quotations ranging from SunTzu ("Be prepared and you will have no trouble.") to the Rolling Stones ("You can't always get what you want.") This allowed students to mull over sayings that relate to the art of negotiating. Students would use these sayings as topic headings or discussion areas in their negotiation analysis papers.

Despite this glowing report, web-based instruction has some down-sides. Sometimes the server doesn't work and the professor needs a back up plan. Some students have computer problems no matter how much help they receive. Despite these draw backs, I remain convinced that the use of web-based instruction is the most energizing teaching techniques that I have encountered. It gives the professor more access to the students and allows students to learn from each other in a controlled environment.

Discussion Boards and Legal Writing
Leslie Larkin Cooney
Nova Southeastern University
Shepard Broad Law Center

For the past two years I have been using a web-based discussion board to enhance my classes. The discussion board, which is hyper linked to my faculty web page, is a place where students can continue the learning process which began in the classroom. Sometimes it seems just as our students get actively engaged processing information, it is time for class to end. Often students approach us immediately after class with a comment or question they just did not have the opportunity to pose during class. When we talk to these students after class, we frequently think of a point we wished we had made to the entire class. There are, of course, other students are unable to ask questions immediately after class because they have to hurry off to another class, work, or home.

The discussion board aids in all these situations because it provides a forum for students to continue the dialogue which began in the classroom. Other students can post replies and I too, regularly take part in the discussion board dialogue. All students have access to any or all parts of the discussion simply by logging on to the internet whenever it is convenient. I also encourage students to post their draft writings.

For instance, the topic for a recent class was drafting questions presented and short answers. During class we did the usual type of critiquing the good and bad points in several sets of samples. The students also had drafted their own questions presented and short answers. While I was able to ask approximately half of the class to share their drafts for classroom critiques, it was impossible to examine everyone's writing. I was, however, able to encourage everyone to post samples on the discussion board. Students could post either their work as originally drafted, or as rewritten—hopefully, improved, in light of the classroom experience. When samples are posted, I freely comment and raise questions about the effectiveness of the writing, just as I would in the classroom or during an individual conference in my office.

The discussion board allows me to answer frequently asked questions by posting an answer once. This is especially beneficial as memo submission dates draw near and writing professors find themselves answering the same few questions all day long. Rather than answer the same question repeatedly, I am able to direct students to the answer on the discussion board. Students seem to find the written "answer" more reassuring than the verbal one. In fact, even when I do not provide an answer, either because there is no answer or because I have chosen not to provide "the answer," students have responded more positively to the written explanation of my "non answer" on the discussion board than they ever did to my similar oral responses.

I also use the discussion board to dispel any rumors concerning deadlines, assignments, grades, or even methodology. Students like the discussion board because it is always open; they can use anytime without waiting for office hours. Last, but certainly not least, is the advantage that the discussion board encourages written expression!

A discussion board differs from a list serve. When you use a listserve, which is push technology, everyone on the list automatically receives every email sent by any member of the list. With the discussion board, which is pull technology, students must take a more active role and they must seek to become part of any discussion. I find this beneficial because (1) it helps reinforce the concept that

lawyers have to seek answers actively, and (2) students are not distracted by a lot of email dialogue at inopportune times. The discussion board is not a substitute for personal interaction with your students, but it is a quick and easy way to enhance their learning.

Teaching Legal Research

Terry Garcia and the Plain View Doctrine: Making Legal Research Interesting

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An effective technique to teach legal research in the books is to use an interesting issue as an example and to have a recent relevant case appear in the pocket part. Here is what I do. We teach legal research about half-way through the fall semester. By this time the students have already written arguments related to a short motion to dismiss based on four cases that we give them but no research is involved. We have three classes dedicated to research, and the students are required to complete research exercises. During the first research class I introduce the various research sources, the difference between primary and secondary authority, and how to come up with a descriptive word list. I introduce the concept of digests including topics and key numbers, and by this time most students have yawned at least one time. To make the whole research process more interesting, I use a search and seizure issue that I have found effective.

To introduce the search and seizure research problem I engage in a role-play exercise where I am a partner and a student is a law clerk. The role-play technique itself teaches various lawyering lessons, such as the way in which research assignments are given, questions to ask when receiving an assignment, and the reality that lawyers often are called upon to research areas of law with which they are unfamiliar.

I give the students the following hypothetical. I tell them that it is next summer and that they have a job working as a law clerk in a large law firm. I select someone to be the law clerk and announce that I am the partner. I tell the student that the partner has just called her into her office and has relayed the following:

I just got off the phone with Terry Garcia. She is upset because last night she noticed a police helicopter searching her backyard on the exact spot where she is growing marijuana. She wants to know if the police may search her backyard like that or if they need a search warrant. I told her that we would research the issue and get back to her by the end of the day. Terry lives in California. Any litigation will take place in federal court. Please research this issue, write a memo, and have it for me as soon as possible.

