



# Collaboration and Cooperation

## A Collaborative Approach to Teaching Legal Analysis

*Jane Muller-Peterson, Pennsylvania State University-Dickinson School of Law*

A collaborative approach helps first-year students through some of the difficulties they have as they embark upon the journey to learn to think like a lawyer—difficulties such as identifying issues, finding rules, and reasoning by analogy. I incorporated a variety of collaborative exercises into my syllabus this year to help my students acquire these skills early as they worked on some ungraded exercises. Two of the most successful were a collaborative analysis exercise at the beginning of the semester, and a peer editing workshop.

### Collaborative Analysis

This exercise eased my students into their first written analysis by allowing them to struggle together rather than alone on one side of an argument, and after mastering it, to teach it to the students working on the other side of the argument. Only after understanding both sides of the argument were students asked to write a short objective paper on their first problem.

During orientation I handed out a problem and a precedent case and asked students to come to the first class with a case brief. When the students arrived for the first day of class, I asked them to sit in pre-assigned groups. I divided each class into six groups of four students each, to be used in collaborative work for the entire

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## “Can’t We All Just Get Along?” — Cooperative Legal Writing Assignments

*James B. Levy, University of Colorado School of Law*

Allowing students to work cooperatively can be a very effective teaching technique in the legal writing classroom. Studies show that students who work together typically learn the material better than students who work in isolation. On the other hand, cooperative work groups can undermine student learning if we don’t establish ground rules that ensure all students do their fair share of the work. The trick, then, is to find the right balance that gives students the benefit of a group learning experience yet holds each one accountable for individual effort.

Traditionally, legal research and writing programs have resisted the use of cooperative working arrangements on the grounds that we are supposed to be teaching students self-reliance. Thus, the rationale behind “no collaboration” rules is that they force students to think on their own so they are equipped to handle the kinds of problems that come up in the day-to-day practice of law. These rules are thought to instill confidence in our students’ ability to think independently.

While this should still be an important goal for any legal writing program, blanket rules that prohibit all cooperation on major research and writing projects go too far. Rather than bolster student confidence, the overuse of “no collaboration” rules can lead to the kind of stress, anxiety and frustration that inhibits learning. When students are instead allowed to work together, they can often help each other

understand the material in greater depth than can be accomplished just through class discussion. In addition, the opportunity to discuss assignments with peers increases confidence in each student’s ability to successfully complete those assignments. With increased confidence comes better learning.

Moreover, the opportunity to brainstorm cooperatively provides students with the kind of immediate feedback that is critical to learning new skills such as research and writing. Many of the benefits of cooperative and collaborative learning groups are discussed by Professor Clifford Zimmerman

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## From the Editors

When we selected “Collaboration and Cooperation in the Legal Writing Classroom” as our topic for this issue, we had no idea how popular it would be. At 28 pages, this is one of the longest issues of *The Second Draft* ever published.

The sixteen essays in this issue and the bibliography to the right illustrate the many ways that collaboration and cooperation are being used to teach legal writing, research, analysis, advocacy, and negotiation. We are drawing on some of these ideas in our own planning for the coming semester, and we hope that these essays will encourage you to include more collaborative and cooperative techniques in your teaching.

These suggestions reflect a range of teaching styles and student cultures. As with all teaching methods, some of the suggestions in this issue will suit you and your students better than others. Even the timing of the exercises or the composition of the student groups can be important to the success of collaboration in your classroom. For example, some teachers are successful using collaborative exercises from the beginning of the term, while others prefer to wait until students know each other, the teacher, and the material a bit better. Some teachers appreciate random groupings of students, while others assign students to groups based on student personalities and abilities. You know your teaching style and your students best, so trust your instincts as you decide how best to incorporate these suggestions into your syllabus. Other members of the Institute are always available to discuss ideas and share war stories.

With this issue, *The Second Draft* begins a new tradition—a column dedicated to our newest teachers. This column ensures that each issue of the Institute’s newsletter is of special interest to those who have been teaching for less than two years. The inaugural column is on page 25.

Please continue to contact us throughout the year with your announcements for the “News” column. We welcome news of awards, promotions, publications, conferences or symposia, and program developments.

For the next issue, we encourage you to submit essays on teaching persuasion—in writing, analysis, and oral presentations. We look forward to hearing from you.

Barbara J. Busbaris  
(Florida State)  
Suzanne E. Rowe  
(Oregon)



## Resources on Collaboration in the Legal Writing Classroom

The following articles and essays are additional resources for teachers who want to incorporate collaborative and cooperative methodology into their legal writing and research classes. Collecting them in a short bibliography allowed us to reduce the number of footnotes given for each essay in this issue, while recognizing the contributions of those who have written on this subject previously.

Leslie Larkin Cooney and Judith Karp, *Ten Magic Tricks for an Interactive Classroom*, 8 Perspectives: Teaching Legal Research and Writing 1 (Fall 1999).

Jo Anne Durako, *BRUTAL CHOICES IN CURRICULAR DESIGN . . . Peer Editing: It's Worth the Effort*, 7 Perspectives: Teaching Legal Research and Writing 73 (Winter 1999).

Linda Edwards, *Certificate Program in Advanced Legal Writing: Mercer's Advanced Writing Curriculum*, 9 Perspectives: Teaching Legal Research and Writing 116 (Spring 2001).

Debra Harris & Susan D. Susman, *Toward a More Perfect Union: Using Lawyering Pedagogy to Enhance Legal Writing Courses*, 49 J. Legal Educ. 185 (1999).

Terri LeClercq, editor, *Collaboration*, 8 The Second Draft 6 (April 1993).

M.C. Mirow, *Confronting Inadvertent Plagiarism*, 6 Perspectives: Teaching Legal Research and Writing 61 (Winter 1998).

Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 Clin. L. Rev. 485 (1998).

Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 Thomas M. Cooley L. Rev. 201 (1999).

Judith Rosenbaum, *BRUTAL CHOICES IN CURRICULAR DESIGN . . . Using Read-Aloud Protocols As a Method of Instruction*, 7 Perspectives: Teaching Legal Research and Writing 105 (1999).

Melissa Shafer, *Shakespeare in Law: How the Theater Department Can Enhance Lawyering Skills Instruction*, 8 Perspectives: Teaching Legal Research and Writing 108 (Spring 2000).

Cliff Zimmerman, *In-Class Editing Sessions*, 13 The Second Draft 7 (May 1999).

Clifford S. Zimmerman, *Thinking Beyond My Own Interpretation: Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 Ariz. St. L.J. 957 (1999).



The next deadline for submissions to *The Second Draft* will be October 15, 2001. Guidelines for contributors appear on page 17 of this issue.

# The President's Column

Jane Kent Gionfriddo, Boston College Law School

LWI needs *you*. Obviously the Institute is sustained by the continuing work of those members with a long history of serving on the Board of Directors or committees. But we also need the ideas and talents of all of our members, both experienced teachers and members who are new to the field of legal writing, who have not participated much in the leadership of the Institute.

To be honest, however, it isn't easy to become involved in the work and governance of the Institute. I know this from personal experience. I remember vividly when my colleague Joan Blum and I attended our first LWI Conference in 1986. One morning as we sat at breakfast, we spoke in awe about those "big names" in legal writing who were sitting at a table across the room and meeting on some issue important to LWI. As we talked, Joan and I wondered whether we would ever be some of those people "when we grew up." We proceeded to struggle for years, floundering around, not knowing how to make contact and volunteer for the work of the Institute. In the end, we both were elected to the Board of Directors, but we didn't have an easy route to our success.

During the past year the Institute has made good progress in reaching out to new members. For instance, Chair Suzanne Rowe and the other members of the New Member Outreach Committee have done an outstanding job welcoming those new to our field and giving them helpful information about the Institute. I have no doubt that Susan Kosse, the incoming chair of the committee, will continue this excellent work.

But the question remains: how do those of you who aren't necessarily "new members" become more involved? As President, here's my advice.

Take an active, positive role in figuring out what you would like to contribute and go after it. Reread the January 2001 issue of *The Second Draft*: it describes the business of the Institute. Think about what interests you and how you might like to become involved. Don't give up even if it takes more than one attempt on more than one front. For instance, if you thought about submitting a proposal for the next conference, but didn't, or submit a proposal that is not accepted, try again for the conference in 2004. If you want to run for the Board of Directors in the next election, Spring 2002, run for the Board of Directors. If you don't win, run again. It takes many wonderful people more than one time to be elected.

Volunteer for committees. As President I will assign committees and committee chairs this summer. Many of you, especially non-directors, who would bring talent, expertise and hard work to committees, aren't known to me. Although I may not be able to accommodate everyone's requests right away, I will try to involve a range of new and experienced Institute

members on committees, and I will keep an on-going folder of information on those who have expressed an interest in committee work.

To be considered for a committee or other special work of the Institute, please send me as soon as possible the following information: your resume and a description of the committee you would like to become involved in—and why. (All current committees are listed below, and were described more fully in the January 2001 issue of *The Second Draft*.) Send this information to me by e-mail (gionfrid@bc.edu) or by regular mail to Professor Jane Kent Gionfriddo, Boston College Law School, 885 Centre Street, Newton Centre, MA 02459-1163.

Finally, consider writing for *The Second Draft* or for one of the other publications that highlight the teaching of legal writing and research. You can share your experience with others in the profession, and they will get to know you better in the process.

Don't be shy. We need you.



## Current Committees of the Legal Writing Institute

Bibliography Committee

Bylaws Committee

Conference Program Committee

Elections Committee

*Legal Writing: Journal of the Legal Writing Institute*

New Member Outreach Committee

Outreach Committee

Plagiarism Committee

Publications Committee

*Second Draft* Advisory Committee

ALWD/LWI Survey Committee

Website Committee



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## Collaborative Approach to Teaching Analysis

(continued from page 1)

semester. After going over the precedent case with the class as a whole and drawing out the relevant facts and the similarities to and differences from our case, I then told three groups to argue for one outcome to the problem based on the case and the other three groups to argue for the opposite outcome based on the same case. Half of the groups were to argue for a narrow interpretation of the holding and the other half for a broad interpretation. I told each side to come up with a “theme”—a reason why the court should adopt that side’s interpretation.

Two research assistants attended the class to help guide the groups. They were familiar with the problem because they had written a memo on it the preceding year. I reviewed the problem with the research assistants before class and gave them model written answers. Each of us took primary responsibility for coaching two groups as they grappled with their task. Then, about ten minutes before the end of class, I asked each group to select a representative to present the group’s thinking about the problem to the class as a whole.

After hearing three reports on each side, the students understood that analogies are used in legal reasoning within the framework of a cohesive argument and that different outcomes can be supported by the same precedent case. I then asked the students to write a one-page paper arguing the position they had been assigned.

When they completed that assignment, they shared their papers in class with the students on the other side. Not until they were thoroughly versed in the arguments each side could make were they asked to write an objective analysis explaining what each would argue and concluding as to what they thought the likely outcome would be if the issue were litigated.

The end products were vastly superior to those of the preceding year on the same problem. Students were able to make analogies within the context of a cohesive argument. I commented on the papers in less than half the time it had taken me before, and was able to provide more

positive feedback so that students had an earlier feeling of success.

### Peer Editing Workshops

The workshop technique is a way to provide feedback efficiently. It is less individualized and detailed than individual written critiques and conferences, but far more individualized and effective than the classroom approach. It provides students with an opportunity to rewrite without requiring that the teacher read and comment on each paper.

I used this technique after giving students individual written critiques on two different two-page assignments: the introductory assignment described above and a section of their first complete office memo. I required each student to attend a workshop lasting an hour and a half. The students attended their workshops with the members of their four-person discussion groups. In all, twelve students attended each workshop. Each student brought to the workshop four copies of a written draft of the paper, one for each member of the four-person discussion group. I handed out and explained the following criteria to be used to focus the group discussion:

1. Does the topic sentence present the narrow idea of the subsection?
2. Does the paper state the correct rule—the one which will give us guidance on the issue in this subsection?
3. Does the paper select the correct precedent cases and explain them adequately?
  - a. Does the paper limit the cases to those on our issue and explain them as they relate to that particular issue?
  - b. Does the paper include all of the facts the writer will compare later?
  - c. Does the paper inform the reader about the holding?
  - d. Does the paper include the court’s reasoning?
4. Does the paper apply the precedent cases to our problem by comparing the facts of the two cases?
5. Does the paper conclude with a prediction about our case?

I then told the students to read their topic sentences to each other in their small groups and to discuss them. As they did so, I circulated from group to group, listening to what they had to say, coaching them, and, when I detected areas of general concern, interrupting the group discussions and speaking to all twelve students at the workshop. We then proceeded to the rule and the other parts of the paper in the same manner. Each student read his or her work to the others in the four-person group and received their comments. Students called me over to their groups when they were unsure about something, and when I wasn’t addressing specific questions, I sat with a group, listening and reading their papers to focus the discussion on problem areas. I spent approximately a half hour with each small group while remaining available for questions from the other groups.

