



LegalWriting
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IN THIS ISSUE:

Letter from the President

Kristen Tiscione

Teaching Students to Use Feedback to Improve Their Legal-Writing Skills

Lara Freed & Joel Atlas

Small-Group Conferences

Alyssa Dragnich

Creative Programming for LRW Complements Classroom and Builds Positive Relationships

Olympia Duhart

Stealthily Instilling the Soft Skills

Elizabeth T. Friedlander

Optimizing the Classroom Experience by Collaborating with Colleagues

Karin Mika

Moral Foundation Theory as the Basis for Legal Argument Themes

Jennifer North

Exploring Diversity with a “Culture Box” in First-Year Legal Writing

Ann Sinsheimer

The Unparalleled Benefits of Teaching Parallelism

Rachel Smith



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LWI Policy Statement on Law Faculty
Adopted March 2015

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

Dear LWI Colleagues,

I hope your spring semester is going well! As Spring approaches and we bid farewell to snow and frigid temperatures, I am pleased to update you on what the Board and our organization have been up to since the biennial conference at Marquette.

LWI STANDING COMMITTEE FOR ALL PUBLICATIONS

In July, the second meeting of representatives from all legal writing related publications took place to discuss mutual issues of concern, including submissions, readership, and the challenges of publishing online. Out of that meeting came the establishment of the LWI Standing Committee for All Publications. The goal of the Committee is to help build the discipline and raise awareness of legal writing scholarship and our diverse publications.

The Committee met again in January and is now in the process of working with our website developer to 1) analyze scholarship consumption based on visits to and downloads from our website, and 2) build an all-publications portal on the LWI website to increase and improve access to our scholarship.

HEINONLINE AGREES TO HOST THE SECOND DRAFT AND LWI LIVES

This fall, we reached an agreement with HeinOnline (at no cost) to host two of our publications, *The Second Draft* and *LWI Lives*. Although these issues have always been publicly accessible on our website, individual articles have not been searchable online, and we get frequent requests for back issues once the email that delivered them gets lost. All articles from previous and current issues of these publications became available at the end of January 2019.

RE-ORGANIZATION OF LWI'S TEACHING BANK (FORMERLY KNOWN AS THE IDEA BANK)

1. Access to the Teaching Bank is now more user friendly. Once you have logged in, you can access the Bank in two ways:

- (a) Hover over your name in the top right corner of the website home page. You should see a dropdown menu with all the "folders" in the bank: syllabi, plagiarism, and all other teaching materials. This last folder contains all sample assignments, including memo and brief problems. You will also see a link here to submit a resource.



We Write Retreat 2018



One-Day Workshops 2018

(b) Hover over “Resources” on the navigation bar at the top of the home page. You should see a dropdown menu with links to resources for teachers, scholars, and practitioners. On the far left, you will see a link to “Teaching Bank.” This link takes you to the Teaching Bank Home page, where you can access all the folders listed above in (a).

2. Submit a sample assignment to the new folder for Social Justice/Pro Bono Assignments.

At the Pro Bono Committee’s request, we now have a new folder specifically for assignments that relate to social justice issues or pro bono-related work. You can expect to hear from that committee on the nature of the submissions they are seeking. Please stay tuned, and thanks to the Pro Bono Committee for this terrific idea.

3. Security glitch.

You may recall we had a security issue with the Teaching Bank at the beginning of the fall semester. Due to a glitch in automatic updates to our website, some materials in the Teaching Bank were not password-protected and appeared in Google searches. Brick Factory, our web developer, solved the problem quickly and worked with Google to remove those documents from its cache. A shout out to Jennifer Romig for notifying us right away so we could address the issue.

BOARD OF DIRECTORS CHANGES AND NEW OFFICER

Last spring, the Board decided that due to advances in technology, we no longer needed a host school to maintain records, receive mail, or engage in other administrative tasks involving physical documents. Without a host school, there was no longer the need for a Host School Director on the Board. We thank Mercer University School of Law and Sue Painter-Thorne for many years of service acting as our host school and Host School Director.

In January, the Board created and filled a new Board position. Congratulations to Iselin Gambert, who will serve as our new Communications and Public Relations Officer. Iselin is currently a member of the Board of Directors and will serve in this new position until July 2020, when officer elections will be held again for 2020-2022. Iselin will be responsible for ensuring that LWI communications are uniform, consistent, and professional across all media.

The Board is in the process of revising the by-laws to reflect these changes. Our current by-laws are now posted on the website under “About.”