I then ask the students how they would go about finding the applicable law. I have them brainstorm about the sources they will look to as well as the words that describe this issue. They usually come up with search, seizure, and police. I then ask them what they would do next. We decide that the next step is to look in the Descriptive Word Index of West's Federal Practice Digest 4th (vol. 99 P-Z). I bring the Descriptive Word Index into class with me with the appropriate pages already tabbed or I make a handout of the appropriate pages for the class. I ask them what word to look up in the Index. They usually decide on "search and seizure" (with some help from me). We look up searches and seizures and under that broad topic is a more specific sub-topic, aerial surveillance (p. 268 of the Index). The digest topic and key number for aerial surveillance is Searches 20, 56. I then go to the volume of West's Federal Practice Digest 4th containing searches, which is volume 84. I show them the case summaries that appear under Searches, 20. There is a relevant case from the Ninth Circuit, United States v. Broadhurst, 805 F. 2d 849 (9th Cir. 1986). We also examine key number 56. We then look at the pocket part and discover a more recent relevant case under key number 20.

Once they have found a case summary that sounds like it applies to the problem, I tell them to jot down the citation, pull the book, and read the case. I then bring one of the cases that we located in the digest to class to illustrate the headnotes and the West topic and key numbers and to show how the summary in the Digest is the same as the summary in the West version of the opinion. I then ask the students how they would answer the partner's question based on the research that we did in class.
I find that this exercise introduces the students to the world of what practicing attorneys do on a daily

basis and also reinforces the necessity of checking the pocket parts. This exercise is also fun to do, and when you're teaching legal research, the more fun, the better.

Teaching Writing

Challenge Students to Use Plain English When Revising Pattern

Jury Instructions
Richard W. Stevens
The George Washington University Law School, 1992-1997

Want to get a classroom of legal writing students laughing? First, have them pretend they are members of a jury at the end of a trial, and that they must remember and apply the legal principles you are about to read. Then read aloud the substantive law from a book of "pattern" jury instructions. The pattern instructions for "fraud" or "libel" are often dense enough to get snorts and titters within 90 seconds.

This comedy routine grabs students' attention to focus on a serious problem. Linguistics studies show that lay jurors may understand as little as 30% of the "pattern" instructions they hear. Studies have shown that jurors who hear "pattern" instructions often miss key points such as the prosecution's burden of proof, the meaning of proximate cause, the value of circumstantial evidence, and the significance of contributory negligence.

The "plain English" emphasis in modern legal writing becomes more relevant to students when they realize the impact of old-fashioned "legalese" on juries.

Many of the same problems that infect "pattern" jury instructions also plague legal memoranda and briefs. These problems include (1) poor logical flow, (2) needlessly unfamiliar words and "legalese," (3) abstract words instead of concrete words, (4) misplaced modifying phrases, (5) multiple negatives, (6) nouns used in place of base verbs, (7) passive voice, and (8) vague prepositional phrases (e.g., "as to").

Writing instructors can use "pattern" jury instructions to develop concretely meaningful writing assignments. After lecturing on the jury instruction language problems and solutions, instructors can assign sample "pattern" instructions for students to analyze and rewrite. Such instructions are available in nearly every jurisdiction, and in specialized books of forms. I recommend using instructions on legal topics with which students might already be familiar, either from everyday life or from law school classes.

Rewriting jury instructions can really improve their comprehensibility. In one study, for example, jurors understood about 50% of the legal substance of a "pattern" murder instruction. After the instruction was revised using "plain English" and good writing techniques, jurors understood about 80% of the legal substance.

For student exercises, the "pattern" instructions need not be lengthy. Students can learn a lot about clarifying sentences by analyzing and revising short examples, such as this: "The failure to avoid unreasonably putting another person in harm's way is negligence."

This example needs work: it is abstract, not concrete; it uses nouns instead of base verbs; it contains at least three negatives. The sentence might accurately state the law, but it is hard to hear, decode, remember, and apply.

There can be many good ways to rewrite a jury instruction. One rewrite of this example, using a definition style, might say: "The defendant is negligent if by acting unreasonably she endangered another person." Another rewrite, using an "if-then" clause structure, might say: "If the defendant acted unreasonably and thus endangered the plaintiff, then the defendant was negligent."

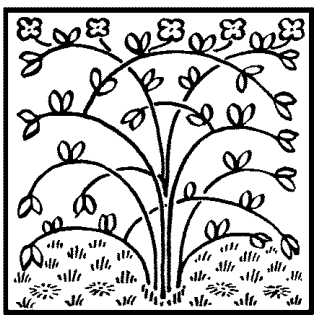
The rewriting assignment can stimulate lots of class discussion about whether a "revised" instruction actually captures the same legal principles as did the "pattern" instruction. Practicing lawyers and judges argue these same points when proposing instructions at trial. What a lawyer might consider an accurate statement of the law might also be gibberish to the lay juror. Small word changes that could alarm a trial judge might transform the gibberish into something jurors can understand and apply.