Providing feedback in this format had advantages over individualized written feedback beyond saving time. First, the feedback was immediate. Most students had completed the drafts just before the workshop and left the workshop with the guidance they needed to rewrite the papers. Second, because the format allowed for a lot of exchange between me and each of the students, I was able to follow up when any student had difficulty understanding an explanation. Third, because students applied the workshop criteria to four papers, one after the other, the criteria that I use in evaluating legal analysis became increasingly familiar to them. Fourth, students had the opportunity to see a variety of approaches to the problem and hear comments on them from each other and from me. After seeing some examples of good work, the students gained a better idea of what was expected.

Spending only six hours on the work of forty-seven students, compared to the twenty-five hours to fifty hours I would have spent writing individualized critiques, I was still able to provide students with a significant amount of feedback and guidance. For the students, this meant that they could write the memo with more confidence. For me, it meant that commenting on the section of the final

memo covered in the workshop was, ultimately, far less burdensome.

These and other collaborative exercises I utilized this year helped students to acquire skills in analysis earlier, and with considerably less stress, than when I stuck to the more conventional approach of classroom teaching, graded assignments, and conferences. Additionally, the classes were more enjoyable and helpful to more people because of the increased participation that group work requires. ♦

## Cooperative Legal Writing Assignments

*(continued from page 1)*

(Northwestern) in *Thinking Beyond My Own Interpretation: Reflections on Collaborative Learning Theory in the Law School Curriculum*, 31 Ariz. St. L.J. 957 (1999). It should be read by anyone interested in becoming a better teacher.

*It is especially important for us to find ways to build student confidence during these first assignments because the students are so filled with self-doubt early in the year.*

The downside to cooperative learning groups is that some students may wind up doing all the work while others do little or nothing, due to the “free-rider” effect. The overall impact on a class may be more detrimental to learning than the use of blanket “no collaboration” rules. Assignments that permit students to work together, therefore, must be carefully designed so they provide the benefits of a cooperative work experience while minimizing the impact of the “free-rider” effect. Here are a couple of examples from my own class where I’ve tried to strike the right balance.

In connection with all my major memo and brief writing assignments, I allow students to work in small groups for the purpose of researching the assigned topic. I limit each group to a maximum of three students because experts suggest that smaller groups tend to minimize the “free-rider” effect. In a large group, it is easier for students to sit on the sidelines, gaining nothing from the experience. I tell students that they can discuss within their own group how the various research tools

work, where to find them in the library and whether, in a general way, the resources are helpful or not in solving their assigned problem. However, I prohibit members of the group from exchanging specific citations to authority unless each member of the group has independently found that authority. Tying this restriction into the school’s honor code ensures their compliance. I also make each student keep a research “log,” reflecting the student’s individual work, which must be turned in with the final draft of the memo or brief. In this way, I allow enough collaboration to build students’ confidence in their ability to use the law library successfully while still requiring them to submit a written product that reflects an effort to work through the problem on their own.

With respect to the writing portion of these assignments, I allow the same groups to discuss the issues involved, which cases they believe to be most relevant (once

they’ve found them independently), and how they plan to analyze the problem. Once they put pen to paper, however, they are prohibited from any further collaboration. No one may review their written work except for me and my research assistants. Again, my purpose is both to instill in them confidence in their ability to understand the legal principles at stake and to impart self-reliance in the ability to edit their own drafts effectively. It is especially important for us to find ways to build student confidence during these first assignments because the students are so filled with self-doubt early in the year. On the other hand, I want them to submit to me a final product that demonstrates their own effort to produce a polished draft through good self-editing techniques.

An ancillary benefit to these kinds of cooperative working arrangements is that students who are allowed to work together rely less on the teacher to answer routine questions. As a result, I am much less overwhelmed with student questions right before the assignments are due. Indeed,

many students prefer to discuss questions with peers rather than risk looking foolish—at least in their minds—by asking those same questions during class. For all these reasons, we should listen to our students more seriously when they implore: “Can’t we all just get along?” Letting them do so results in a better learning experience for everyone involved. ♦

## Alternative Dispute Resolution as a Vehicle for Promoting Collaborative Learning

*Pearl Goldman, Nova Southeastern University, Shepard Broad Law Center*

Although collaboration is a critical part of law practice, law schools have generally failed to embrace collaborative pedagogy outside the context of clinical programs. Experiential learning situations offer an excellent opportunity for students to collaborate in developing a variety of lawyering skills, including legal writing and the skill of collaborative lawyering itself. Legal writing and lawyering courses can provide additional opportunities for students to experience the benefits of teamwork and cooperation. This essay discusses the use of alternative dispute resolution (ADR) as a means of accomplishing this goal.

One of the objectives of the First Year Lawyering Skills and Values Program (LSV) at Nova Southeastern University Shepard Broad Law Center is to eliminate the litigation bias that permeates the first-year curriculum. The issues that students encounter are designed to be resolved through ADR processes. In the first semester, the LSV Program focuses on planning a transaction, such as the purchase of property or the negotiation of an employment contract. During the life cycle of a file, students interview clients about the transaction, conduct legal research, draft memoranda, and negotiate the terms of the agreement. In the second semester,

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## ADR as a Vehicle for Collaborative Learning

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the curriculum shifts to pre-trial litigation. Students interview and counsel a client about a possible lawsuit, conduct legal research, and draft court documents, correspondence, and a pre-trial memorandum to a court. At the end of the year, they argue their motions and participate in court-ordered mediation of the dispute.

In both the negotiation and mediation exercises, students collaborate at two stages of the ADR process. The negotiation assignment requires students to work with a partner, with each team representing the interests of one party to the proposed transaction. Students first collaborate when their team produces a written negotiation plan. The negotiation plan outlines the needs and interests of each party, the team's strategy, and the strengths and weaknesses of each side. It also includes a draft of proposed revisions to the contract and alternative proposals or a concession plan. Students collaborate again when they reach agreement with the other team: following the negotiation, both teams work together to produce a polished final version of the revised contract.

Similarly, the mediation exercise presents two opportunities for collaboration. Students again work with a partner to advocate for their client at court-ordered mediation. Each team drafts a written mediation plan that summarizes the initial offer, describes the team's mediation strategy, identifies the strengths and weaknesses of each side, and discusses possible areas of compromise. Following settlement, the two teams collaborate to produce a written agreement memorializing the terms of the settlement.

Although the LSV Program provides other opportunities for collaborative work in shorter research and writing exercises, the two ADR assignments have proven to be the most popular. Scheduled at the end of each semester, when students are often unmotivated to learn additional material, these assignments provide realistic closure for each client file. They are simple to design and execute because they build upon the memoranda students

have researched and written. In addition to promoting conciliatory methods of dispute resolution, ADR assignments decrease the anxiety associated with learning new skills, support a non-competitive learning environment, and teach the group dynamics found in law practice. For faculty and students alike, these benefits provide an excellent return on their investment of time and effort throughout the semester. ♦

## The “Moot Case” Approach to Student Collaboration

*Ken Chestek, University of Michigan Law School*

As in many first-year programs, the second semester of the Legal Practice course at Michigan is devoted to persuasive writing. This presents a wonderful opportunity to do a number of things, from introducing ethics education to encouraging collaboration (and its counterpart, respectful competition) among students.

I chose to encourage collaboration by focusing the entire semester on a single “moot case.” I created a fact pattern involving a case of potential gender discrimination in employment, then assigned one of my classes to represent the employee and the other to represent the employer. Each class met at first as a large law firm, but I quickly broke the classes into much smaller sub-groups to deal with specific issues.

For example, in the first week, before interviewing their clients, the students were assigned to small groups to research various theories of recovery that might be advanced. They collaborated on the research, then wrote separate memos reporting what they found. I selected the best memo on each issue and distributed it to the entire class. I then asked the class to interview the client and write a letter to the client explaining the pros and cons of all of the various legal theories that had been researched. This forced each member of the class to rely on the research performed by the other groups, and to view the memos written by other students

from the perspective of the “user” of those memos.

During the discovery phase of the case, the students were assigned to even smaller groups, which interviewed witnesses and took depositions. They not only had to collaborate with each other in preparing and conducting the interviews and depositions, but also had to learn to deal effectively with an adversary when they were confronted with an opposing attorney during the deposition.

After the depositions were concluded, the transcripts were typed and distributed to class members so that they could prepare their briefs in support of or opposition to a motion for summary judgment filed by the employer. Once again, the students were forced to rely on the work of their classmates in taking the depositions, since the motion for summary judgment in this case is very fact-dependent.

The students have taken to this collaborative approach very well. Class attendance has been excellent, and class discussions have been lively and well informed. The briefs based on the record the students created were remarkably diverse; as each student interpreted the deposition testimony in different ways, the students created an interesting array of different arguments. The briefs were also frequently passionate. Many students reported to me that they “really got into” the project because they had a sense of having a real client to protect; their writing reflected this connection. The students uniformly reported that they enjoyed the collaborative experience, and feel they have learned a lot about how a real lawsuit would proceed. ♦

### 2002 LWI Conference

*University of Tennessee  
College of Law  
Knoxville, TN*

*Wednesday, May 29–  
Saturday, June 1, 2002*

## Involving Students in the Commenting Process

Craig Hoffman, Georgetown University Law Center

Empowering students to do critical self-evaluation of their own writing is one of my primary teaching goals for the first-year legal writing course. Often, I give the students handouts that require them to answer questions about their own papers, using criteria that we have discussed in class. These in-class exercises can focus on any stage in the writing process: planning research, crafting the thesis, or beginning an outline. One of the most successful of these self-evaluation events occurs on the day that the students turn in a completed draft of a writing assignment. It begins with students reviewing and discussing each other's work.

As we all know, students can be a bit mind-numbed on those days, and it is often not at all productive to teach something new. I have had a great deal of success capitalizing on the prevailing interests of the day: the students are intensely curious about what the other students have written; they want some notion of how they are doing relative to the rest of the class; and they are desperately eager to explain why they wrote the paper the way they did. Keeping those interests in mind, I use the following self-evaluation exercise.

Because I believe that commenting is writing, and, like all writing, commenting should have a theme and a purpose, I use the beginning of the class to explain the commenting theme for the drafts being submitted. For example, for first drafts, I may focus mainly on the students' use of authority and case analysis. I explain that they will get no comments on their word choice or citation form. The purpose of these comments is to encourage wholesale rewriting—I hope the students will start from scratch. For final drafts, I may focus on persuasiveness or sentence and paragraph structure. In either case, I try to be as explicit as possible about the commenting theme.

After I explain the commenting theme for the draft, I ask the students to exchange papers with someone sitting nearby. The

## Fostering Teamwork Though Cooperative and Collaborative Assignments

Judy Rosenbaum and Cliff Zimmerman, Northwestern University School of Law

At Northwestern University School of Law, our Dean is encouraging all faculty to find ways to incorporate both cooperative and collaborative learning into our classes. By way of definition, in *cooperative* work group members have similar goals but ultimately they produce individual work for an individual grade. Examples of cooperative work are read-aloud exercises, peer edits, study groups and brainstorming sessions. *Collaborative* work, on the other hand, involves students

working jointly to produce a final product for a joint grade, thus fostering considerably more interdependence.

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syllabus for the class typically says something like “self-evaluation exercise,” so they are prepared for some in-class work. After we have done the exercise once, of course, they know that another student will be seeing their papers.

The main focus of the exercise is students' evaluation of their own papers. Students concentrate on criticizing the papers according to the commenting theme I have described; however, they make no written comments on each other's papers. Instead, after they have read their neighbors' papers, they briefly discuss their papers with each other. Next, I have them read their own papers. The prior reading serves as a “priming task.” A student is much more likely to be critical of his own paper if he has seen another paper to contrast it with. As students read their own drafts, I have them make comments, consistent with the commenting theme, directly on the paper. They often write a cover note as well, pointing out more general concerns.

This task has many benefits: the students' self-evaluative comments give me something to respond to in my comments; they also give the students an ownership in the commenting process. The method also promotes student interaction. Most important, the task explicitly reinforces self-criticism. The “priming task” satisfies the desire to read someone else's paper, while avoiding the possible downsides of students' writing comments on other students' papers. ♦

working jointly to produce a final product for a joint grade, thus fostering considerably more interdependence.

The Legal Writing classroom is an excellent place to introduce both cooperative and collaborative projects, because students are less intimidated about voicing their opinions in smaller groups. Often their understanding of material deepens after hearing the differing perspectives of their classmates about the same material. Thus, this past year we used a number of cooperative and collaborative exercises to try to create a sense of interdependence and trust in our students and to try to expand their opportunities for learning beyond what we could accomplish if their interactions were limited to the classroom and one-on-one meetings with us.

Early in the year, many of the exercises were task-oriented. We asked our students to work in groups to identify relevant facts, to synthesize rules and to organize rules and facts together into what would ultimately become a fully reasoned analysis. We also used more cooperative projects than we had ever previously used, such as in- and out-of-class peer edits and in-class read-alouds. These projects took place sometimes within a single section and sometimes between two sections working on different topics.

To allow the exchange of information among students to take place without raising Honor Code issues, we modified our course plagiarism policy somewhat. It now acknowledges the benefits of giving and receiving constructive criticism, but it still admonishes students that their classmates will not be around when they are at their jobs and must produce a written analysis under time pressure. It goes on to say, therefore, that no matter how much they discuss their assignments with each other as students, the goal is for them to learn to do the work on their own for their jobs, where, in fact, they will be “graded” in a way that is far more important to their careers than the letter grades they receive from us.