One-Day Workshops 2018



One-Day Workshops 2018



One-Day Workshops 2018

CHECK OUT OUR WEBSITE IMPROVEMENTS

Slowly but surely, we are working to provide better and more current information to our members via the website. A few things you might notice:

- A new link to our by-laws under “About LWI.”
- A new FAQ page addressing frequently asked questions about membership, the listserv, and the Teaching Bank.
- An updated New Member Information Guide under Resources for Teachers
- A link to Café Press for legal writing-related gifts under Resources for Teachers
- A new link to information on our We Write Retreats under Conferences
- More photos of LWI-related events

VIRTUAL WATER COOLER

This fall, the Discipline Building Working Group launched its new initiative, the Virtual Water Cooler, to discuss online selected articles related to the discipline of legal writing. The first discussion in October 2018 was about Colin Jones article, *Unusual Citings: Some*

Thoughts on Legal Scholarship, 11 J. LEG. WRITING 377 (2005). The second discussion was in February 2019 about Donald R. Caster and Brian C. Howe’s article, *Taking a Mulligan: The Special Challenges of Narrative Creation in the Post-Conviction Context*, 76 MD. L. REV. 770 (2017). We hope you will join us for the next discussion! Check the listserv for details.

UPCOMING EVENTS

As always, we have exciting events coming up in the next months. Be sure to mark these on your calendars:

- 2019 ALWD Biennial Conference: *A Time for Transformative Leadership: Teaching and Learning.*, **May 29-31, 2019**, at Suffolk University Law School in Boston.
- Seventh Applied Legal Storytelling Conference, **July 9-11, 2019**, at the University of Colorado, Boulder and sponsored by the Legal Writing Institute, the Clinical Legal Education Association, and the Rocky Mountain Legal Writing Scholarship Group.
- Selection of the 2019 Phelps Award winner. The call for nominations is due March 31, 2019. Information related to the call is on the website under Awards.

Best wishes for a great rest of the semester,

Kristen K. Fiscione



One-Day Workshops 2018



One-Day Workshops 2018

Teaching Students to Use Feedback to Improve Their Legal-Writing Skills



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I. THE PROFESSOR-STUDENT PARTNERSHIP

In an age in which writing-software programs tout formative feedback on student papers and advertise clear and compelling sentences, the roles of professor and student in the assessment and outcome-achievement process may appear passive, or even supplanted. Using feedback to improve learning, however, requires both professor and student to play active roles.¹ In legal education, law professors are tasked with identifying and assessing learning outcomes.² And much has been written about these tasks as they relate to both doctrinal and legal-writing courses.³ But less attention has been devoted to law students' role in responding to feedback on their writing and law professors' role in teaching students to use that feedback to improve legal-writing skills.

The idea that law students should play an active role in learning is not new. The Socratic method, for example, relies on dialogue between professor and student to

stimulate critical thinking. Likewise, legal-writing scholars have recognized the need to teach students metacognitive techniques (such as “pre-writing”⁴ and self-editing exercises⁵) to monitor the students' own learning process during legal analysis and writing.⁶ Indeed, a thread on the Legal Writing Institute listserv suggested post-critique self-assessments⁷ as a means of weaning students from being passive listeners during one-on-one conferences about students' legal writing.

This article addresses the range of guidance that professors can give to law students to help students actively process and learn from feedback. Professors should devote class time to preparing students for the feedback (e.g., explaining the overall purpose, depth, and scope of the feedback), to communicating students' role in responding to the feedback, and to outlining the steps that this role entails. Professors may—in addition to holding individual student conferences—set aside class time for students to reflect on, discuss, or implement the feedback (e.g., during a workshop at which the professor and any teaching assistants are available to answer questions about the feedback).

II. HOW TO PREPARE STUDENTS FOR FEEDBACK AND HOW TO COMMUNICATE THEIR ROLE

All too often, students receive detailed comments on their work and yet still ask, “What can I do to improve?” This question underscores a common disconnect between feedback and learning, which may exist because students failed to review the feedback closely,

Professors should devote class time to preparing students for the feedback (e.g., explaining the overall purpose, depth, and scope of the feedback), to communicating students' role in responding to the feedback, and to outlining the steps that this role entails.

do not understand how to implement the feedback, do not appreciate the value of the feedback, or believe that the professor is hiding additional feedback. To avoid this disconnect, professors should educate students about the types of feedback that students will receive on their legal writing, the reason for this feedback, and students' active role in processing feedback.

Typically, the feedback includes some combination of the following: written comments in the form of line edits, margin comments, and end comments on initial and revised drafts; and oral comments during individual student conferences (pre- and post-written critique or "live," in place of written feedback). The feedback may address all or some of the following topics: format; grammar and punctuation; writing style⁸; organization; and substance.

Because attorneys must be detail-oriented and case outcomes may turn on grammar, punctuation, word choice, and, of course, nuanced analysis, professors should explain that proper feedback is pointed and comprehensive, though it may appear to an untrained learner as too granular. Students seem comforted, though, to hear that the work of all students in the course, whether strong or weak, will receive thorough comment. To the extent that professors choose to narrow feedback to correspond with material taught in class (e.g., withholding comments on citation form until having taught that subject), professors should notify students of the restricted scope. Further, professors should encourage students to view the feedback, whether broad or narrow, as presenting a learning opportunity.