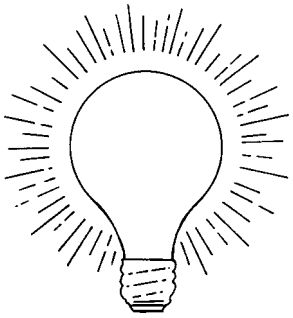
Unlike many other legal writing assignments, revising jury instructions can directly improve students' oral advocacy. As they prepare their moot court arguments, students will be more aware of organization and flow. Students

will want to employ language structures which help the listener follow the logic, and avoid those which derail the listener from the argument's track.

The following references can help instructors prepare lectures and handouts for classroom use. Mary Barnard Ray & Barbara J. Cox, Beyond the Basics: A Text for Advanced Legal Writing, 50-79 (1991) (teacher's supplement also available); Amiram Elwork, Bruce D. Sales, James J. Alfini, Making Jury Instructions Understandable (1983); Gail Hagerty, Instructing the Jury? Watch Your Language!, 70 N.D.L. Rev. 1007 (1994); Peter M. Tiersma, Reforming the Language of Jury Instructions, 22 Hofstra L. Rev. 37 (1993);

Walter W. Steele & Elizabeth G. Thornburg, Jury Instructions: A Persistent Failure to Communicate, 67 N.C.L. Rev. 77 (1988); Harvey S. Perlman, Pattern Jury Instructions: The Application of Social Science Research, 65 Neb. L. Rev. 520 (1986); Robert P. Charrow & Veda R. Charrow, Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions, 79 Colum. L. Rev. 1306 (1979).





Reminding First-year Writing Students Not to Abandon Creativity

Mary Dunnewold
Hamline University School of Law

Because first-year writing students concentrate so hard on following the explicit directions given to them about IRAC organization, paragraph patterns, and readers' expectations, they tend to lose track of their ability to be creative writers. They become so bound to the rules established by the authority (the instructor or the text) that they stop listening to their own voices, and they decide to permanently shelve any creative impulses. Their writing thus often becomes technically correct but dreadfully dull, and they are convinced that it has to stay that way.

While as a writing instructor I want my students to become technically proficient, clear writers over the course of the year, I also want to remind them that they need not disregard their creativity just because they write for a legal audience. Thus, each year on the first day of class I distribute the Michigan Court of Appeals opinion Fisher v. Lowe, 333 N.W.2d 67 (Mich. Ct. App. 1983), written by Judge J.H. Gillis, as a reminder that once they are technically proficient writers, they should strive to become interesting and creative writers. The complete text of the opinion is as follows:

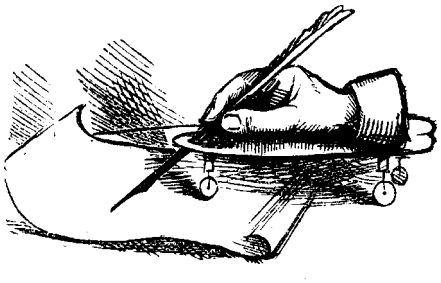
We thought that we would never see
A suit to compensate a tree.
A suit whose claim in tort is prest
Upon a mangled tree's behest;
A tree whose battered trunk was prest
Against a Chevy's crumpled crest;
A tree that faces each new day
With bark and limb in disarray;
A tree that may forever bear
A lasting need for tender care.
Flora lovers though we three,
We must uphold the court's decree.
Affirmed.

I suggest that students staple the opinion to the inside of their class notebook to keep them focused on their ultimate goal: clear, concise writing that also holds the reader's interest.[1]

Invariably, students ask whether this means they may hand in their assignments in verse, and whether a judge or senior partner would frown on a submission formulated as a sonnet. Although such questions are usually asked in jest, they provide an opportunity to discuss the relationship between meeting the expectations of legal professionals and exercising your own creativity. I try to get my students to see that as long as they master the skills necessary to achieve mechanical accuracy, clarity, completeness, and depth of legal analysis, they can break out of the parameters of form set during the first year writing course.

Of course, mastery is seldom achieved during the first year. But when students glimpse vistas of writing beyond mastery of basic skills, I hope they will learn that achieving good legal writing is an ever-evolving process, not simply a goal to be met this year.

[1]West's head notes and summary of opinion are also in verse, illustrating to students that legal writers other than judges may also seize the opportunity to write more creatively.



Teaching Grammatical, Spelling and Word Usage Errors in First-Year LR&W

Carl S. Pavetto
University of Baltimore
School of Law

I teach first-year legal writing. I have two sets of expectations and two approaches depending upon whether I am teaching first-semester first-year or second-semester first-year students.

For my first-semester students, I expect that the level of their writing abilities and their proficiencies in grammatical, spelling and word usage are likely to require a substantial amount of remedial instruction by me. Consequently, I have designed a course curriculum that allows time for this type of instruction. I begin each semester with the proposition that for the first writing assignment, a legal memorandum, I will not consider grammatical, spelling and word usage errors in my grading. In my critiques of their memoranda, however, not only do I edit my students' work, I do the editing and the making of grammatical, spelling and word usage corrections in a color of ink (highlight in yellow and mark in blue) that is different from the color (red) that I use for making my substantive comments. As my students continue through the semester and complete subsequent writing assignments, and based on how I feel the students as a class are progressing, I give increasing consideration to errors in grammar, spelling and word usage as I grade.