By far our most significant change this year was to incorporate a variety of

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## Fostering Teamwork

(continued from page 7)

collaborative projects into the curriculum. We asked students to work collaboratively on all first-semester research exercises and on the ALWD citation exercise. We observed that, working in collaboration, the students seemed to learn the material at least as well as they had in prior years when they had worked on their own. However, the student feedback on these projects was universally positive. We heard much less griping about these exercises, which some students consider busy work, than we had heard in the past when the assignments were individually done.

The most challenging (both for us and for the students) collaborative projects that everyone in the program used this year were two writing assignments: a collaborative rewrite of a memorandum in the first semester, and a jointly drafted section of a persuasive argument in the second semester. The persuasive argument eventually became part of individually written briefs. In one section, the teacher also had the students co-author the statement of facts for their brief. For all of these assignments, the students worked in groups of either two or three. We found that asking students to collaborate on the first draft of a persuasive argument worked better than asking them to merge separately written first drafts into a collaboratively written rewrite.

There are probably several reasons that the collaborative first draft done in the second semester worked better than the collaborative rewrite from the first semester. The thought behind asking the students to collaborate on a rewrite was that by the time they rewrote the paper, they would already be familiar with the cases and the issues. We had not taken into account, however, that they would have to merge two papers, some of which had initially reached different conclusions, and that they might have proprietary issues over whose version was rejected in favor of another's. Moreover, students tended to resolve the issues simply by taking the paper with the better grade and incorporating the professor's comments on each student's paper into that paper. This defeated a major purpose of collaboration, namely having the students expand their thinking by challenging each others' assumptions to produce a new whole that is

better than the sum of its parts.

Furthermore, the collaborative rewrite was done fairly early in the first semester, before students had become comfortable with the material and before they developed the "esprit de class" that tends to form over the course of the year. By the time they wrote the persuasive argument in the second semester, they not only knew each other well enough to pick compatible partners, but also had the confidence that comes with surviving the first semester and their first set of exams. Thus, the assignment was simply less intimidating.

Finally, as teachers, we realized from the first semester assignment that we had to do a better job of laying the necessary groundwork for a collaborative assignment. Thus, for the second semester assignment, we devoted at least half a class session to discussing hypothetically how the students might go about approaching the assignment.

*When the collaborative teams worked together effectively, the group members described their experiences as "seeing inside someone else's mind" and said that their understanding of the subject grew exponentially.*

In addition, each member of the Legal Writing faculty held conferences with the collaborative teams about midway through the assignment to make sure that the groups were working smoothly and to help them with any substantive concerns.

Some of the changes that made the second semester collaborative work more effective came from the Legal Writing faculty's own debriefing of what had worked and what hadn't worked with the collaborative rewrite. In addition, however, we had actively solicited comments from our students about their perceptions of the collaborative rewrite, and our own opinions were reinforced by the comments of our students. Their reactions were typically affected by the chemistry of their group. Thus, most of the negative comments (60 in total) focused on problems that are typical of most collaborative work, but by no means insurmountable. These included:

- Difficulty working with a partner (20%)
- Trouble blending writing styles and organization (15%)
- Team effort driven by finishing

memo rather than writing a good one (15%)

- Compromises needed to get along with each other decreased work quality (15%)
- Unfair skill pairings with grade on the line (10%)
- Unwillingness of partner to participate fully (5%)

Counterbalanced against some unsuccessful group combinations were many positive experiences. The positive comments were much more consistent with each other, tending to fall into one of two categories:

- Expanded views and opportunities to learn from each other (46%)
- Feelings of support gained from the ability to share tasks with a partner (30%)

When the collaborative teams worked together effectively, the group members described their experiences as "seeing inside someone else's mind" and said that their understanding of the subject grew exponentially. In light of these comments and the need for today's law school graduates to learn how to work together and to communicate differing points of view to colleagues and to adversaries, we are convinced that our investment in collaborative learning exercises will help our students to be more effective attorneys in the changing workplace of the 21<sup>st</sup> century.

We plan to continue to incorporate both cooperative and collaborative assignments in our curriculum. However, we also see several ways that we can improve on the way that we present these assignments next year. These include: encouraging the Legal Writing faculty to be more supportive of and enthusiastic about the collaborative and cooperative work; assigning the work later to better fit the students' learning patterns and confidence levels; and fostering a less competitive and more respectful class environment, so that students feel more free to share their ideas. ♦



# Collaboration in Legal Writing—and Beyond

Tracy Bach, Vermont Law School

Three divergent experiences occurred this spring when I encouraged collaboration among students in my first-year writing classes and a health law seminar.

A peer critiquing exercise went particularly well for my legal writing students. As in years past, I emphasized the need for legal writers to develop the capacity to self-critique, and not to rely solely on a third party like me to judge effectiveness. As before, I provided general criteria for judging the memo's effectiveness, after discussing the reasons for the criteria in class. But this year, I did the peer critique anonymously. The students provided one copy of the assignment (an intake memo) to me with their names on it, and one with only their student identification numbers. Although I had planned to have students critique each other's memos in class, we ran out of time. So I assigned it as homework and advised students to spend no more than 30 minutes on these short memos. I was delighted with the results.

As compared to years past, students provided forthright and supportive criticism, seemingly freed from the peer pressure of knowing who was critiquing whom. Some student critiquers gave not only specific line-by-line editing suggestions, but overall summaries of the assignment's strengths and weaknesses as well.

When we reconvened for our next class, students uniformly commented on how much they had learned from being forced to take on the reader's perspective. Some noticed how much of the underlying facts other students had missed—or realized that they had missed facts, in comparison. Others observed the varying effectiveness of overall memo and individual paragraph organization, as well as word choice and sentence-level punctuation and grammar. As compared to learning from models, students acting

as the “busy legal reader” learned from what struck them as both ineffective and effective.

In contrast, my attempts at using a “virtual office” to continue class thinking and collaborative strategizing in preparation for a client counseling session did not work well. I had established a class folder at the beginning of the semester, and used it primarily for administrative announcements, assignment directions, work product models, and current events information and tips. I also encouraged students to ask e-mail questions of me and their peers, or to continue class discussion on points of interest.

When we had not hammered out in class every possible permutation of advising our client in an upcoming meeting, I invited the class to use the folder to “meet” with colleagues and continue the preparation. Out of 40 students, only one took up the offer, unfortunately only three days before the client session. I promptly responded to her posting, with a few words of advice and a couple of open-ended questions, to stimulate more thinking on the topic. And then there was silence.

In retrospect I identified several reasons for this collaboration's utter failure. First, I had used the folder mostly as a one-way street for disseminating information up to this point, so a culture of “virtual” conversation and, arguably, collaboration, was missing. Second, the time frame for this on-line collaboration was relatively short and spread out over a weekend, when off-campus access of the system can prove unwieldy, if not impossible. Finally, student comfort with the technology is still fairly uneven (to my surprise), so it is possible that those willing to work cooperatively face to face in class could not do it in the remote wilderness of cyberspace.

My experience with requiring collaboration in a health law seminar made me question whether other forces are at work when law students do not take advantages of opportunities to work together. This spring I taught, via distance learning technology, a health law and public policy seminar to law students on campus

and master's level students at a nearby university. Within the first month of class, I required students to work in small groups to present a policy paper on managed care patient rights. For this project, I permitted students to select their group members and topics (within a specified range), and provided contact information for everyone in the class. The students had about two weeks to work on this project, including class time during a week when I was away from campus.

I was astonished by the range of responses to working in a group. On the whole, the graduate students eagerly participated, immediately focusing on the task at hand. They used technology to bridge the geographical gap and tackled logistical problems as they developed. In contrast the law students focused on the group process issues, complaining that it was hard to contact people and to arrange time to get together. Responses ranged from the sublime to the ridiculous, such as one e-mail that queried “I don't know the student's phone number; what should I do?” I came away wondering whether the LSAT has a selection bias toward those students whose elementary teachers marked “not satisfactory” on the “works well with others” line of their report cards.

No doubt both nature and nurture play a role here. In the nurture column I see a law school curriculum that focuses on individual achievement (via Socratic questioning, final exams as the almost exclusive evaluation device, and the relative grading required by forced curves), while graduate schools typically require group assignments and courses in group process. In fact, I had included the health law group project because many syllabi from this university's graduate programs required such activities. Clearly some disciplines have come to realize the limits of the individual and the potential of cooperation. As I reflect on my successes and failures at encouraging collaborative learning in the classroom, I now see that what strikes me as quotidian actually challenges long-held assumptions and entrenched constituencies in legal education. ♦

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# Learning Factual Analysis and Negotiation Skills Using Collaborative Techniques

Myra Orlen, Western New England College School of Law

The Legal Research and Writing Program at Western New England College School of Law was expanded this year from two credit hours to four credit hours. The expansion of this two-semester class has allowed us to greatly enhance our program in a number of ways. The incorporation of more opportunities for student collaboration is among the ways in which we have enhanced this program. Two such opportunities for collaboration were integrated into the curriculum for the spring semester, which was based on a single fact pattern.

The fact pattern includes a premises liability claim against a landowner and a negligence claim against a municipal defendant. At the beginning of the semester, the students were given a motion for summary judgment and supporting memorandum of law filed by the municipal defendant. The basis of the motion was that the plaintiff had not properly presented the claim against the municipality under the jurisdiction's tort claims act. Acting as counsel for the plaintiff, the students wrote their first persuasive memorandum in opposition to that summary judgment motion. Members of the Legal Research and Writing Faculty then modeled oral argument by arguing the summary judgment motion in front of the students.

While that motion was pending, we assigned students to represent either the plaintiff or the remaining defendant, and students wrote office memoranda

assessing the strengths of the claims and defenses involved in the problem. They then switched roles to write their pretrial memoranda either in support of or in opposition to the defendant landowner's motion for summary judgment. The substantive issue was whether the owner of the apartment building owed a duty of reasonable care to a minor plaintiff who was assaulted in the basement of the apartment building. This scenario provided us with opportunities for collaborative learning of factual analysis and negotiation skills.

At the prewriting stage, in preparation for drafting their pretrial memoranda, we asked the students to form groups of no more than three students and review the facts contained in the record. Our goal was to have students identify the legally significant facts and categorize them as helpful, harmful, or neutral with regard to their client's case. The students recorded their fact groupings on overhead transparencies and shared them with the class. This led to a lively discussion of how the same facts can be viewed differently by opposing parties.

We next discussed how to draft a persuasive statement of facts by emphasizing favorable facts and de-emphasizing harmful facts. We made copies of the transparencies for each student. Thus, the students left class having identified and grouped the material facts and were better prepared to draft their statements of fact.

As the semester progressed, the students turned in the first submission of their pretrial memoranda. That week we reintroduced the municipal defendant and worked on negotiating the plaintiff's claim against that defendant. The goal of this exercise was to allow the students to experience a variety of negotiation strategies, from adversarial to problem-solving. Reaching an ultimate settlement and writing a settlement agreement were not goals of this exercise. The negotiation exercise was

designed to contain issues that involved both the on-going relationships between the parties as well as their non-monetary needs.

Students worked in pairs. They met to discuss their case and prepare a negotiation strategy. The negotiation took place in class, and portions of it were conducted in a "fishbowl"—one negotiation table set up in the front of the classroom. At any given time during the course of the negotiation there were four student negotiators, two plaintiff's attorneys and two defendant's attorneys. Pairs of students representing the plaintiff and pairs of students representing the defendant circulated in and out of the "fishbowl." At various points during the negotiation either the teacher or a student could halt the negotiation to discuss what had taken place up to that point or suggest what steps might be taken in the future.

Students learned from each other as they worked together. The learning was more active because the students were required to interact as they completed the assigned tasks. By talking about the issues, students became engaged in the problem. When assessing the legal significance of the facts and categorizing the relative value of those facts that they designated as legally significant in the prewriting exercise, students engaged in animated discussions. Through this technique, we were able to teach the process of fact evaluation in a way that stimulated discussion among students. The negotiation exercise afforded students the opportunity to both participate in and comment on the attempt to settle a legal claim. Students were able to make suggestions regarding the course of the negotiation and, then, "jump in" to the negotiation and act on their suggestions. Both exercises proved to be highly successful. ♦

*News of publications, promotions, program changes, or upcoming conferences and meetings can be sent throughout the year. Please e-mail news to [bbushari@law.fsu.edu](mailto:bbushari@law.fsu.edu) or to [srowe@law.uoregon.edu](mailto:srowe@law.uoregon.edu).*

## Common Threads

*Kathleen Portuan Miller, Texas Tech University School of Law*

Collaboration among students works well in the classroom when the students begin synthesizing, or finding a common thread, among cases. Most first-year legal writing courses require students to find the thread that links the rules from a group of cases, and then to apply the rules to a client's situation. To do this synthesizing, we at Texas Tech use small groups to create a "synthesis chart."

For a class of twenty, the students gather in preassigned groups of five each. First, the students synthesize the cases that they have briefed. They analyze, compare and contrast the cases they have briefed with a "client's" situation. Using a chart with case names listed vertically, and the elements of the cause of action listed horizontally, the students "dissect" the cases and fill in the charts. Then, once the students have filled in the charts, they deduce a general rule to predict an outcome for the client.