Students will achieve the full benefit of feedback only if they actively participate in the process. Professors should, as detailed below, be proactive in instructing students about this role.⁹

III. STEPS FOR STUDENTS TO ACTIVELY PROCESS AND LEARN FROM FEEDBACK

The steps that follow are designed to help professors teach students how to envision and implement their role.¹⁰

A. Value Feedback

An important step toward improving one's skill set is to value feedback. To be sure, most students will follow feedback if only to meet the professor's wishes and, ultimately, to earn a better grade. But the broader goal—i.e., to learn from feedback— should be paramount.¹¹

Law-school professors, regardless of their seniority, surely have greater legal expertise and experience than do their students. Indeed, having preceded students on the professional path toward becoming a lawyer, law professors are well qualified to provide guidance. Although this feedback is not invariably on-point or correct, it is surely worth consideration even apart from grading concerns. (The same can be said for advice provided by an upper-class teaching assistant.) At the very least, feedback represents the reader's reaction to the writing, a reaction that is in itself worth knowing. Professors should explain that—for these reasons— law students can, generally speaking, invest a good measure of trust in the feedback.¹²

By trusting feedback, and by valuing it for both short- and long-term goals, students may be both more attentive and receptive to it and thereby heighten the likelihood that it will in fact enhance their skill set.

B. Adopt a Growth Mindset

Underpinning the educative process is the principle that students' current skills do not reflect their future skills. And, the dichotomy between a fixed mindset (i.e., believing that one's legal-writing ability, for example, is static) and a growth mindset (i.e., seeing the potential to develop new skills) is significant¹³; the former vitiates the value of feedback. Students, thus, should be dissuaded from believing that deficiencies in their legal writing cannot be overcome and should be encouraged to view feedback as a means to improve their skills (rather than as criticism). In setting the context for feedback, law-school professors can help students develop a growth mindset by explaining that one's legal writing improves with practice and experience.¹⁴

C. Understand the Feedback

Feedback is useful only if understood. Upon receiving feedback, students should first try to ensure that their egos do not impede their ability to understand the feedback. Moreover, students should make every effort to hear the actual content of the feedback rather than what they would like to hear.¹⁵ Pausing before reacting can help prevent emotions from impairing how students absorb the feedback.

Professors should instruct students to reflect on the feedback independently but, if necessary, to seek clarification of feedback that seems ambiguous or obscure, request alternative explanations, or request examples.¹⁶ A brief follow-up with the professor (or teaching assistant) can ease concerns, provide direction, and save time.

Related, professors should caution students not to over-correct the document in response to targeted feedback; at the same time, professors should advise students to assess the document holistically to determine the extent to which initial changes made in response to feedback require additional changes to the document.

D. Distinguish Between Required Changes and Suggested Edits

In a typical legal-writing course, the professor provides considerable feedback on papers that need to be re-written as part of the course requirements and papers that are a final version. Although, in the latter situation, feedback is necessarily suggested rather than required, in the former situation professors should be clear about their expectations for students. Are the comments merely suggestions? Or, instead, do the comments require changes that, if not made, would impact the grade?¹⁷ Of course, even mere suggestions merit careful evaluation: they are, after all, intended to be, and usually are, constructive; and, even if the suggestions arrive too late to incorporate into the current document, they can help to improve future work product.¹⁸

E. Identify Strengths and Weaknesses

Assuming an adequate sample of a student's work, feedback may explicitly designate the student's strengths and weaknesses. Absent explicit designations, students should use the feedback to identify strengths and weaknesses independently. Post-critique self-assessments—whether guided or

not—can be a valuable tool for creating an action or progress plan.

When reviewing feedback as part of a self-assessment, students should extrapolate themes. For example, are many of the comments directed at a particular component of writing, such as organization? And, if so, are those comments directed at, for example, the small-scale organization (e.g., the flow of sentences) or the large-scale organization (e.g., the placement of fact-application in relation to the legal rules)? Awareness of such themes allows students to focus on actual weaknesses rather than one-off errors that do not reflect writing deficiencies. A student who struggles with grammar, for example, should triage that topic; a student who does not should focus on other topics (while still attending to proper grammar).

In addition to extrapolating themes, students can identify challenges that they face—other than lack of time—in responding to particular feedback (e.g., the inability to distinguish between a “rule” and an “explanation of precedent”). These challenges, shared with the professor, can serve as a springboard for a productive professor-student conference. And, when students identify the source of their own confusion, they are already on the path toward improving their skills.