For my second-semester students, I expect that there will be few, if any, grammatical, spelling or word usage errors. Of course there are some, often many. Nevertheless, in my grading I consider grammatical, spelling and word usage errors from the beginning of the course to the end, giving some leeway early in the semester, none by the end. Since I do not consider my second-semester legal writing course to be remedial at all, I do not differentiate my comments – substantive versus non-substantive – by color of ink.

What I have found is that the whole experience can be quite painful for students who come into my class without a good command of grammar, spelling or word usage. To accommodate those students' needs and, depending upon their willingness, I make myself available outside the classroom as much as is needed to assist them.

A Handsome Thesis Statement: A Classroom Exercise

Anita Schnee
University of Arkansas
School of Law (Fayetteville)

Handsome Adjunct Associate staggered into my office after hours, dragged off his snap-brim fedora, and dropped it, and a dog-eared stack of first-year memos, onto my desk. "Professor," he whispered feebly, "I can't stand it much longer."

He was referring, of course, to the absence of thesis statements and paragraphs in the students' writing. I sympathized, but what could I do? Then it came to me. Get the students to write their own theses into a particularly offending judicial opinion. In class. Where it would be fun.

H.A.A. picked up the papers and strode out, a spring in his step and his head held high. I kept the hat. I got to work.

The decision I used was the lead case for the students' first memo, which they had already researched, briefed, and the infirmities of which we had discussed ad nauseam in class. I distributed one paragraph each to two groups of three. Each group began working collaboratively, first amongst itself and then comparing and integrating its result with that of the other corresponding group. I eavesdropped, monitored progress, gave "time" alerts, and answered questions. At the end of class, I collected the proposed theses, downloaded the published opinion, and inserted the students' work, in caps, into the text of the decision. I then circulated the revised opinion to the students for them to study before rewriting their first office memo assignment, cautioning them to quote only the published decision and not their rewrites.

The result: In twenty-six memos, the Discussion Sections of which contained around 260 paragraphs in all, I singled out thesis statements and paragraphs as especially praiseworthy eleven times. I had to make critical marginal notes only nine times and, in three of these instances, the students had done much better elsewhere in the memo. I'd say the experiment worked.

Moreover, the students seemed to enjoy the exercise in class. (No

doubt this was partly because it required no additional advance preparation, but why not give them a break and still get some good work done?) The only complaint I heard was that, once having done the exercise, a few of them found it a burden to try to find new words for the same ideas in their memos.

I could announce in advance for them not to worry about using the same words in nonquoted material, or I could get them to do the exercise on something they wouldn't be using for their memos. I would prefer to avoid the latter, though; it would be more preparation work for them and repetition of the same material has a reinforcing quality that I don't want to sacrifice. A former student of mine contends that the students did the work — albeit collaboratively — therefore they should feel free to use their work in their memos. I think I agree.

The sample follows. The students' writing is in caps; I added transitions, the need for which emerged when the paragraphs were put back into context. The text derives from English Whipple Sailyard, Ltd. v. The Yawl Ardent, 459 F. Supp. 866, 873 (W.D. Pa. 1978). Embedded citations are omitted.

THERE ARE SOME CASES HOLDING THAT A BAILMENT DID NOT EXIST BECAUSE A BAILEE-PARKING LOT OWNER DID NOT ACQUIRE EXCLUSIVE DOMINION AND CONTROL OF A BAILOR-MOTORIST'S BAILED VEHICLE. In Taylor v. Phila. Parking Auth., the Pennsylvania Supreme Court stated: "Since here plaintiffs reserved possession of the car at all times by retaining the keys thereto, defendant acquired no dominion over the vehicle nor any right to control removal of it; hence there was no bailment." Accord, Sparrow v. Airport Parking.

ON THE OTHER HAND, WHERE THERE WAS A CONTRACT FOR STORAGE OF A BOAT AT A SHIPYARD, A COURT FOUND THIS SUFFICIENT TO CONSTITUTE A BAILMENT; THE COURT DID NOT ADDRESS WHETHER THERE WAS EXCLUSIVE DOMINION AND CONTROL. In a case rather similar to [the one at bar], [when a boat owner sought] to recover charges for repairs to a vessel necessitated by its fall from a cradle constructed by the shipyard . . . the court held that the storage contract of the boatyard was such that it became a bailee for hire. Johnson's Branford Boat Yard, Inc. v. Yacht Altair . . . . The court did not discuss the bailment issue, and merely stated that "the proof clearly requires" the finding of a bailment.

THUS, ABSENCE OF THE BAILEE'S EXCLUSIVE CONTROL OF THE THING BAILED DOES NOT NECESSARILY CAUSE A TERMINATION OF THE BAILMENT. RATHER, THE INITIAL DETERMINING FACTOR SEEMS TO BE WHETHER THERE WAS A SERVICE AGREEMENT GOVERNING THE BAILMENT RELATIONSHIP.
Meanwhile, H.A.A.'s so revivified, he's talking about going out on his own. We're talking about sharing office space. We're planning the reception. Y'all come.