I use this exercise soon after assigning the first memorandum. The synthesis exercise serves as an ice-breaker; moreover, it also reinforces the students' feelings of competence. In the small groups, the students work together, and struggle together, to extract the concepts that they need. Their group struggle produces a group effort. During their efforts to find an analytical solution to their problem, the group forms a bond. Students reinforce each other's efforts.

After the small groups create their charts, the whole class discusses the findings. The result is typically a very lively class discussion. The group collaboration fosters the class discussion. Since individual students (and individual student answers) have already been validated by their peers, students are not afraid to voice opinions about their analysis. Even the quietest students are willing to speak. This group work relates to graded and ungraded assignments.

Finally, I assign a synthesis chart for the cases in the closed memorandum. The synthesis chart can also be used as an

outline to help write the memorandum. Our Legal Practice course is three credits, so we have time to do a lot of assignments in class, including synthesizing. If the course were awarded only two credits, then the assignment would be homework.

This type of collaboration also works well with issue formation, drafting of point headings, formulation of facts, and persuasive writing in the appellate brief. At Texas Tech, we add group work on a negotiated agreement and a mediated contract. The students enjoy working in the groups so much that we also collaborate (in class) on client letters, complaints, and persuasive writing. ♦

## Collaborating with the Opposition

*Wayne Schiess, University of Texas School of Law*

In our first-year legal writing course at Texas, we assign an appellate brief and an oral argument. Most law schools do the same, but our approach differs from many because students are not on a team—they do not argue in pairs. Instead, our students collaborate on the brief by taking opposite sides. When we hand out the brief assignment, we instruct students to pick a partner. The partners take opposite sides of the brief, and they argue against each other in the oral argument assignment.

Why require students to have a partner who is on the opposite side of the problem? Here are the reasons we give our students when we assign the briefs:

### Working with your Partner.

You may work together in researching the problem, planning a theory of the case, developing an argument strategy, and preparing oral arguments. While working cooperatively with your "opponent" may seem paradoxical, you will benefit from researching and thinking about your brief with your partner because an effective advocate must thoroughly understand the opponent's position as well as his or her own. Also, if you progress in the optional moot

court competition, you will have to argue both sides of the problem, so working closely with your brief partner is particularly important if you plan to try out for the competition.

But as teachers, we have more complex reasons for using opposite-side partners. Here are three:

**1. Any collaboration enhances learning.** We believe that working with a partner helps both partners learn. Research and experience inside and outside law schools has validated that assertion. To cite just one source, Clifford S. Zimmerman recently wrote about collaboration in legal writing courses in *The Arizona State Law Review* and concluded that collaborative writing is an "undeniably powerful teaching method."<sup>1</sup>

Yet creating opportunities for collaboration can be difficult. In fact, we abandoned having students work in teams on one side of a brief because it became so hard to manage. To use the team approach, we had to create two-issue problems, we had to read and critique longer briefs, and we had to listen to longer oral arguments. So we gave it up. But we still wanted to allow collaboration.

Using opposite-side partners was our solution. Now our oral arguments and our moot-court competition are for individuals. As a result, the brief problems are easier to design, and our moot-court competition is easier to administer. But our students still get the advantages of collaboration.

**2. Opposite-side collaborating simulates reply briefs.** In the real world, appellate lawyers are often able to see the opposing brief before completing their own. In a typical case, the Appellant or Petitioner files an initial brief, the Appellee or Respondent then files an answer brief, and the Appellant or Petitioner may then file a reply brief.

That is difficult to simulate in a legal writing course. We have never had enough time to allow it. Yet an effective brief will respond to the opposing side's arguments and authorities. So we implemented opposite-side partners, and we have had good results.

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## Collaborating with the Opposition in the Appellate Brief Exercise

(continued from page 11)

With opposite-side partners, our students get to know the problem from both sides. Their briefs can address *known* opposing arguments without having to guess. Their own arguments are better, and usually more thoughtful, because they have become familiar with the best ideas and arguments on the other side.

**3. Collaborating simulates real law practice.** Lawyers rarely write briefs alone. For example, a brief writer might take an earlier memorandum—written by someone else—and convert it into a brief. That is a form of collaboration. But frequently the brief writer will talk to the memo writer or others and seek input, share ideas, or ask questions. Using opposite-side partners gives students a chance to practice the common lawyering skill of collaboration.

What's more, a brief is often tackled by a team of lawyers. These lawyers share ideas, read each other's drafts, and give each other suggestions. And even if the team is hierarchical, receiving input and critiques from a senior lawyer is a form of collaboration. In any law office, most briefs are joint efforts: "[B]riefs are drafted by all the attorneys involved in the case. Everyone contributes."<sup>2</sup> Using opposite-side partners has allowed our students to work with others in ways that begin to help them learn how "everyone contributes."

One caveat: our legal-writing course is pass/fail, so there is no focus on grades and there is little incentive for partners to sabotage each other or to withhold information. The opposite-side partner approach may not work as well in a graded course.

### Notes

1. Clifford S. Zimmerman, *Thinking Beyond My Own Interpretation: Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 *Ariz. St. L.J.* 957, 1020 (1999).

2. Frederick Doherty, *The Headless Snake of Law Firm Editing*, 7 *Scribes J. of Leg. Writing* 43, 45 (1998-2000). ♦

## Testing the Waters

Terry Jean Seligmann, University of Arkansas School of Law (Fayetteville)

I have ventured into peer collaborative exercises on written work with caution, but found the benefits significant for those who participate. As lawyers know, no one (including the judge) ever knows our cases as well as we do, after we have lived with the facts, the law, and the challenge of writing or arguing our analysis. Here, I describe two points in the first-year curriculum where I have successfully used exercises that capitalize on students' submersion in their work. Both enlist classmates' knowledgeable perspectives to help students improve their written analysis.

### Student Editorials

It is the week before that major, graded office memorandum is due.

Students have turned in their drafts, some much more developed than others. Teachers have held lengthy conferences with students. Students have handfuls of written notes on their work to absorb. Class discussions have crystallized the issues, reviewed and analyzed the major authorities, identified appropriate organizational structures.

Mid-week, students are asked to bring to class two to three pages of their memorandum, with the full legal analysis of one specified issue. This part of the memo, they are told, should be as close to final as they can make it. In class, each student exchanges that section of the memo with a classmate sitting nearby. The student receives a suggested set of instructions to use (see box, page 13) in reviewing the classmate's memorandum.<sup>1</sup>

In class, the students quietly read each other's work. Some ask their classmates if it is all right to make notes on the memo. Then they begin talking to each other about their thoughts on the memos.

I circulate in the room during this time, listening quietly, or encouraging conversation with a question here or there. I often overhear efforts by students to be encouraging and to praise aspects of the classmate's work. I also hear students asking their classmate to explain their intended meaning in some particular spot, or suggesting a case or line of analysis that could fit in. Certain pairs mark more language and citation edits than others; these pairs I try to engage in a discussion about the organization or analysis of the issue.

When students have finished giving feedback to one another, they return the paper to its author. Their papers have not circulated outside the room, nor has anyone seen or read the whole paper, so fears of cheating are largely allayed.

I have scheduled this kind of in-class peer review for the past several years. Students tell me that they do not

*Students tell me that they do not realize how difficult it is to give useful feedback on their legal writing until they try to do it themselves.*

realize how difficult it is to give useful feedback on their legal writing until they try to do it themselves. They also say it helps them go back to their own writing, this time reading with the eyes of an

editor, before they turn it in the following week. The timing here is important—students feel uncomfortable sharing their work and research early on, both out of insecurity about their own stage of preparation, and out of a competitive desire not to do others' work for them. Later in the semester, though, they have reached the point of readiness for this unique opportunity to hear from another reader who has struggled with the same material and task.

### Devil's Advocates

Appellate briefs are due next week. The halls are buzzing with anxiety. "How will I know what the other side is going to argue?" "I heard that a student on the other side of my case is arguing some fact (or point or case) that I haven't specifically addressed. Do I need to write a paragraph on that?" "My

professor keeps telling me to deal with my opponent's arguments within the structure of my own argument, but how can I do that without constantly writing 'Appellant claims this, but...?' "Do I need to explain the opponent's best case at length, or even cite it?"

Time to take advantage of these advocates' pent-up energy. For this exercise, I tell students to bring their drafts to class. Students exchange their briefs with a classmate writing for the other side, whom I designate. I instruct the students not to edit the brief, but merely to read it. Then the opponents argue with each other for a portion of the class. Students leave class with their own briefs.

Here is what my students discovered. Both sides use the same overall structure and recognize the same legal principles governing the case. The analysis each side gives the law and the facts has already, for the most part, taken into account the likely spin of the other side. Some good point made by the opponent that is not dealt with in the brief could be addressed, with just a sentence or two. Some of the points that seemed really persuasive on paper can't be defended when someone is citing to the record or the cases in debate with you, so those points need to be strengthened or abandoned. Finally, one does not need a professor to dictate the contents of the brief—the issues, law and facts do that.

This collaboration was new this term. It was pre-announced, and some class members stayed away. Those who came, though, found it invigorating and helpful in testing their own theories of the case. They used the weekend to fine tune their written arguments. Several of the attendees turned in their briefs early. And the classroom corner debates helped them begin to prepare for the next step, oral advocacy.

Note

1. I know that these instructions are the work of another Legal Research and Writing teacher, who shared them either directly with me or via the Legal Writing Institute idea bank. But I no longer have the information, or at my age the memory, that allows me to credit that teacher. I do disown any claim to authorship, however. ♦

## Peer Review Instructions

1. Read the entire section of the memorandum through once without making any notes or comments. Put yourself in the role of an educated and skeptical supervisor. Describe your initial thoughts to your classmate after this reading.
2. Read the section a second time, focusing on the organization and order of the points being made. Comment on any places where the flow of the analysis appears to be less effective, where points might work better in a different order, or where you see a gap in the logical chain of the points being made.
3. Look at the topic sentence of each paragraph and respond to each sentence, as to both their relationship to the content that follows, and their phrasing and tone.
4. Discuss the use of the authorities by the author. Have they been accurately described and synthesized? Are the cases selected logical ones to discuss, or are there others you would have chosen to rely upon or discuss? Has the author satisfactorily acknowledged and dealt with any logically apparent counter-arguments?
5. Discuss the factually based analysis. Are the conclusions explained sufficiently using the details of the events? Has the author worked with the facts rather than reciting them and leaving you to draw the desired conclusions?
6. Note any other observations or edits—writing style, sentence structure, grammar, citation, and typos.

## In-Class Exercises That Foster Student Collaboration

*Melissa J. Shafer, Southern Illinois University School of Law*

In our lawyering skills program, we have experimented with many types of student collaboration exercises. We have asked our students to engage in peer editing, team projects in writing, and in-class group exercises. In reviewing these various types of group learning efforts, the in-class exercises have been the most successful in terms of enhancing student collaboration. Our course engages in an in-class student collaboration exercise in almost every legal research and writing class to practice and master the particular skill being taught.

One useful exercise involves group projects in research. For example, the research professors in our course recently taught Internet legal research. Students were asked to work in teams of four students to investigate specific web sites. The student teams were required to evaluate each web site for its usefulness. The students then reported their findings about their web site in class through a group presentation. Students came prepared with handouts and visual aids to supplement their group presentation of the web sites they had evaluated. The benefits of collaborative learning were apparent. Students with computer and technical expertise were able to assist their classmates who were deficient in these skills. Additionally, students were able to practice their oral presentation skills through the group report. Each student was able to contribute something. The

**CONTINUED ON PAGE 14**

## In-Class Exercises

(continued from page 13)

group presentation helped those students who were apprehensive about speaking and fostered a sense of team spirit and cooperation.

Another successful in-class exercise is the spring semester “bad brief” class session. This class session is held while students are drafting their appellate briefs. The class is divided into teams and given copies of an appellate brief that contains many flaws, including logical fallacies, factual misrepresentations, weak legal arguments, and mechanical and citation errors. The teams are given 30 minutes to find as many problems as they can. They then report their findings to the entire class. The advantage of collaborative learning with this exercise is that the stronger writers reinforce their own skills as they help their classmates find errors in the brief. Small prizes could be awarded to the team finding the most errors, though simply holding the title of the “bad brief champions” is usually enough to stimulate collaboration among the students.

The continual use of these collaborative in-class exercises helps create an interactive and cooperative learning atmosphere to teach first-year legal research and writing, resulting in increased learning as students benefit from the contributions and expertise of each student in the group. These concrete in-class exercises can be implemented in any first-year legal research and writing course to foster student collaboration. ♦

## Using Peer Editing to Supplement Feedback

*Ann Piccard, Stetson University College of Law*

In the rarefied atmosphere of law school, collaboration is often a dirty word. Students are warned early and often about the dire consequences likely to flow from working together on assignments for their LRW courses. At Stetson, our Course Policies specifically state: “You MAY NOT collaborate on, offer, give, solicit, or

receive any assistance on anything that is written, including drafts and final work product. . . .”

I have struggled to reconcile this prohibition with my own real-world experience. In the ten years I practiced law, not one document was filed with my name on it unless that document had been thoroughly reviewed, critiqued and proofread by someone other than myself—someone whose opinion I trusted. Certainly in my early years as a lawyer, a diligent mentor reviewed every written product before it was mailed or filed. To me, this makes sense in terms of turning out a quality work product.