F. Prioritize Feedback and Create Lists

Prioritizing thematic weaknesses can serve a dual purpose: informing students how to allocate their time (both during a professor-student conference and while revising their writing) and how to order revision steps.

The prioritization process may be nuanced. Indeed, all writing problems are not equally important. Clarity, for example, is almost universally ranked as the most important component of good writing. But students should balance attention to clarity against efficiency: although students should make all required changes for an assigned revision, if students correct substantive weaknesses first, clarity-related problems may disappear (either because the problematic sentence was excised or because the substantive fix means that the student more-clearly communicated the idea).¹⁹ To the extent that professors value certain aspects of an assignment more than other aspects, professors should, to help students prioritize, be transparent about those valuations. The depth and scope of the student's weaknesses may also impact how students prioritize feedback.

Creating a list of the prioritized themes can also be helpful. Most obviously, the list may be used as a checklist, enabling the student to customize any rubric that the professor has created. This customized rubric reminds students to apply the feedback going forward, beyond the assigned task. Another technique is to edit a document separately for each listed theme (e.g., passive voice, nominalizations).

G. Review Writing Texts and Style Manuals

A skilled professor can explain, and help students to cure, writing problems. But, given professors' time constraints and the value that students be resourceful, an important source of information for students is often a writing text or style manual. These books can not only teach students rules of which they were unaware but also make even strong writers more conscious of the rules underlying their writing choices. Given the multitude of options, a professor should recommend or require the use of specific guides that best match the professor's writing preferences. Ultimately, these tools can help students to write better revisions and initial drafts.

NOTES

1. See, e.g., Susan E. Davis & Joanne M. Dargusch, *Feedback, Iterative Processing and Academic Trust – Teacher Education Students' Perceptions of Assessment Feedback*, 40 AUSTRALIAN J. OF TEACHER EDUC. 177, 185, 189 (January 2015) (studying how students actively use feedback—e.g., reading and re-reading comments, identifying key features of the feedback, and applying feedback beyond the narrow task or course context—and how professors should actively provide feedback).
2. See Managing Director's Guidance Memo for amended ABA Standards 301, 302, 314, and 315 (June 2015).
3. See, e.g., LORI E. SHAW & VICTORIA L. VANZANDT, *STUDENT LEARNING OUTCOMES AND LAW SCHOOL ASSESSMENT: A PRACTICAL GUIDE TO MEASURING INSTITUTIONAL EFFECTIVENESS* (Carolina Academic Press 2015) (examining the "who," "what," "why," and "how" of outcomes assessment in law school); Deborah L. Borman, *De-grading Assessment: Rejecting Rubrics in Favor of Authentic Analysis*, 41 SEATTLE U. L. REV. 1, 2 (2018) (advocating for a holistic approach to evaluating legal writing, including "engaging in authentic conversations about writing"); see also *infra* note 9.
4. "Pre-writing" denotes a stage in the writing process in which, before students begin writing, they assess their analytical process and the validity of their analysis. See Miriam E. Felsenburg & Laura P. Graham, *A Better Beginning: Why and How to Help Novice Legal Writers Build a Solid Foundation by Shifting Their Focus from Product to Process* 16 (2011), available at <http://ssrn.com/abstract=1845024>.
5. See Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*, 3 J. LEGAL WRITING INST. 175 (1997); Beryl Blaustone, *Teaching Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLINICAL L. REV. 143 (2006) (presenting a feedback model rooted in self-directed learning).