An exercise is an exercise is an exercise - or is it?

Joe Nalven
University of San Diego
School of Law

One of my teaching buddies keeps asking, "What's the teaching objective?" I think about that question a lot as I review the numerous skill exercises in our core lecture plans, our textbooks, journal articles, and The Second Draft. Part of the answer is what works for me; the other part is what works for the student. I have not tried the following exercise enough to say that it works better for the student, but I find the teaching of the material more interesting and perhaps I convey the material in a more interesting way. That's the experimental and open-ended nature of the teaching enterprise, right?

We teach bits of grammar, spelling, writing style, sounding professional but without jargon, citation and so forth. An exercise for this, an exercise for that. But when the time comes to grade the student's work, the writing comes as a single fabric - all of the pieces coming together in a letter or memo or brief.

Why not start the course with a prototype of poor student writing? *"Here, see this. This paragraph is something I might get from a student. Can you find the errors?"* (One of the other instructors made my exercise a competition and awarded candy bars to the student who found the most errors.)
The exercise begins with the student sharing the teacher's perspective: the student is asked to find the errors in another (albeit fictional) student's work. After discussing preliminary student

responses, I hand out an annotated version of the same writing sample. The students are impressed with the 58 errors in only 15 lines of writing. Every error is annotated so the student can see the specific error and the specific correction. Finally, a revised text appears on the final answer sheet. The student moves through the process, much as we do, from poor to corrected text.

Here is a sample of the poor writing with the numbers identifying the specific writing problems:

1
The issue to be addressed is
whether Dolores Sosa can,
2
after having recovered
3
$675,000 from BMI, inc., a
4
biological weapons'contractor,
5 6 7
have a recovery from the U.S..

Example from the annotated pages that follow the answer key:

No., Error & Explanation of Error

1 **to be addressed**
Wordy. This phrase can be deleted.
2 **after having**
The phrase splits the verb and places the object too distant from the subject. Eliminate interrupting phrases.
3 **inc.**
Capitalize the abbreviation "Inc." See Bluebook, page 60.
4 **weapons'**
Here, the apostrophe is incorrectly used to indicate possessive. Compare the two plural nouns: *foxes' tails* (the *tails* belongs to the *foxes*) - the plural noun is used as a possessive; in the sample text, *weapons* is used to describe the type of *contractor* - the plural noun is used as a modifier.
5 **can have a recovery**
Keep compound verb together. Prefer simple to compound verbs — *can recover*.
6 **U. S.**
Write out the name *United States* as the proper name of the party in the action.
7 **U. S..**
The second "." is unnecessary. When a sentence ends with an abbreviation, do not add an extra period for punctuation.

The student is then given an example of revised text.

The issue is whether Dolores Sosa can recover from the United States after having recovered damages from the biological weapons contractor.

My objective with this exercise is to draw students into the writing process from the viewpoint of the editor/teacher: The goal is to teach from a shared or joint enterprise perspective, to create dialogue.

But is the end result any better? Ask me again after I try Find the Errors out a few times and ask the students what they think. The result may only be in making the exercises more of a novelty, but I hope it opens the door to writing a little wider and a little faster to my students.

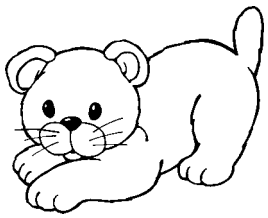
P.S. If you want a free copy of "Find the Errors," email <jnalven@acusd.edu>.

Citation

Citation Carnival
Terry Jean Seligmann
University of Arkansas School of Law (Fayetteville)

As a way to make learning citation form less deadly, I came up with the concept of a "Citation Carnival." I set up the classroom as four stations for the

"games," and label them. I adorn the room with stuffed animals for a midway decor.



I dress up like a carnival ringmaster and play circus music as the students enter, having them draw a ticket from a hat. All the students have been told is to bring their Bluebooks to class. As they enter, they are assigned to one of four teams. The teams are named after famous or infamous attorneys. Each team goes to one of the four stations in the classroom.

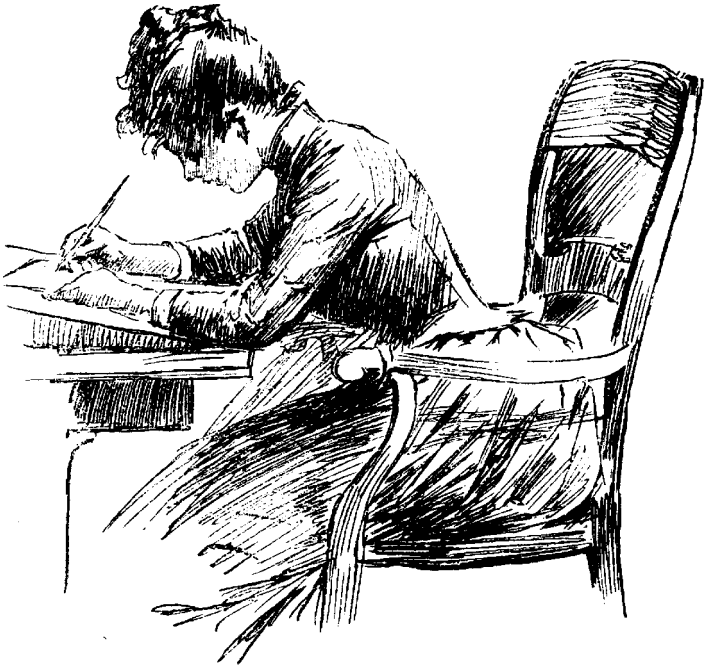
At each station, there is a citation exercise that asks which citations are correct, which are incorrect, and why. The four sets cover case names, state court citations, federal court citations, and selected secondary sources.