Why, then, do we prohibit students from utilizing every resource available to ensure that their written assignments are the best they can be? Obviously, we want to encourage, indeed require, them to learn how to do their own work. We need to level the playing field among diverse students, some of whom may, for example, live with an experienced lawyer whose input in any written assignments would give that student an unfair advantage

*In the rarefied atmosphere of law school, collaboration is often a dirty word...contrary to real-world experience.*

over his or her classmates. So we insist that there be no collaboration, which may be neither realistic nor particularly instructive.

At Stetson, we use several peer-edit exercises in an effort to overcome this dilemma. In the second semester, for example, as the students are writing lengthy appellate briefs, there is a designated peer-edit of the Statement of the Case section of the brief. Students submit one copy of the Statement of the Case to their professors, and exchange a copy with the classmate of their choice. A checklist for evaluation is included in their course materials. When the peer edits are returned, students can compare their classmate’s observations with those of the professor, who has reviewed the same document. This makes

collaboration between students possible while avoiding the risk of the “blind leading the blind.”

When this peer-edit exercise was an optional assignment, participation rates were, perhaps understandably, low. As a required assignment, however, it has been favorably received by the students. The exercise can even be confidence-building for students who are still struggling with their own writing. This semester, I watched with interest as one of my top students exchanged papers with someone whose writing left a great deal to be desired. The top student later told me that her classmate caught several grammatical errors in her paper, which she had been unable to see.

Anytime the due date for a major written assignment approaches, I struggle with my students over their decreasing ability to “see the forest for the trees.” They become mired in details and lose track of the ultimately important bottom line: logical legal analysis. If one or two sessions of collaboration can help them see their own work with a clear eye, let’s encourage rather than discourage it. ♦

## Using Groups to “Divide and Conquer”

*Susan C. Wawrose, University of Dayton School of Law*

“Divide and Conquer” is a group research exercise that can be used for classes engaged in legal research of any kind. I have used it successfully for researching case precedent on substantive law, researching procedural rules, and researching in form books.

**The Problem: So Many Resources, So Little Time.**

The Divide and Conquer exercise addresses a common problem: students need to know about more legal resources than can easily fit within two semesters of a three-credit legal research and writing class. The reality is that each student can barely “touch” every basic source once, much less develop a working knowledge of the range of primary and secondary materials available. This exercise is designed to share the collected wisdom of a class that has been divided into

research groups. The job of each group is to become hands-on experts on a few sources. Once the research is done, the groups share their expertise with each other. Each group of experts teaches the rest of the class. In return, each group benefits from listening to classmates who have been researching the same issue in other sources or other media.

The exercise is also designed to address some of the pitfalls of wide-open research. Even though a professor teaches many sources, some students “lock in” on a particular source or pattern of researching early on and, while they may develop a comfort level with that approach, they may also reject others prematurely. A prime example of this is the student who rejects books for computers in every situation, even when the tangible volume would be easier to use and more efficient than an on-line search. Another problem is that students may not be attentive to the need to evaluate their options and make wise choices among various media.

#### **A Solution: Divide and Conquer.**

“Divide and Conquer” requires students to collaborate to research the same issue in different sources and media, and then to compare and evaluate the results. The exercise typically takes two class periods. In the first class, the problem is assigned and students go to the library to do their research. In the second class, students present their results to the large group.

To begin, each class is divided into small groups with two or three students per group. Each group is assigned a source selected by the professor. This can cause grumbling if students feel they are stuck with a bum source. An antidote is to require students to research two sources: one that is assigned and one that they select. Imposing sources on students ensures that all the bases are covered and has the advantage of forcing an entrenched student to stretch into new territory.

Groups go to the library armed with a worksheet that includes the issue(s) and special instructions. For a class on researching in form books prior to a class on complaint drafting, for example, students were asked to find and photocopy a useful form for a complaint. Sources included: *Shepard's Causes of Action*, *Am. Jur. Proof of Facts*, commercial vendors and

the Internet, among others. Instructions directed students to the source, defined the subject matter, and placed page limits on the photocopying. After a day of researching, groups presented the results of their research to the class. Students evaluated various sources against several criteria from time and cost to quality of results.

#### **Results.**

To complete the assignment, students must explore at least one source in depth and talk about it in front of their peers. At the same time, the collaborative effort brings several sources to the table. This lets students leave at the end of the day with experience in one type of research and with choices that have been test-driven by others.

Students' revelations are powerful teaching moments. The perennial “discovery”—and one I always hope will be made—is that books still have value. The transformation is almost predictable: students assigned to research in the books drag off to the stacks disappointed as their colleagues settle in at the computer lab. They return two days later enthusiastic proponents of the books, while their counterparts on the computers tell of the problems of computer-assisted research: unwieldy searches, difficulty scrolling through search results, getting lost on the trail and so on.

Students see how their colleagues work and they learn from each other's work habits. Moreover, students collaborate on more than one task, allowing them to play to their strengths.

Students get a chance to speak up. I especially like this component of the exercise since most students need practice talking about the law and presenting information clearly. As a curricular matter, clear speaking does not receive the same attention as clear writing. In this exercise, the common mission of completing a graded assignment creates an incentive for those listening to learn something, and puts pressure on presenters to convey information.

Finally, there is a sense of fairness. All students may not start with their source of choice, but everyone benefits from the efforts of the group. Once the reports are in, students are free to investigate sources that others have recommended. ♦

## Varying the Traditional Methods of Peer Editing

*Ruth Anne Robbins, Rutgers School of Law-Camden*

This semester I experimented with some peer editing techniques in the Advanced Brief Writing course at Rutgers-Camden. This is a course I had co-created with Brian J. Foley, now teaching a similar course at Widener University School of Law. One of the underlying themes of the course is that what often separates a mediocre brief from a great brief is organization and rewriting. Rutgers students are skeptical by nature, and I set out to prove my point a few different ways. So, although this spring's course involved two major “start from scratch” brief assignments at the beginning and end of the semester, I also used two different forms of peer editing in the middle writing assignments. I think that the variety of assignments improved both the students' comprehension and their writing quality.

Advanced Brief Writing attracts mostly 3L students, about to clerk or to enter the real world, who want more than just the brief writing basics a traditional first-year program can provide. The class size is relatively small. My goal is to raise the competency level of student brief writing to that of a practicing attorney, not just a law student. That goal does not necessarily mandate a fixed curve, and I explain that everyone will get an “A” if everyone does “A” work.

The first peer editing assignment involved the legal argument sections of two opposing actual briefs. Thus, the “peer” was an attorney who had filed a brief with the New Jersey Appellate Division a few weeks before I went looking for course materials. (I redacted the attorneys' and clients' names.) The briefs were relatively short, only fifteen to twenty pages, and the record was not extensive. I went to the Appellate

**CONTINUED ON PAGE 16**

## Varying Traditional Methods

(continued from page 15)

Division specifically asking for “typically bad” briefs. I did not want “really terrible” briefs, nor did I want good ones. I gave the whole package to the students and asked them to edit or rewrite the legal argument section from either brief.

The students all realized very quickly that both briefs were lacking in many ways. The case dealt with an injured plaintiff’s failure to properly notify the defendant city of the impending lawsuit. The plaintiff-appellant ignored the obvious emotional theme of “little person vs. big city.” The defendant-respondent failed to articulate that there were two possible tests the New Jersey courts might use in the situation, and that the plaintiff’s actions were so egregious as to fail *either* test. Although the research was fairly thorough, in each brief the law was not set out in any sort of cogent way. Thus, the students had a hard time understanding the basic premises of law the lawyers were arguing until they read the statutes and cases for themselves.

This exercise provided a great eye-opening experience: judges (or their law clerks) do not want to have to re-research the briefs in order to understand them. Almost every student was able to produce a better-organized and more developed legal argument than contained in the original briefs. In conference with those students whose papers were not that strong, I discovered that they had simply tried to keep too much of the original brief’s language in their own versions; they did more of an “edit” than a “rewrite.” Those students too understood the major shortcomings of the original organization and analysis and felt stymied. In retrospect, this assignment probably did more than any other this semester to emphasize the need for clear and precise macro-organization in a legal argument section of a brief.

The second peer editing assignment yielded similar leaps in the students’ legal writing development. This time we concentrated on the facts section of a

brief. I asked the students to edit the facts section of a brief they themselves wrote at some other point in their legal education, so each student was his or her own “peer.” The selection could be their final brief from their first year. It could be something from a job (keeping confidentiality). It could be a brief from another class. The students attached a copy of the original as well as the rewrite, so that I could comment on the overall difference as well as the specifics.

Interestingly, no one chose to rewrite the facts from the first brief assignment in this course. Instead, the students reported that they liked looking back at their own earlier work. They all understood that the point of peer editing is to be a better self-editor, and they felt more comfortable with the editing process once I completely removed from the equation the natural curiosity of “which fellow student wrote *this*?” And since they could more clearly understand the frustration of not understanding a brief, they felt better prepared to work on their own writing. Although I discussed how I had originally intended a second peer edit of a “real attorney’s” work, I was pleasantly surprised when the students recommended I continue to require a self-peer edit in future semesters.

I am pleased with the results these two peer editing techniques yielded, and I will certainly be using them in the future. ♦

## Yikes—The Students Are Editing My Writing!

*Sbeila Simon, Southern Illinois University School of Law*

Collaboration between students is a great teaching tool, and editing lends itself to collaboration. Students can edit their own writing together, or they can work together on a memo that is purposefully filled with errors for them to catch. But what if—make sure you are sitting down now—they were editing *your* work!

*Showing students that you are willing to take the same risks they take when they submit work for review creates a balance and fosters mutual respect.*

Editing collaboratively has many values. It allows students to recognize their own skills as editors. Students can learn a great deal from hearing one of their classmates think out loud through the editing process. One student can see another read backwards for typographical errors. Another student will highlight the first sentence in each paragraph to check the structure of the paper. Students come equipped with many skills, and it makes sense to reinforce old skills while learning new ones. Now, what to edit?

Giving students a draft of your writing takes the collaboration one step farther, and it offers great benefits. Students see that you are an active writer, and that builds respect. Students also appreciate that you value their work enough to submit to their editing. And you get new perspectives on what you have written.

But the biggest benefit of sharing your writing is that students sense a balance. They work hard on each paper, and they have to muster the guts to turn it in for critique. Handing them your work demonstrates that you understand the pressure and that you have taken the risk.

I tried this last semester with a draft of an op-ed piece I had written. The response was positive and immediate. The student edits were useful, and were incorporated into the piece that was later published. Next time I try this I may pull out an earlier draft, and after the students do their editing I can share how I made changes from that draft to the next.

Having students collaborate on editing your writing can be a little scary. It’s like turning in your annual report to the Dean and hoping that you haven’t missed some huge error, say, turning legal writing into legal writhing. But it’s worth the risk. Go for it. ♦



## Legal Writing Listserve Moves from Chicago-Kent to Seattle

LEGWRI-L is a list whose goal is to provide a forum in which scholars and teachers of legal writing discuss topics in their field. In June 2001, the listserve moved from Chicago-Kent to Seattle University. The new list owner is Professor William Galloway of Seattle University School of Law. The list manager is Lori Lamb, also at Seattle University School of Law. The listserver at Seattle University hosts the list. Instructions for subscribing and posting messages to the list are reprinted below.

**Subscribing:** To subscribe to the Institute's list, please send an e-mail request to: [laml@seattleu.edu](mailto:laml@seattleu.edu).

Be sure to include your name, institution, title, and e-mail address.

**Posting messages:** Any member of the Institute can send announcements, queries, or general messages to the list. To post a message to the list, please send the message to: [legwri-l@seattleu.edu](mailto:legwri-l@seattleu.edu)

**Postponing messages during vacations:** If you will be away from your

e-mail for an extended period of time, and you want to postpone your mail from the list, please contact Lori Lamb at [laml@seattleu.edu](mailto:laml@seattleu.edu). She will unsubscribe you until you return. When you return from vacation, remember to e-mail Lori Lamb again and she will resume your subscription. Please do *not* set your computer to automatically notify all message senders of your absence during your vacation or sabbatical.

**Change of address:** If your e-mail address changes (especially if you change schools), please contact Lori Lamb at [laml@seattleu.edu](mailto:laml@seattleu.edu) to let her know your new e-mail address.

**Leaving the list:** If you wish to leave the list (unsubscribe), please send the message "unsubscribe legwri-l" to [laml@seattleu.edu](mailto:laml@seattleu.edu).

If you have general questions about the goals or policies of the LEGWRI-L list, please contact William Galloway at [wgallowa@seattleu.edu](mailto:wgallowa@seattleu.edu).

*A special thank you to Professor Ralph Brill (Chicago-Kent) for setting up the Institute's listserve and for managing it during the years it was supported by Chicago-Kent.*

## Contributors Welcome

The theme for the next issue of *The Second Draft* is teaching persuasion—in writing and orally. If you have a technique, a class or an assignment that has been particularly helpful in teaching students to advocate as well as analyze, please consider sharing it.