6. Felsenburg & Graham, *supra* note 4, at 13–14.
7. See discussion of post-critique self-assessments *infra* at Part III(E).
8. See Anne Enquist, *Critiquing and Evaluating Law Students' Writing: Advice from Thirty-Five Experts*, 22 SEATTLE U. L. REV. 1119, 1157–58 (1999) (excluding grammar and punctuation from the definition of "writing style" and distinguishing between individual preferences and stylistic choices that represent the legal-writing community's consensus about readability and effectiveness).
9. This article does not address how professors should critique students' writing—a topic extensively covered in legal-writing scholarship. See LEGAL WRITING INSTITUTE MONOGRAPH VOLUME 1: THE ART OF CRITIQUING WRITTEN WORK (listing articles). Certainly, meaningful feedback—i.e., timely, clear, specific, and non-idiosyncratic feedback that avoids substantially rewriting the paper for the student—will require students to actively participate and thereby enhance the learning process. See Jane Kent Gionfriddo, *The Reasonable Zone of Rights Answers: Analytical Feedback on Student Writing*, 40 GONZAGA L. REV. 427, 439 (2005) (noting that simply "giving" students analysis will lead students to revise their work "without ever confronting their initial mistakes" and that, conversely, vague comments or questions do not provide sufficient guidance for students to identify and correct writing problems).
10. The manner in which students respond to feedback will, of course, depend on the type of feedback provided (e.g., students should take written notes during a live critique that is not otherwise recorded).
11. Indeed, research has shown the value of individualized feedback on law students' performance in school. See Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, 67 J. OF LEGAL EDUC. 139, 174 (Autumn 2017) (finding that students who had received individualized feedback in a first-year course outperformed those who had not and concluding that "the positive impacts of individualized, formative feedback extend well beyond the classroom in which that feedback is given").
12. See Davis & Dargusch, *supra* note 1, at 179 (noting the value that a student trust both the feedback and teacher).
13. See Sarah J. Adams-Schoen, *Of Old Dogs and New Tricks—Can Law Schools Really Fix Students' Fixed Mindsets?*, 19 J. LEGAL WRITING INST. 3, 4 n.4 (2014) (defining and distinguishing "fixed" and "growth" mindsets).
14. Related, professors can help students to understand that adapting to legal writing is a shared challenge. See Anne Enquist, *Talking to Students About the Differences Between Undergraduate Writing and Legal Writing*, 13 PERSP.: TEACHING LEGAL RES. AND WRITING 104-05 (Winter 2005).
15. See handout at <https://www.uts.edu.au/sites/default/files/Giving-and-Receiving-Feedback.pdf>, updated from David Boud, *Implementing Student Self Assessment*, HERDSA Green Guide, no. 5 (2d ed. 1994).
16. University of the Incarnate Word, Writing and Learning Center and Student Engagement Center, *Receiving Feedback on Writing* (handout), <http://www.uiw.edu/wlc/documents/receiving-feedback-on-writing.pdf>.
17. Notably, a skilled professor accounts for a "reasonable zone of right answers," which ensures accuracy while allowing creativity. See Gionfriddo, *supra* note 9, at 438.
18. No doubt, changes, whether suggested or required, are at times difficult to make. Sometimes the reader's concern is not apparent. And, even stated concerns do not always inspire a clear or simple fix. But, without substantial student effort to learn from the feedback, the student's skill set is much more likely to remain static.
19. See JOEL ATLAS, LARA GELBWASSER FREED, JOHN MOLLENKAMP, ANDREA J. MOONEY, URSULA H. WEIGOLD, & MICHELLE A. FONGYEE WHELAN, *A GUIDE TO TEACHING LAWYERING SKILLS* 122 (Carolina Academic Press 2012).

Small-Group Conferences



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Many first-year writing courses include a “report to supervisor” simulation,¹ in which the professor plays the role of a supervising attorney in a law office² and the student plays the role of a junior attorney providing an oral briefing. This type of conference differs from the conferences in which a professor and student review a piece of the student’s written work together. Instead, this style of conference more closely resembles a strategy meeting where a junior attorney reports on her research findings to a more senior attorney, and the two then discuss a possible theory of the case, evaluate the case’s strongest arguments, and determine how to handle the case’s weakest arguments.

Rather than holding these conferences individually with each student, I have started including three to four students in each conference. These small-group conferences are much more effective than the individual conferences I held in the past. The primary benefits to the group format are that students are more active during the conference, lower-performing students identify their own weaknesses, and all students feel a sense of shared experience with their peers.

Although group conferences could occur at various points in the semester, I like to conduct them after students have completed their legal research for an assignment (whether it is an objective memorandum or persuasive brief), but before they have written much of the assignment. These conferences allow me to ensure that each student is on the right track with her research before she progresses too far in the writing process.

To prepare for the conferences, students individually perform legal research and begin outlining their analysis for the assignment. I give the students a list of specific questions to answer on their own, and students bring their answers, along with any relevant cases and statutes they have found, to the conference. Each conference typically runs for forty-five minutes.

We meet in a law school conference room, rather than my office, to lend the exercise a bit more gravitas, and we sit at a large conference table.

I play the role of the senior attorney, and the students report on their research and case strategy.³ I go around the table and ask each student a question in turn. This might be something as simple as, “Which databases did you use for your research?” or as specific as, “Tell me a case you are planning to use for the ___ factor.”

The primary benefits of the group format are that students are more active during the conference, lower-performing students identify their own weaknesses, and all students feel a sense of shared experience with their peers.

I provide immediate feedback along the way. If a student suggests a case that’s been overruled, I’ll say, “And what did you find when you Shepardized that case?” If one student did not find a helpful case for a particular argument, I’ll ask other students to chime in. If a student suggests using a case that does not seem particularly helpful for an argument, I will ask the student to further explain her reasoning. If her explanation leads me to understand the point she wants to make, then I can coach her to better articulate it. If her explanation reveals that her choice of case is not optimal, she will realize it on her own as she attempts to answer my questions, in an almost Socratic approach.

At first, I was afraid that my students might be too competitive with each other and would not want to reveal the “best” cases they were planning to use. But I have been pleasantly surprised that this is not a problem. In fact, some students are quite generous with each other and will help their peers who might be struggling.