The team completes the exercise as a group in around 5-7 minutes. When the music begins, the teams move to the next station, until all teams have done all the exercises. With one student acting as scorekeeper, the teams take turns giving their answers. I award one point for the right answer, two for the right explanation. The team with the most points wins a prize— boxes of crackerjacks for the winning team; consolation Halloween sized candy for everyone else.

For the past four years I've done this midway through the Fall semester, and the students have really gotten into the spirit of it (and sometimes a bit too much into the competition— there are usually protests of my arbitrary scoring). The teaching goals seem to work— using the small groups as teams, there is usually at least one student who by then has become familiar with the Bluebook. The others see that the Bluebook is not so impenetrable as to be beyond student use. They explain and argue about the Rules to each other instead of my droning on in dull lecture. And, usually, they never make those citation mistakes again, just different ones.

The trappings are for fun. When I first came up with this, I was worried that my students would react negatively or think it was childish. One of my colleagues said "If you believe in it, it will work." (Sort of like clapping for Tinker Bell.) So far, it has.

From the Desk of the Writing Specialist



Why Vladimir Can't IRAC: Cultural Impediments of Legal Discourse for Second Language Learners

Debra Parker
Legal Writing Advisor,
John Marshall Law School

"I'll try to give the story in your language. It's hard to express the way I feel in it but I don't feel the pain so much when I talk about it in your language. My own words carry too much weight. But I always worry when I finish a part, did I say enough? Did I really connect by those words? You see, your language is set for your way of thinking. It's like a different current, and that current carries the strong feelings from a different way of thinking. It's like plugging a lamp into the wrong current. The energy I put into it takes more than it gives out."

These words spoken by a young victim of Cambodia's Khmer Rouge portray the struggle second language (L2) learners often face when they want to communicate sophisticated ideas. We're all perhaps familiar with the famous quote by Ludwig Wittenstein, "The limits of my language are the limits of my mind." When the philosopher's words are heard against the backdrop of a struggling second language learner, the undefined limits become boldly obvious.

In the legal community, where language is the very essence of its soul, where the economy of words is valued next to the law itself, and where producing a tightly crafted legal document is a true rite of passage, the L2 learner surely comes to this community with language limits. It takes linguistic sophistication to create clear, concise, succinct legal writing. The L2 learner enters law school with a raw vocabulary and a good dictionary, ill equipped for the subtle nuances of the language, a tool of survival for the persuasive writer.

Despite a high TOEFL score and a good dic-tionary, grasping the semantics of some words requires more. When Sergey came into my office, intending to make a joke by asking me if I had a dictionary that explained the word "schmooze," (a good word for a law student to know) he was surprised when I pulled my copy of Longman's *Dictionary of English Language and Culture* off the shelf and found his word (which took a while because I'd never seen the word in print and wasn't sure of the spelling). Yet we still had to discuss the sociolinguistic rules for using the term in various contexts before he sort of understood.

In their book *In Other Words*, a comprehensive review of second language acquisition, Bailystok and Hakuta give this analogy: "If observing first-language acquisition is like studying the forces of gravity at work by dropping feathers in a vacuum, perhaps...second language acquisition is more like watching a feather drop from an airplane, buffeted by winds, weighted by moisture, and slowed by pressure" (p.4). As if that beating is not sufficient, legal discourse acquisition, a more grueling, concentrated exertion, is perhaps like watching the feather weathered by the winds ... almost entering the atmosphere for a safe landing, (and upon entering the legal community) is sucked into a jet engine and forced through the narrow confines of a turbine.

Now that we've established the *bliss* of second language learners in law school, the question is what are the cultural impediments such students encounter and how can we help provide them a smoother acquisition into the legal discourse community - an easier question to ask than to answer.

THE ROLE OF CULTURE

Methodologies for Teaching English as a Second Language (TESL) are influenced by theories from linguistics, anthropology, psychology, sociology, and education. In the field of TESL, as in any discipline, the theoretical tide tends to shift with the currents of the culture. What we believed to be effective methods a decade ago no longer hold ground because of continual research on which new theories are constructed. Theories of language learning then in turn influence the pedagogy of the classroom.