In addition, if you have an idea for an essay or article that seems appropriate for *The Second Draft*, but which does not relate directly to the theme of an upcoming issue, you are encouraged to contact the editors about submitting the essay as a "Special Feature." The Special Feature in this issue is slightly longer than most of the "theme" essays, but a specific length is not required. The length may vary according to the topic chosen.

Finally, we invite suggestions and contributions for the "Tips for New Teachers" column. What do you wish you had known during your first year or two of teaching? Do you wish you had—or hadn't—done something when you first started teaching? If you're more experienced, what do you think you do better now than when you started?

Comments and suggestions on these or other aspects of *The Second Draft* are welcome at any time.

## GUIDELINES FOR CONTRIBUTORS

We welcome unsolicited contributions to *The Second Draft*. Our goals include providing a forum for sharing ideas and providing information that will be helpful to both experienced and novice instructors. Each newsletter will have a "theme," with the exception of newsletters that follow the LWI biennial conferences, but the content of the newsletter will not be limited to a particular theme.

**Content of submissions.** We encourage authors to review recent issues of *The Second Draft* to determine whether potential submissions are consistent with the type of contribution expected, and with the format and style used. Submissions should be written expressly for *The Second Draft*, but we will consider submissions which explore an aspect of a work in progress that eventually will be published elsewhere. The ideal length for submissions for a "theme" issue is approximately 500 words. Longer articles will be considered if their content is particularly newsworthy or informative.

**Deadlines.** Material can be submitted to the editors at any time. Submissions received after a deadline for one issue will be considered for a later issue, with the exception of submissions written to respond to a particular "theme." For the next issue, the deadline for submissions will be October 15, 2001.

**Form of submissions.** We encourage electronic submission. Submissions can be attached to an e-mail and sent to either Barbara Busharis at [bbushari@law.fsu.edu](mailto:bbushari@law.fsu.edu) or Suzanne Rowe at [srowe@law.uoregon.edu](mailto:srowe@law.uoregon.edu). You may also send a diskette to Barbara Busharis, FSU College of Law, 425 W. Jefferson St., Tallahassee, FL 32306-1601; or to Suzanne Rowe, 1221 University of Oregon School of Law, Eugene, OR 97403-1221. If electronic submission is not possible, please mail a copy of the submission to both editors using the addresses given above. Documents in WordPerfect are preferred; for other acceptable formats, contact the editors. Include your name, full mailing address, phone number(s), and any other contact information.

**Review and publication.** Submissions are reviewed by the editors. One of the editors will notify the author of the article's acceptance, rejection, or a conditional acceptance pending revision. The initial review process will generally take approximately two weeks. Articles that require extensive editing will be returned to their authors with suggestions and their publication may be delayed. If an article is accepted, it may be further edited for length, clarity, or consistency of style.

# Special Feature:

## The Paperless Writing Class

Laurel Currie Oates, Seattle University School of Law

I am not a techie. About all I know about my computer is how to turn it on and turn it off. I don't read computer magazines or, for that matter, most articles like this one. Having said that, when the earthquake hit Seattle a couple of months ago, the first thing that I grabbed was not a picture of my kids, my purse, or even my car keys. It was my laptop.

For the last year or so, my laptop has been my constant companion. It is how I receive, critique, and return my student papers; where I store my class assignments, handouts, and teaching notes; and how I communicate with my students. And although occasionally there are problems (like the time our server went down for several days), I can't imagine life without my laptop.

### 1. Using a computer to receive, critique, and return student papers

Until this year, I used the method most legal writing professors use in critiquing their students' papers: I had all of my students turn in their papers on the same day; I critiqued the papers; and, when I had finished critiquing, I returned the set.

This year, I decided to try something different. Instead of having my students turn in paper copies of their assignments, I had them e-mail their assignments to me. In addition, instead of having all of my students turn in their drafts on the same day, I encouraged them to turn in their papers as soon as they finished them by critiquing and returning the papers on a first in, first out basis. When we worked on ungraded drafts, I critiqued a draft as soon as I could after I received it, and I e-mailed my critique back to the student as soon as I finished my critique. When we worked on a graded assignment, I modified the process slightly. Although I still critiqued and graded the papers on a first in, first out basis, I didn't return the graded papers until after the final due date for the assignment. My students appreciated the fact that, most of the time, they received their critiques within a few hours to a few days. I appreciated the fact that I never had a stack of 40 papers sitting on my desk.

To facilitate this process, I created a file folder for each of my classes at the beginning of the semester. Within the class file folders, I created a separate file folder for each student. I chose to use Outlook Express rather than another e-mail program because Outlook Express allows me access to my downloaded e-mail even when I am not online. Thus, when I receive an e-mail containing a student paper, I allow the paper to sit in my e-mail until I have a chance to critique it. When I am ready to critique the paper, I save the student paper into the student's file, and I

begin my critique, using the autosave on my computer to make sure that I don't lose any of my work.

When I critique papers, I typically make three types of comments: I write a general comment at the beginning in which I summarize what the student has done well and what he or she needs to work on next; I write "margin" comments at specific points in the paper explaining why what the student has done works well or needs revision; and I do some line editing, such as revising a specific sentence to show the student how to give it a stronger subject and verb, editing a couple of sentences to make the writing more concise, or adding a transition.

The reviewing toolbar on Microsoft Word makes it easy to make all three kinds of comments. To add the reviewing toolbar to your existing tool bars, click View, then Toolbars, and then Reviewing. Once you have opened the reviewing toolbar, click on the Track Changes icon, which is the sixth icon from the left. After you have clicked on this icon, anything that you write on the student's paper will appear in a different color. You can select the color you want (I prefer blue) by clicking Tools, then Track Changes, then Highlight Changes, and then Options.

To insert a general comment at either the beginning or the end of the paper, simply move your cursor to the beginning or the end of the paper and begin writing. You can start this comment at any time during the

critiquing process, and add to and subtract from it as often as you like.

To insert "margin" comments within the draft, use the Comment icon, which is the icon at the far left end of the reviewing toolbar. When you click on this icon, a symbol like the symbol for a footnote will appear on the draft (usually your initials and a number) and a new window will appear at the bottom of your screen. In this window, you can write a comment to the student about that specific portion of the paper. When you finish the comment, move your cursor back into the main window and continue commenting. (To the right of the Comment icon are icons that allow you to edit a comment, move to the next comment, move to the previous comment, or delete a comment.)

When the student receives the paper from you, he or she can access the comments in one of three ways: (1) by placing the cursor on a comment, which will allow the comment to "pop up"; (2) by clicking on View and then Comments, which opens a second window on the screen containing your comment; or (3) by printing out the paper and your comments by clicking on File, then Print, then Options.

To do line editing, simply delete or add material. If the Track Changes function is on, your deletions will appear on the screen

*...when the earthquake hit Seattle a couple of months ago, the first thing that I grabbed was not a picture of my kids, my purse, or even my car keys. It was my laptop.*

as cross outs and your additions will appear in the color of ink that you have selected. Students can view these revisions either on their screen or in print. They can see the revisions in color if they print out their paper on a color printer; otherwise, the revisions print in black and white.

You can use the autotext function to speed up the process of writing either the general comment at the beginning or end of the draft or the specific comments that you insert into the draft. Once you have written a comment that you think you may want to reuse, highlight that comment, click on Insert (on your main toolbar), then on AutoText, and then on New. A dialog box will appear that allows you to “name” your comment. Select a name that you can easily remember (for example, “semicolon” for the comment in which you explain the correct use of semicolons or “organization” for a comment in which you explain a common organizational problem that you have seen in your drafts) and then hit Enter. The next time that you see the same problem, simply begin typing your label and, when the comment begins to appear, press Enter. At any given time, I have about 50 autotext entries that I can use: some are standards that I use from memo to memo and some are new ones that I have created specifically for the particular assignment that I am critiquing or grading.

Although I have one student in each of my three sections who has opted to have me critique and grade the print versions of their papers, the rest of my students have given electronic critiquing and grading high marks. They like being able to e-mail their papers to me instead of rushing to school to turn in a paper by a set time; they like the faster turn around; and they like the fact that they tend to get more comments than they did when I wrote the comments by hand. In addition, on drafts, they have begun inserting their own comments, asking me questions or explaining why they did what they did.

## 2. Using a computer to store class assignments, handouts, and teaching notes

In addition to using my computer to receive, critique, and return student papers, I also use it to store class assignments, handouts, and my teaching notes. As a result, I no longer have a file drawer filled with the materials that I have handed out or used in class. Instead, when either I or a student needs a copy of something that I have given out in class, I simply go to my computer, open the file in which I have filed the assignment or handout, find the material, and e-mail it to the student.

I have also been experimenting with e-mailing my students copies of the assignments, handouts, and “overheads” before class. Most of them appreciate having the material in advance and, as they have obtained their own laptops and learned to create their own filing systems, many of them have stopped taking the paper copies, allowing me to reduce the number of copies that I make. Sometimes, this results in big savings. For example, this spring, we gave our second-year students the option of buying

the 200-page appellate record or receiving a copy of the record by e-mail. About sixty percent of the students chose the e-mail version.

## 3. Using a computer to communicate with students

At the beginning of each semester, I create a listserv for each of my sections and enter each of my students’ e-mail addresses into my address book. Doing these two things allows me to communicate easily with the entire class and with individual students. When I want to communicate with the entire class or send the entire class a copy of an assignment or handout, I simply e-mail the list. When I want to communicate with an individual student, I simply type in his or her name. Similarly, when my students want to communicate with the whole class, they can e-mail the list, and when they want to talk to just me, they can e-mail me.

E-mail has allowed me to quickly answer those “quick questions” that can eat up office hours and to talk with those students who may be hesitant to ask a question in class or to come to my office for an appointment. And although e-mail has blurred the lines between my personal time and my professional time, at least for me, the pluses outweigh the minuses. In the end, e-mail has saved me time by eliminating some student conferences. In addition, it has allowed me to be more responsive to my students while at the same time controlling when I meet their needs.

### A Final Note

Computers and those of us who use them are not perfect. As a consequence, things will go wrong. But then, no matter which system we use, things go wrong (I have, for example, dropped a hand-critiqued paper into the bathtub, ruining an hour’s pleasant but hard work.) Many of these problems can be eliminated, however, by saving your work, by backing up your work at least once a day to your University’s server or other system, and by asking your colleagues and students questions. Old dogs can learn new tricks.

*[Ed. note: unrepentant WordPerfect users can also add annotations and comments to documents. To “review” a document and add notations that will appear in a different color, open the document, then click on File, Document, Review, Reviewer. After you save the document, the original author will be able to read your notes by clicking on File, Document, Review, Author, or can choose to read the original version. You can also embed comments by clicking on Insert, Comment, Create from the main toolbar. Initials will show the reader the location of the comments, and clicking on them will make them “pop up.” Change the initials in the “User” section under Tools, Settings, Environment.]*

*Detailed documents illustrating the icons and dialog boxes used in this commenting process were distributed by Kristin Gerdy (Temple) at the 2000 Legal Writing Institute Conference held at Seattle University. Copies are available from the editors. A similar presentation has been proposed for the 2002 LWI Conference in Knoxville.]*

### Commenting in Microsoft Word

To review and annotate:  
View, Toolbars, Reviewing

To insert comments:  
Comment icon on Reviewing toolbar

### Commenting in WordPerfect

To review and annotate:  
File, Document, Review

To insert comments:  
Insert, Comment, Create

**Grace Barry** (Louisiana State University) has been named the Interim Director of the Legal Research and Writing Program at the Paul M. Hebert Law Center.

**Kathy Bean** (Louisville) received a University Distinguished Teaching Award, one of only five such awards in the university this year.

**Maria Perez Crist** (Dayton) has been selected as one of two recipients of the 2001 ALWD Summer Research Grants. Each recipient will receive a \$5,000.00 grant to pursue scholarship this summer. Professor Crist's scholarship will address Legal Writing for the Online World.

The faculty of the **Dickinson School of Law** of Pennsylvania State University has voted to extend limited voting privileges to the Lawyering Skills Professors, who will be able to vote on all issues except personnel decisions, matters affecting promotion and tenure, or amendments to the by-laws.

**Diane Dimond** (Duke) has been appointed Clinical Professor of Law. This elevation from Senior Lecturing Fellow makes her a member of the governing faculty and allows her to vote on all matters except appointments and tenure.

**Diane Edelman** (Villanova) has been named Assistant Dean for Legal Writing.

**Suzanne Ehrenberg** (Chicago-Kent) will join the faculty of Northwestern this fall as Clinical Associate Professor of Law.

**Jessica Elliott** (Quinnipiac) is the new Director of Legal Writing at Roger Williams in Bristol, Rhode Island. Professor Elliott has also been selected as one of two recipients of the 2001 ALWD Summer Research Grants. Professor Elliott's scholarship will examine the education of learning disabled law students in the required first-year legal research, writing, and lawyering skills course, with particular emphasis on developing teaching methodologies in the areas of legal research and lawyering skills.

**Scott Fruehwald's** (Hofstra) book, *Choice of Law for American Courts: A Multilateralist Method*, has been published by Greenwood Press.

**Debra Green** (Florida Coastal) has been elevated from visitor status to tenure track. She is the Director of Lawyering Process.