The best part about these conferences is that the *students* are talking more than I am. I found that when I conducted individual conferences at the same point

in the semester during previous years, I talked too much, and the students did not talk enough.⁴ One goal of conferencing is for the student to practice oral communication—a goal that is frustrated when the professor dominates the conversation. Additionally, during small-group conferences, I make a point of directing a question to each student in succession, going around the table several times. This ensures that each student participates equally.

Another benefit of group conferences is that if a student is lagging far behind her peers in research (usually due to a lack of effort, rather than confusion), that student quickly realizes that she needs to catch up. Previously, when I had to convey this message to a student during an individual conference, it could sound accusatory and cause the student to become defensive. In the group setting, the professor does not have to deliver the message personally, but it comes through loud and clear. In that way, it is even more effective.

Finally, students receive additional practice with oral communication—which is often too limited in the first-year curriculum,⁵—in a non-threatening environment. My simulated conference is not graded (although professors could certainly grade it if they so choose), and there are only a few people in the room, all seated around a conference table. This makes the exercise much less intimidating than one that requires the student to stand in front of the classroom and speak in front of a crowd, making it an introductory step toward public speaking.

If a professor is worried about potential free riders, she could require students to submit a graded or ungraded written research report prior to the conference. This allows students to gain all the benefits of the small-group conference while still ensuring that grades are distributed fairly. Some professors hold similar conferences but do not have students name specific cases. This allows participants to discuss the relevant rules and arguments without “giving away” cases that some students may not have otherwise found in their own research.⁶

Students consistently report that they find these conferences helpful. They say things like, “I felt like a real lawyer discussing the case.” Most of the students feel reassured about their research and the cases they plan to use in their writing. All of the students report that they have a clearer understanding of the issues

after discussing them, and they feel better prepared to begin writing their assignments.

The group format also allows students to feel a small sense of teamwork or camaraderie. Although they are each writing their own assignments, they realize that they are all in the same situation and experiencing the same frustrations and exhilarations. Law school can feel lonely and competitive, but small efforts like this can reduce a student's sense of isolation.

As a professor, although my reason for using group conferences is not to save time, I confess it is a nice fringe benefit. I achieve the same pedagogical goals—allowing students to practice their oral communication skills and ensuring that each student has performed sufficient research to write on the correct issue—but in a shorter amount of time. And as discussed above, there are additional pedagogical benefits to the group format that cannot be replicated with individual conferences. I still meet with my students one-on-one to review their written work, but I have replaced all of my report-to-supervisor exercises with this small-group format.

I certainly did not invent the concept of a small-

group conference and am not the first to employ it successfully, but it has worked so well in my own classroom that I encourage others to try it, if they have not already.

NOTES

1. According to the 2015 ALWD/LWI Survey, 103 law schools required some type of "oral report to senior partner" assignment. Assoc. Legal Writing Dirs. & Leg. Writing Inst., 2015 Survey Results 13 (2015) (available at <http://www.alwd.org/wp-content/uploads/2017/03/2015-survey.pdf>).
2. I use the term "law office," rather than "law firm," because I want my students to realize that these briefings occur with all types of legal employers, not only private firms.
3. For a greater treatment of ways in which a professor might hold "law firm meetings," see Lloyd B. Snyder, *Teaching Students How to Practice Law: A Simulation Course in Pretrial Practice*, 45 J. LEGAL EDUC. 513 (1995).
4. "[A] solely professor-driven conference can be overwhelming." Christy DeSanctis & Kristen Murray, *The Art of the Writing Conference: Letting Students Set the Agenda Without Ceding Control*, 17 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 35, 38 (2008) (discussing individual student conferences).
5. Jane Korn, *Teaching Talking: Oral Communication Skills in a Law Course*, 54 J. LEGAL EDUC. 588, 588-89 (2004).
6. See Susan M. Chesler, *The Small Group Progress Conference*, 20 THE SECOND DRAFT 11, 12 (2005) ("By omitting references to specific case names during the conferences, students see gaps in their research, without having other students 'give away' the answers.").

Creative Programming for LRW Complements Classroom and Builds Positive Relationships



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Shepard Broad College of Law*

An attorney who doubles as a certified yoga instructor. A law professor with a passion for mindfulness and meditation. A nutritionist with the latest advice on healthy eating. And a fitness instructor skilled with the kettlebell.

These speakers were featured in the latest “Writing and Wellness” event hosted by the Legal Research & Writing Program at Nova Southeastern University Shepard Broad College of Law. The goal was simple: Offer students some concrete examples to help them better manage the stress of their first LRW writing assignments. For six years, a dedicated team of professors in the LRW program has volunteered to organize and host special programming to supplement classroom efforts. The popular Writing and Wellness program—featuring hands-on tips such as chair yoga poses and guided meditation from experts—is just one of several special programs held on campus and at the courthouse throughout the year. With a little money and a lot of human resources, these programs complement work in the classroom, reinforce healthy habits, and promote a positive relationship between LRW faculty and students.