For example, when the behaviorists explained language learning as simply a matter of habit formation, the structural linguists, parallelling the belief of the time, construed the audio-lingual method (repeat after me) for classroom practice. So while Pavlov's dog was learning to respond to the bell in the psychology lab, ESL students were learning to mimic language phrases.

The pendulum then swung in reaction to the behaviorists view to the innatist's position, weighted by Chompsy and the belief that humans are born with all the necessary equipment for language learning. This shift carried with it changes for the classroom, and the ESL teacher began to focus on the language learner rather than isolated language forms and structures.

The interactionist's view soon followed, attempting to balance the pendulum. Krashen, a proponent of this view, argued that meaningful input was necessary for language acquisition (Lightbown and Spada, p.29). In response, learner and language merged and soon after, text and context emerged producing yet another approach to language teaching. The com-municative approach embraced learner-centered classrooms, authentic materials as input, the integration of the "4 skills" (reading, writing, listening, and speaking), and the role of culture. These days, in the practices and theories of TESL, culture learning has as much clout as the language itself. Lois Damon refers to culture as "the fifth dimension of the classroom," the other four being the 4 skills.

As the father of social psychology, Kurt Lewin once said, "there's nothing more practical than

good theory." (Bailystok and Hakuta, p.5). In the field of TESL, the integration of theory and practice is incessantly emphasized. And now as TESL meddles in the affairs of the legal discourse community, it brings with it practices born of theory.

KEEPING UP WITH THE NATIVES

The language experience of an L2 learner in law school is painfully distinct from a native speaker's experience. Although the native speaker must also adjust to the legal sub-culture which may parallel the qualms of second culture acquisition, the native speaker possesses the tacit cultural knowledge necessary to figure out the "way to do things" in his new environment.

ESL students often have trouble feeling comfortable in a classroom full of fast talking, English-speaking idiom lovers. Keeping up with the discussion language-wise is not nearly as laborious as catching the clever one-liners and the culture bound illustrations or analogies. Nevertheless, the pitfalls of comprehension fall short of the trouble it takes to orally participate in classroom discussion.

Dimitri, a Russian LLM student, described the first time he spoke up in his criminal law class. He said he raised his hand and asked the professor a question.

"So, what happened, Dimitri, did you understand the answer?" I asked.

"Well, there was no answer. My professor talked for a minute and then turned the question back to me. I sat silently, a little embarrassed. I could have answered him in Russian, but I didn't have the words in English to discuss a moral issue."

Dimitri's limitations were certainly not the limits of his mind, but only the *expression* of his mind. When a student's language skills are not up to par with his cognitive skills, he may have no choice other than silence. To a teacher, a silent student is usually seen as either not knowing the answer, not understanding the question, or just being haughty. However, this may not be true for the silent L2 law student since oral legal analysis is a complex linguistic task.

Keeping up with the natives who are competitive, determined, linear thinking, and individualistic, is not as hard as understanding their ways. This notion became more clear to me when Guillermo, a student from the Dominican Republic who has had experience writing for American legal readers, explained how audience-centered he had become in his writing. In essence, he argued that some people are "bullet people," and others more appreciative of sophisticated legal writing where style is apparent (speaking of his own preference to write lengthy, flowing, flamboyant Spanish sentences).

In a previous issue of *The Second Draft*, Jessie Grearson, writing about cultural influences on learning, explained that "the clarity and 'point-first' constructions we value might actually be considered insulting" and that "a tool like IRAC, might run completely counter to an organizing method that an international student brings from home." Yet, this is not to say that the student cannot learn to emulate the organizational patterns of American legal writing, for they must to survive. Consequently, the L2 learner is also a second culture learner and requires the same depth of explanation about cultural patterns as he does about language patterns.

DEALING WITH ERRORS - WHERE TO BEGIN?

Identifying the causes of L2 writing problems is the first step to knowing how to treat them. It is a false assumption that all errors are simple language mistakes. Errors may certainly be linguistic in nature such as first language interference, overgeneralizing rules of the new language, or creatively constructing new structures by mixing languages; however, cultural or sociolinguistic errors are just as prevalent.

For example, identifying "awkward" sentences, or word choice problems in an ESL student's paper does not help the student know how to fix these mistakes. A more thorough explanation of why their choice does not work and suggestions of what would work better is often necessary. I find that even after writing lengthy explanations, the student still needs to talk about the comments.

Responding to ESL writing in the traditional way of marking every grammatical error may not be effective. Not only does the student feel overwhelmed, but cleaning up one particular paper does not insure language progress. Students need to be taught skills that can transfer from one assignment to another, and

often the best way to accomplish this is to identify *patterns of reoccurring errors*. In this way, the student can clean up the most glaring errors, and undoubtedly in the process sweep away the little blunders.

Last semester I worked with a Lithuanian student who first came to me because she had an "article problem." Viktoria insisted that if I gave her some exercises from a grammar book she would be cured. I insisted that she would be infected even worse. Nonetheless, I succumbed on the condition that she do a writing sample and sit with me as we reviewed it.