**Joe Kimble** (Thomas Cooley) has been named the drafting consultant to the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States. He works with the five advisory committees on federal rules: civil, criminal, appellate, evidence, and bankruptcy. He is also the new editor-in-chief of *The Scribes Journal of Legal Writing*, and he has recently published articles in the *Scribes Journal*, *Trial*, and the *Michigan Bar Journal*.

**Michael Koby** (Catholic University) is moving to Washington University to become the associate director of the LRW program there.

**Jo Ellen Lewis** (Washington-St. Louis) has been made the Director of Legal Research and Writing at Washington-St. Louis.

The USC Law School faculty voted to change the writing program, under the direction of **Denise Meyer**, from a student-taught model to one staffed by full-time writing faculty.

**Norman Printer** (Mississippi) is the new director of the Mississippi LRW program.

**Nancy Schultz** (Chapman), President-elect of ALWD, has been elected Vice-President and President-elect of the entire Chapman University faculty. She assumes her role as Vice-President on June 1, 2001, and as President on June 2, 2002.

**Amy E. Sloan** (George Washington) will become the Co-Director of the Legal Skills Program at the University of Baltimore School of Law.

**Stetson's** faculty has voted to change Research and Writing I from an S/U course to a course graded on

the 4.0 scale. The grade will count in the student's GPA.

Just four years after establishing its Legal Practice Program, the faculty at **Texas Tech** has voted to make the director's position tenure track.

**Grace Tonner** (Michigan) has been recommended for tenure by the faculty of the Law School.

**Lorri Unumb** (George Washington) is the new director of the legal research and writing program at GW Law School.

**Marilyn R. Walter** (Brooklyn), Director of the Legal Writing Program at Brooklyn Law School, was on sabbatical in the spring 2001 semester.

**Ursula Weigold**, Assistant Dean at South Texas College of Law, has accepted a tenure-track position as Director of Legal Writing and Associate Professor of Law at the University of St. Thomas' new law school in Minneapolis/St. Paul, effective the beginning of the coming academic year.

The faculty of **Widener University School of Law** recently extended to the Legal Methods faculty voting rights on all matters but hiring, promotion, and tenure.

**Victor Williams** will become the director of legal writing at Catholic University.



## Regional Conferences

**Writing is Thinking in Ink: The Second Biennial Central Region Conference** on the teaching of Legal Research, Analysis and Writing will be held at DePaul College of Law, Chicago, Illinois, on September 21-22, 2001. The conference will emphasize classroom teaching. The theme spotlights writing as a natural extension of the thinking process. The conference will consist of a series of short presentations and panel discussions, some illustrating specific lesson plans, and others dealing more generally with teaching methods. For information contact Wanda M. Temm, University of Missouri-Kansas City, [temmw@umkc.edu](mailto:temmw@umkc.edu), or visit [www.law.umkc.edu/lwp/conference.htm](http://www.law.umkc.edu/lwp/conference.htm).

Stetson University College of Law, located in St. Petersburg, Florida, will host a **Southeastern Regional LRW Conference** on Saturday, September 8, 2001 for those who teach in or direct legal writing programs. Law librarians are also invited and encouraged to attend. Registration for the conference will be under \$100 and will include at least two meals. In addition, Stetson has limited scholarship assistance available. Programs will proceed on two tracks, one for newer professors and the other for experienced professors. Brochures have been mailed; registration forms and a conference description are available at [www.law.stetson.edu/darbyweb/2001%20conference.htm](http://www.law.stetson.edu/darbyweb/2001%20conference.htm). For more information contact Darby Dickerson at [dickerson@law.stetson.edu](mailto:dickerson@law.stetson.edu).



## Support Legal Writing and Research at the ABA Annual Meeting

The annual meeting of the American Bar Association is being held in Chicago from August 2 through August 8. If you will be attending the meeting, or if you will be in the Chicago area, here are three events at which you can represent the legal writing community. All three events are taking place on Saturday, August 4.

1. CLEA, the professional organization for clinical law professors, is holding a free program at DePaul law school on August 4 from 9:00 a.m. to 1:40 p.m. (the program includes lunch). CLEA has been extremely supportive of efforts to gain recognition for legal writing professionals. You do not need to register for the ABA meeting to attend the program, but you will need to contact Peter Joy at Washington University-St. Louis, [joy@wulaw.wustl.edu](mailto:joy@wulaw.wustl.edu), to say you'll be attending.

2. The ABA Section on Legal Education and Admissions to the Bar is meeting at 2:00 p.m. that day to discuss challenges facing legal education. This is the ABA Section that enacts and enforces the ABA accreditation standards. If you are a law professor and member of the ABA, you are a member of this Section, and should be able to attend this meeting without registering for the ABA annual meeting.

3. Finally, CLEA will be holding a reception at the apartment complex at 2800 North Lakeshore Drive, arranged by CLEA member Gary Palm. Enjoy refreshments, breathtaking views, and the opportunity to thank the clinicians for all the support they have given the legal writing community in recent years.

For more information, contact Mark Heyrman, [mheyrman@midway.uchicago.edu](mailto:mheyrman@midway.uchicago.edu), or Peter Joy, [joy@wulaw.wustl.edu](mailto:joy@wulaw.wustl.edu).

# From the Desk of the Writing Specialist



## The Architecture Behind the Architecture of Passive Voice

Jeffrey Gore, *Legal Writing Advisor, The John Marshall Law School*

Video artist Bill Viola uses our society's most familiar medium to create works of art that show in museums and would seem entirely unfamiliar to anyone who most relates to the medium through television. Creating works meant to be shown in museums enframes not only an idea or image, but also the medium itself—even if it is a medium that is normally quickly digested in the familiar realm of television—and asks the viewer to offer to the work the patience that a visit to the museum requires. For Viola, this setting makes it possible for him to expose what he calls the “architecture behind the architecture” of our relationship with video and perhaps of vision itself.

As Writing Advisors, many of us have had in our professional training a relationship with the architecture behind the architecture of the act of writing. Many of us have training as English teachers, with additional training in literature and linguistics. Some of our training may seem as far away from our most regular job of familiarizing students with accepted rules of grammar, punctuation and organization as Bill Viola's art work seems from an episode of *Friends*. However, the whole point of Viola's work might very well be that it is never that far away from the more familiar use of the medium. Likewise, through our ever-growing awareness of the architecture behind the architecture of any piece of writing, we have something to offer our students as an additional strategy for becoming familiar with the rules of grammar and organization particular to legal writing problems. In this essay, I would like to suggest that intensely considering the purpose behind a rule of language, as we do each time we intensely read a literary work, can often serve as the most effective mnemonic device for remembering the nuts and bolts of its architecture.

One of the common areas of struggle for many of the students I encounter has to do with understanding passive voice. Many students will tell me that their professors have told them to avoid passive voice, but many of them will not understand what passive voice really is. When I ask them, they give me a variety of answers that are only partially correct or simply wrong such as “using *is, are, was* or *were* before a verb,” “putting the subject after the object” or “writing about things in the past.” Usually, the students have too many possible *indicators* for detecting passive voice, but little *understanding* of what might be its definite boundaries. They have been told what they should look for, but they are not always sure when they have found passive voice or just an indicator of passive voice. Many grammar handbooks facilitate some of these misunderstandings by offering numerous indicators of what is and is not passive voice, the numerous

reasons why it is unfavorable, and a few instances when it might be acceptable, but nothing really to suggest a central guiding principle.

One of the most effective ways to teach students about writing in active rather than passive voice is to consider the function of active voice: to assign responsibility to human actors. Throughout all of their first-year courses, students will be asked to assign responsibility to human actors or to make judgments about actions for which actors are assumed responsible. The common purpose of students' writing—whether they are writing an objective memorandum in lawyering skills classes or an exam in contracts—is to determine responsibility. Thus, knowing the *function* of the rule—emphasizing the responsibility of human actors—and how a *form*, the active voice, exemplifies this function, seems like a principle that should be learned by heart.

Because most students know that passive voice is a major sin in legal writing, and some of them will have a growing sense of control of its indicators, we need to help them understand the “policy” behind this rule. As Laurel Currie Oates, Anne Enquist and Kelly Kunsch write, “Active voice emphasizes who or what is *responsible for committing an act*.”<sup>1</sup>

The following examples have the advantage of immediately illustrating how passive voice hides responsibility. Often, I will use this all too familiar example of a child explaining a broken cup to illustrate this principle of grammatical representation of responsibility before moving on to examples of sentences more like one encounters in a legal environment.

### PASSIVE VOICE:

The cup was broken.

[subject & [verb] receiver of the action]

Notice in this example, the child has accomplished exactly what he or she wanted to by hiding the fact that he or she (or someone he or she loves) was responsible. The emphasis here is on the cup (the thing that received the action of the breaking) and not on the being responsible for breaking the cup. The sentence is fine grammatically, but the speaker has hidden the actor or the doer of the deed. Consider the following revisions:

### ACTIVE VOICE:

I broke the cup.

[subject & actor] [verb] [object & receiver of the action]

The puppy broke the cup.

[subject & actor] [verb] [object & receiver of the action]

These examples of active sentences may have the *disadvantage* for their speaker in that he or she may have to claim or assign responsibility for the broken cup. However, they do have the *advantage* in that the actor of the verb is the subject of the sentence, and the thing that receives the action is, in fact, in the position of the grammatical object, after the verb. And that order of words and the explicit expression of responsibility (which the child might want to hide) is what students are expected to show in legal writing. In the world of legal writing and in most legal deliberations, we do not usually consider acts of God. We consider acts of people we believe a court should hold responsible for their actions. That is the function of legal writing, and again, the *form fits the function*.

Thus, what we could refer to as “grammatical responsibility” becomes a possibility for the students who recognize that, through the way they construct their sentences, they actually express the relationship that law school assumes they will have with responsible actors and rules with purposes behind them. The examples below further emphasize that point.

### Example #1

#### PASSIVE VOICE:

Even though the restaurant had one of its busiest nights, the fish used for sashimi was inspected as carefully as usual.

*(We can see that the fish was inspected, but who inspected the fish?)*

#### ACTIVE VOICE:

Even though the restaurant had one of its busiest nights, the chefs of Sushi-Sashimi-East inspected the fish used for sashimi as usual.

*(Chefs. . . people qualified to know how to look at fish. . . inspected the fish. Now, it will be up to the student to predict whether the inspection was sufficient or even relevant.)*

### Example #2

#### PASSIVE VOICE:

The sushi was served to Zuckerman later in the evening.

OR

The sushi was served to Zuckerman by the new waiter later in the evening.

*(In the first case, the writer has hidden who the responsible actor is. In the second sentence, we do, in fact see who the responsible actor is, but the sentence is still passive along with being what some instructors would refer to as “wordy” or even “awkward.” Because of situations like this one, many students come to believe that passive means, among other things, wordy or awkward.)*

#### ACTIVE VOICE:

The new waiter served the sushi to Zuckerman later in the evening.

*(Who is the actor in this sentence? The waiter! Form matching function, we emphasize the actor of the verb at the beginning of the sentence.)*

Once the student realizes that the purpose of writing in active voice is to emphasize through their sentence order the actors responsible for their actions, he or she might even begin to understand how to use passive voice in writing situations where it might be acceptable. First of all, students should always know the boundaries of their professor’s stylistic preferences: is passive voice ever acceptable in this class? There are at least two situations in which it might be acceptable for responsible actors, in this case law students, to use passive voice. The first one occurs when the act, and not the actor, is the primary focal point for the writer. Consider the following re-written statute from a student paper.

Candidates, party affiliates or political committees may request a manual recount through the submission of a written request to the canvassing board. This request must be filed prior to certification of the results or within 72 hours after midnight of the date of the election.

The second sentence of this statute, of course, is passive, but for many professors, it is acceptable because responsibility in this case will usually not be assigned to an actor, a person whose actions do or do not fall under the law. Instead, the law will be applied to the action, the filing of the request, that becomes valid if the stated conditions are met.

The second example of when passive voice might be acceptable brings us back to my earliest example. For like the child who is attempting to hide responsibility for a broken cup, in some classes where students practice persuasive writing, it may actually be acceptable to hide responsibility if, for instance, the writer is relaying facts that might be damaging to his or her client. The following sentence, of course, is in passive voice: “As Brian and William ran down to the basement, William was pushed down the stairs, and in the fall, he broke his nose.” This example uses passive voice to hide that it was Brian who pushed William. Interestingly, the active verbs in the sentence are “ran” and “broke,” rendering two actors responsible as runners and, almost comically, William as the actor who “broke his nose.”

By considering the architecture behind the architecture of the rules of language, as I have attempted to do here with passive voice, we have arrived at a mnemonic device that links all the other indicators of passive voice together, along with providing one more opportunity for students to consider the function of their writing, which in legal writing very often, at least in their first year of law school, is to assign responsibility. Active voice is the form that expresses this function.

Note

<sup>1</sup>Laurel Currie Oates, Anne Enquist and Kelly Kunsch, *The Legal Writing Handbook* 589 (2d ed. Aspen L. & Bus. 1998).