DOING MORE WITH LESS

After a university-wide reduction in the semester length, many faculty members in LRW were even more concerned about how to fit everything into the semester. At the same time, some faculty were hosting exceptional programming or guest speakers for an audience limited

to their own small classes. Nevertheless, the LRW faculty decided to try something ambitious despite the shortened semester. By pooling human resources and securing a little funding from the law school, the entire 1L program was able to benefit from a newly minted LRW Student Outreach Committee. The committee members brainstorm on programming for the year and host about four to five events for 1L students. The law school offers the committee a small budget (a few thousand dollars) for food, and LRW professors leverage contacts in the community to bring in interesting speakers. Events do not require an RSVP, and most events draw between 75 and 100 students.

Over the past few years, LRW Student Outreach programs have included:

Writing and Wellness

The event is among the most popular and draws more than 100 students. It is interactive and features wellness tips. The goal is to normalize self-care and help students manage the stress associated with writing. It features interactive demonstrations on chair yoga, tips about mindful eating, exercises that can be done with a law book or laptop, and a guided meditation. According to a recent survey, up to one third of law school students struggle with substance abuse or a mental-health issue.¹ Because of student conferences and the highly personal nature of writing instruction, many LRW professors are “first-responders” of sorts to troubled students. The Wellness event has given both faculty and students some specific coping tools.

Bluebook Workshop

This event features “near-peer” mentoring with help from the Law Review staff members. The student volunteers run a Bluebook Workshop high on technology, featuring the web-based quiz application Kahoot to boost student engagement. The LRW Student Outreach Committee offers small prizes to reward students for getting citations right. At this point in this semester, students have already learned how to cite, but this event reinforces the skill and makes positive use of gamification strategies.

Interviewing Made Easy

In this program, clinicians come in to do simulations on conducting a client interview. Even in a program that tries to expose students to lawyering skills, it is useful to offer a more in-depth look at a specific skill. Though interviewing is one option, other options include negotiation and mediation. Clinicians in the building are usually excited to collaborate, and students enjoy the role-play.

Time Management

This program is usually held at the start of the school year and features a student, a professor, and a practitioner sharing their time-management hacks. It is usually moderated by an LRW professor, who can guide the conversation. It also includes a time-management checklist that students can work through as they start law school. Speakers are also encouraged to help students think intentionally about the importance of time-management for large writing projects, such as breaking down the parts of a writing assignment and leaving ample time for editing.

Judicial Roundtable on Professionalism

Another fan favorite, this event features about four local judges who join students as they take over the Jury Assembly Room at the local courthouse. The judges offer brief remarks on what makes a strong brief and then break into small groups to lead students in ethics or professionalism hypotheticals. The day ends with cake and coffee in the cafeteria, where students can chat with judges and make important connections. Several students have landed clerkships following this event, which is billed as a “field trip” and is usually held on a Friday afternoon. And it is the first time some students have ever been in a courthouse.

Summer Readiness Workshop

This workshop is often a collaboration with the Career Planning and Development Office (CPD). It features tips on how to prepare a writing sample, build a strong resume, and clean up a social media presence. The collaboration with CPD helps demolish the silos that often mark law schools. For many schools, there is little coordination between programs helping the same students and implicating the same skills. CPD, for instance, partners successfully with LRW to help students write persuasive cover letters and resumes. Another plus: It reduces cost on a tiny budget. By sharing the catering cost with CPD, LRW can stretch its budget to support more programming.

Oral Arguments Tips from a Local Appellate Judge

This workshop is held at the law school the week of the mandatory LRW oral arguments. Students have already submitted their trial briefs and are busy preparing for some expert advice from a distinguished judge. Before the mandatory LRW oral arguments, students must prepare oral argument folders and practice several times in front of classmates. During the Oral Argument event, the judge offers a brief presentation featuring tips and engages students through a Q & A session. Following the one-hour presentation, students join the judge at a reception. The Moot Court Society is invited to moderate the Q & A session and asked to contribute part of the funds for the reception. In addition to the 1L LRW students, members of the Moot Court Society are also invited to attend. Again, students gain peer mentoring and see positive examples.

Over the years, some programs have emerged as constants while others have rotated in and out. The programming all features local speakers who volunteer their time because they love to engage with students. Each participant is thanked with some school swag, a hand-written note, and a letter from the dean. Students have also been very good at sending thank you emails.

Most contacts with the bench and bar to secure speakers are made through ongoing relationships with LRW faculty. A few speakers were newcomers who responded positively to an invitation. Even the panel of judges at the courthouse is filled now because so many judges have heard about the event and are eager to participate. This is clearly a good problem to have.