Since Viktoria had studied English in Lithuania and Russia for several years, she knew lots of grammar rules, but she never had the experience of looking at her own writing with editorial glasses. *Proofreading* was a new concept to her and it took some effort to convince her that, using this method, her entire writing would improve in time.

Although we cannot ignore the importance of grammar, particularly in legal discourse where one misplaced comma can have devastating consequences, it is just as important to give attention to the language development of the learner. As Savignon points out, "L2 learners focus best on grammar when it relates to their communicative needs and experiences." Identifying patterns of errors as they occur within a student's memorandum, for example, relates to that student's most immediate communicative need.

Teaching students self-editing skills may not cure an "article problem," but this approach to error correction treats the disease itself rather than only the surface sores. Many times errors are connected to or caused by other errors and the real task is discovering which one to address first. Focusing on articles when verb tense is screaming for redemption may only prolong the agony. Since ESL errors are a natural part of language learning, responding to them requires thought and purpose in determining whether the error is linguistic or cultural in nature, and patience to wait for results.

A FINAL WORD

Is culture an impediment to language development? Yes and no. Certainly for the L2 learner in law school linguistic sophistication entails more than a working knowledge of legal vocabulary and a knack for IRAC. How culture affects language learning is a long debated topic for theorists, yet the nexus between language and culture is apparent. While some methods of teaching L2 learners may be more effective than others, *why* we do what we do is more fundamental. David Hunt, turning around the philosopher's phrase, said it admirably"there's nothing so theoretical as good practice."

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News

Legal Writing Institute Summer 1998 Conference.

The LWI Summer 1998 Conference will be held June 17-20, 1998 at Anne Arbor Michigan.

Legal Writing (the journal)

Additional copies of Volumes 1, 2, and 3 of Legal Writing are available from Lori Lamb at Seattle University School of Law, 950 Broadway Plaza, Tacoma, WA 98402.

When requesting a copy, please send Lori a check for $4 (payable to the Legal Writing Institute) for *each* copy to cover postage.

Mid-Atlantic Regional Conference

Temple University School of Law hosted the Atlantic Region Legal Research and Writing Conference on May 30, 1997. Thirty five LRW professionals attended the conference, organized by Susan DeJarnatt and Michael Smith of Temple.

Presentations included " 'Skills' Scholarship in Legal Writing: Toward an Interdisciplinary Future" by Michael Smith of Temple, "Working Undercover: A Writing Teacher Infiltrates the Large Classroom—An Exploration of the Use of Writing to Enable Learning in Doctrinal Areas and of the Necessity of Doctrinal Grounding for Teaching Legal Writing" by Mary Lu Bilek of CUNY, "The Nuts and Bolts of Publishing an Article" by Diane Penneys Edelman of Villanova, Richard Neumann of Hofstra and Kathryn Stanchi of Temple, "Clinical Theory and Rhetorical Context—Two Sides of the Same Coin?" by Marilyn Walter of Brooklyn, and "Collaboration in Scholarship: A Cautionary Tale and a Moral" by JoAnne Durako (then of Villanova, now of Rutgers-Camden).

Clinical Law Review

"The Clinical Law Review, a Journal of Lawyering and Legal Education," is a peer-reviewed and faculty-edited journal that publishes articles concerning clinical education and lawyering theory and practice. The journal, now approaching its fourth year of publication, operates out of NYU Law School under the sponsorship of the AALS and the Clinical Legal Education Association. Because legal writing is a significant aspect of both clinical education and lawyering theory and practice, we welcome articles from members of the legal writing community. We are interested primarily in articles that go beyond description of existing programs to provide analysis and critique of the form or function of legal writing, or of the methods of teaching legal writing. That is, our primary focus is articles that tie issues of legal writing skill or pedagogy to alternative models of clinical education and lawyering. We are, however, open to developing a "Department" that provides an occasional venue for shorter, more narrowly focused topics, should the volume and quality of submissions warrant.

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New Area Code for LWI

The area code for all numbers at Seattle University School of Law is now <253>, not <206.

Publications

Darby Dickerson, Curtailing Civil RICO's Long Reach: Setting New Boundaries for Venue and Jurisdiction Under 18 U.S.C. § 1965, 75 Neb. L. Rev. 476 (1996).

Darby Dickerson, Seeing Blue: Top Ten Changes in the New Bluebook, 6 Scribes J. Legal Writing (forthcoming 1997).

Darby Dickerson, The Law and Ethics of Civil Depositions, Md. L. Rev. (forthcoming 1998) (lead article).

Scott Fruehwald, A Multilateralist Method of Choice of Law, 85 Ky. L.J. 347 (1996-97).

Anita Schnee, Logical Reasoning: Obviously, 3 Leg. Writ. 105 (1997). Senior Chief Judge Ruggero Aldisert, United States Circuit Court of Appeals for the Third Circuit, has called the article "delightful," in the new edition of his book, Logic for Lawyers, at xxii (3d ed. 1997).

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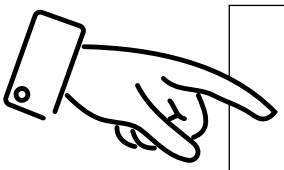

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