# A Millennium of Legal Writing

*Sue Liemer, Southern Illinois University School of Law*

As most of the Western world prepared to celebrate the start of a new millennium, I asked my colleagues on the listserve for legal writing professors to pick the most important pieces of legal writing in the last 1,000 years. I envisioned compiling an entertaining, Letterman-style top ten list, with one work representing each century of the past millennium. As suggestions started arriving, however, my glibness quickly sobered. I found choosing just one great work per century impossible, and no laughing matter. The profound impact of legal writing on our society, on our daily lives, and even on our very consciousness became immediately obvious. Below is my current compilation, admittedly quite subjective and skewed by our American perspective.



**1000:** Just to set the scene, at the beginning of the last millennium King Ethelred the Unready sat on the English throne. He often was surprised by attacking Danes and eventually fled to Norway. Legal documents from the year 1000 are amazingly easy to find on the Internet, but mostly in the original Anglo-Saxon.

**1086: The Domesday Book.** After William the Conqueror brutally infused a Latinate vocabulary into a nascent English language, he ordered the compilation of the Domesday Book. This book established feudalism by listing all the royal rights and taxable assets.

**1088: Irnerius's glosses.** Irnerius wrote comments between the lines of Justinian's code. He taught thousands at the European University in Bologna, Italy, spreading Roman law throughout Europe.

**1215: Magna Carta.** Twenty-five barons forced power-sharing concessions on King John, ending absolute monarchy in England. "No man shall be captured or imprisoned ... except by lawful judgement of his peers or by the law of the land." The barons' document also provided for free trade.

**1220's: On the Laws and Customs of England.** Attributed to Bracton, this treatise attempted to describe and rationally organize all of English law. The next attempt, by Blackstone, would not be undertaken for over 500 years.

**1290: Quia Emptores** destined the feudal system to collapse. This statute allowed land to be bought and sold, making transactions based on money more important than transactions based on relationships.

**1300's and 1400's:** No entries received. Warfare in England may not have been conducive to great legal writing. Your suggestions are welcomed.

**1591: Henry VI, Part 2.** Shakespeare penned the oft misinterpreted line "[f]irst kill all the lawyers" and acknowledged the crucial role of lawyers in a functioning society.

**1639: Connecticut's Fundamental Orders.** The first written constitution in history.

**1682: Duke of Norfolk's case** inaugurated the Rule Against Perpetuities.

**1710: The Statute of Anne** established copyright protection for intellectual property.

**1765: Blackstone's Commentaries.** *See* Bracton [1220's], *supra*.

**1776: Declaration of Independence.** Jefferson's masterpiece of legal writing. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness."

**1787: United States Constitution.** Over two hundred years later, still being used as a template for emerging democracies.

**1791: Bill of Rights.** Ditto.

**1863: Emancipation Proclamation.** Lincoln gave meaning to Jefferson's words for the many Africans and African-Americans living in slavery in the United States.

**1864: Red Cross Convention,** for the Amelioration of the Condition of the Wounded in Armies in the Field. Precursor to the Geneva Convention. Even in battle, the social compact remained partially in effect.

**1872: Bradwell v. Illinois,** 83 U.S. 130, 141 (1872), held the state may bar women from practicing law because "[t]he natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life."

**1957: United Nations Declaration of Human Rights.** Via this document, most countries on earth acknowledged basic human rights for all.



**1957: *Brown v. Board of Education***, 347 U.S. 483, 495 (1957): “Separate educational facilities are inherently unequal.”

**1973: *Roe v. Wade***, 410 U.S. 113 (1973), within certain limits, established the right to make private decisions about reproduction, including abortion.

**1999: *SEC Plain English Handbook***. Language the average consumer can understand became required by law, and the SEC returned incomprehensible documents to attorneys to rewrite.

This column originally appeared in the Fall 2000 edition of *The Scrivener*, the newsletter of Scribes, The American Society of Writers on Legal Subjects, and is reprinted with permission. If your favorite example of the importance of legal writing is missing from this list, please contact me at [sliemer@siu.edu](mailto:sliemer@siu.edu), as I hope to develop the list further. My thanks go to Professor Jan Levine for allowing me to serve as a guest writer for his usual column in *The Scrivener*. I would also like to thank Marvin Fein, Peter Friedman, Joe Kimble, Maria Mangano, Penny Pether, Lou Sirico, and Sheila Vance-Lewis for their suggestions.

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# Tips for New Teachers

## Take Two: Preparing for the Second Year of Teaching

*Suzanne E. Rowe, University of Oregon School of Law*

Recently I posted a message to the LWI listserv summarizing the range of emotions that many legal writing teachers feel at the end of the academic year: “delight that you have finished grading the final stack of papers; sadness that you won’t work with these students again; elation that some students did so well and made so much progress; concern that other students didn’t master all that you tried to teach them; pride that you did a good job; frustration if students complain about grades.” I received a number of messages from colleagues just finishing their first year of teaching; all said that I had hit a familiar note. This column is the next note in the song. It’s about moving successfully from your first to your second year of teaching.

*Lose the baggage.* Each class has its own personality. One of the joys of teaching is learning the personality of each class, as well as the individual students within it. Don’t carry forward emotional baggage from your first year—an aggressive class may be followed by a quiet class, followed by a supportive class, followed by an argumentative class. You are beginning a new relationship with a new class.

*Rewind.* After teaching your first class to read cases, research statutes, write memos, and argue an appellate brief, it may be tempting to try building on that base of knowledge. But your new students will begin your class with a blank slate. Terms like “dicta” and “Shepard’s” that are now familiar to your first class of students will be foreign again; you must give these new students the same careful explanations you gave in your first year. Spend the summer rewinding mentally

to the first day of your first class. Erase from your memory banks, and from your expectations, the knowledge second-year students have.

*Don’t reinvent the wheel.* Your second year of teaching gives you the opportunity to repeat your successes, avoid your mistakes, and tinker around the edges. You lose much of that benefit if you toss out your first syllabus and start from scratch. If you can choose your own writing text, resist the temptation to experiment with a new one unless your first text was hard to use. Reusing class notes and exercises can save you enormous amounts of time. Even a major writing assignment can be reused if you modify it so that the new students cannot recycle last year’s papers or copy a sample that you posted on your web site. Moving the assignment to a new jurisdiction, focusing on a different aspect of the law, and changing the client’s facts are all ways to modify writing problems so that you can benefit from your experience teaching them before.

*Make transitions.* Your first class of students will not disappear. They will stop by your office to tell you about their summer experiences and to ask for job references. They will want to know which courses to take or which organizations to join. Some will simply want the reassurance of knowing you are still involved in their careers and their lives. Activities that might be too demanding in the first year of teaching, such as coaching moot court and mock trial teams, advising student organizations, or simply attending student-sponsored events, are good ways to maintain ties. Though you may need to monitor the amount of time you devote to former students, enjoy making the transition from teacher to mentor to friend. ♦

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# In Memory of Mark Broida (1956-2001)

Jackie Slotkin, *California Western School of Law*

Mark and I knew one another for eight years. I was first his boss and colleague; through our professional relationship, we became friends. He was funny, smart, intelligent, and very hard working. He never attended a meeting without his yellow pad filled with lists of questions and issues to discuss.

He loved with enthusiasm. He genuinely loved teaching and cared for his students. He loved France, traveling there with his new wife, Karen. He adored his wife, his parents, his 96-year-old grandmother, his sister and brother-in-law, niece and nephew. He was crazy about his Jack Russell terrier, Bo.

People often remarked that Mark reminded them of Seinfeld, both in appearance and in his dry humor. Members of Faculty Support would comment they always took him seriously, then realized he was kidding them. His niece and nephew were delighted their uncle still loved “poopy” jokes.

He was an outstanding athlete. Mark was a winning Little League pitcher when he was 12, and played high school lacrosse. He loved baseball and cycling. His niece and nephew said he was the “best quarterback we ever knew.” He organized an annual baseball game between California Western and USD. He regularly attended San Diego Padres games. He cheered for all his favorite sports teams, especially the underdogs.

Mark attended Cornell University, receiving his B.S. degree in June 1977 and graduating in the top 15% of his class. He received his J.D. from the University of Michigan Law School in May 1983. He was selected for membership on the University of Michigan’s *Journal of Law Reform*. At Michigan, he was a writing and advocacy instructor for first-year students. From 1983 to 1988, he was an associate with Morgan Lewis & Bockius in New York; from 1988 to 1990, he was an associate at Roberts & Finger in New York, practicing labor and employment law.

In 1990, Mark became a Lawyering Skills Instructor at the University of San Diego School of Law. He was also a visiting lecturer at Universidad Autonoma de Baja California. In 1994, he joined the California Western School of Law faculty as a Legal Skills Professor. He taught legal method, legal research, writing and oral advocacy courses to first-year law students. He also taught negotiation, supervised student externships, and regularly coached the National Appellate Advocacy Competition team. He served as chair of the Adjunct Appointments Committee for six years.

He wrote several articles on legal skills: *Can Legal Skills Become Legal Thrills? Knowing and Working Your Audience*, (published in 4 PERSPECTIVES: TEACHING LEGAL RESEARCH AND WRITING 44 (1996)), *A Tale of Two Programs* (published in 5 PERSPECTIVES: TEACHING LEGAL RESEARCH AND WRITING 65 (1997)), and

*Balancing Power in Student Conferences* (published in 5 LAW TEACHER 8 (1997)).

Mark’s life was about enthusiasm and about accomplishments. He was kind, loyal, ethical, handsome, and funny. He lived life with action and passion, and his death is a tragedy for his wife, for his family, and for all of us who loved and respected him. All of us are grateful for the time we spent with him.

*Colleagues at California Western School of Law have created the Professor Mark Broida Memorial Fund, with the hope of naming a Legal Skills instruction area in the new law library there. For more information on the fund, contact Jackie Slotkin at jhs@cwsl.edu.*

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## THE LEGAL WRITING INSTITUTE

*The Legal Writing Institute is a non-profit corporation founded in 1984. The purpose of the Institute is to promote the exchange of information and ideas about legal writing and to provide a forum for research and scholarship about legal writing and legal analysis.*

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*The Second Draft is published twice yearly and is a forum for sharing ideas and news among members of the Institute. For information about contributing to The Second Draft, contact one of the editors:*

Barbara Busharis (Florida State),

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## LWI Board Meetings

2001 ALWD Conference: Thursday, July 26, 2001  
 AALS Annual Meeting, January 2002 (precise date to be scheduled)  
 2002 LWI Conference: Wednesday, May 29, 2002

## 2002 LWI Conference

2002 LWI Conference, University of Tennessee College of Law, Knoxville, TN:  
 Wednesday, May 29 through Saturday, June 1, 2002

## Board of Directors Elections

Call for Nominations: January 2002  
 Elections: March 2002

## Legal Writing: The Journal of the Legal Writing Institute

Status of Volume 8: Currently reviewing submissions

## The Second Draft

Deadline for submissions for December 2001 issue: October 15, 2001  
 Deadline for submissions for June 2002 issue: March 15, 2002

## **Reflections and Visions** **Legal Writing Institute Biennial Conference** **May 29-June 1, 2002**

The Legal Writing Institute will hold its 2002 Conference from Wednesday, May 29 through Saturday, June 1, 2002 at the University of Tennessee College of Law in Knoxville. The Conference will celebrate the successes our community has achieved within the academy and focus on the challenges that currently face us. Some parts of the program are designed to encourage experienced teachers to share their insights with the newer members of the profession. Other parts of the program will allow directors, writing specialists, experienced teachers, and novices to meet separately to discuss their unique challenges. We hope the Conference will encourage, inform, and inspire everyone from the newest legal writing teacher to the most seasoned director.

Brochures including registration and housing information will be sent to all Institute members in late fall. Registration for the conference is \$350, and includes most meals. Professor Terri LeClercq, of the University of Texas School of Law, will be featured as the plenary speaker, kicking off three days of conference presentations and workshops. Special events include an opening reception at a local art museum, an evening at the Knoxville Zoo, and a closing Riverside Reception. Lodging in

hotels and dorms will be available. The Knoxville weather in late May is often pleasant and warm. The average high during this period in 2001 was 77, and the average low was 60. Conferees should plan to bring a light sweater and possibly a small umbrella.

Please direct questions to either of the Conference Co-Chairs, Dan Barnett (Boston College), 617-552-4366 (EST), [daniel.barnett@bc.edu](mailto:daniel.barnett@bc.edu) and Suzanne Rowe (Oregon), 541-346-0507 (PST), [srowe@law.uoregon.edu](mailto:srowe@law.uoregon.edu), or to the Chair of the Site Subcommittee, Carol Parker (Tennessee), 865-974-6700 (EST), [parker@libra.law.utk.edu](mailto:parker@libra.law.utk.edu).

*Special thanks to Donna Williamson for assistance in updating the mailing list; to Nikki Dobay, Andrew Lopata, Greena Ng, and Angela Vokolek for research assistance and proofreading; and to FSU Printing and Mailing Services.*

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To help us keep our mailing list current, please keep us informed of changes in your address or in the addresses of your colleagues. You can complete this coupon with any updates to your contact information and mail it to Professor Suzanne E. Rowe, 1221 University of Oregon School of Law, Eugene, OR 97403-1221; or you can send an e-mail to [lwiaddresses@law.fsu.edu](mailto:lwiaddresses@law.fsu.edu), and your information will automatically be forwarded to the *Second Draft* editors and the LWI Program Assistant, Lori Lamb.

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