A FEW LESSONS LEARNED

For those interested in trying the Outreach Programming themselves, be mindful of scale. Early on, the LRW Student Outreach team tried to do too many programs. That made for a stressful year and spotty attendance. It is better to pick about two events per semester and focus on quality programming. Where possible, record the event for students who cannot attend. Also, if your law school has an evening division, host at least one event per semester in the evening. Our Bluebook Workshop is hosted both day and night in the fall. The Oral Argument presentation is held at 4 p.m. before evening classes start. As for attendance, a few professors offer extra credit for attendance or for a written summary. Most professors do not provide any incentives but do commit to making a good push in class for the programming. All programming is advertised throughout the building and in class.

Another lesson learned is to be deliberate about staffing panels. Diversity is key and should be read expansively to include gender, race, sexual orientation, and age. Also, pick members of the bar from diverse practice areas. In addition to Big Law, bring in an attorney from a nonprofit or small firm.

And keep it active! The first year, some panels suffered from over-lecturing as experts gave extensive talks about their respective fields. Since then, the committee has been very clear to speakers that the events must be interactive. Each event is an opportunity for students to engage and participate. This keeps the events exciting.

A few early surveys of students at the end of the year helped identify which programming was more popular and pointed us to new programming to consider. The dean has also agreed to include the work on the LRW Student Outreach Committee as a specific box on the faculty self-assessment to more explicitly consider the additional service of faculty members on the committee. Finally, the student outreach events have dramatically improved the culture around LRW because they help move the program into a positive space. Through the

Through the programming, LRW professors demonstrate in concrete ways their support and concern for their students; the expert advice from local attorneys and judges also reinforces and validates classroom instruction.

programming, LRW professors demonstrate in concrete ways their support and concern for their students; the expert advice from local attorneys and judges also reinforces and validates classroom instruction.

Although faculty members know the value of strong LRW instruction, the constant feedback loop can sometimes make for strained relationships between professors and students. The truth is that students sometimes come to resent their legal-writing professors because the writing critiques the students receive are not always positive. The additional student-outreach programming helps the LRW team demonstrate a serious commitment to the discipline and to students. The programming also allows LRW professors to take important but non-essential material out of the classroom. This move frees up more time to both drill down on the basics and focus on more complex material for mastery. Finally, the programs help the law school build strong relationships with the bench and bar. These relationships help students and increase goodwill in the community. Creative programming for Legal Research & Writing goes a long way toward building a supportive and successful experience for students, faculty, and the community.

NOTES

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Stealthily Instilling the Soft Skills



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Success in our current globalized world depends on excelling at interpersonal communication or the “soft” skills. These skills enable a person to interact effectively and harmoniously with other people. Examples include verbal communication, listening abilities, problem solving, decision-making, manners, social awareness, methods of assertiveness, responsibility, relationship building, and negotiation, to name a few.¹ Strong, well developed soft skills can resolve conflict, increase understanding, improve communication, reduce stress, and even promote joy.² Conversely, a lack of these skills can lead to devastating consequences. According to a recent soft-skills study, 84.8% of business professionals have witnessed an executive-level leader fail due to lack of interpersonal skills, and 90.2% of executives said effective communication was a key ingredient for advancement.³ Finally, and most important for our students, legal employers across the country universally seek these skills in their new hires.⁴ Even if our students choose a career outside traditional legal environments, 92% of human-resource leaders from a variety of professions believe that soft skills are increasingly important.⁵ A law school’s legal-writing program can do more to help students with these skills, and we’ve been doing it in the Writing Resource Center at The John Marshall Law School.

Students entering law school today need more guidance in developing these skills than any preceding generation.⁶ Formerly, people developed and practiced interpersonal communication skills throughout their lives by socializing with their peers, interacting with family members, and going to school.⁷ The introduction of technology, specifically personal devices with the ability to digitally connect at all times, has changed this. Law students today have never known a world without omnipresent personal technology.⁸ It was not necessary for them to politely converse with an adult over the phone or at the front door when trying to find a peer in their adolescent years. They likely texted, tweeted, or “chatted” electronically for any thought worth conveying to a friend.

Even though these digital natives will likely bring an unprecedented amount of technological expertise to their studies and the workplace beyond law school, apprehensions exist about their communication abilities and their formation of strong interpersonal relationships.⁹ Because they spent a significant portion of their social lives online, these students have less developed face-to-face social and conflict-resolution skills.¹⁰ They admit relying on technology too much.¹¹ Over half



of this generation think they need to improve their face-to-face communication skills, which do not come naturally to them.¹² In fact, members of this self-critical generation think they need more work developing their soft skills than any other generation.¹³ In an apparent break with their millennial predecessors, these students are ready to put down their devices and communicate face-to-face; they just don't know how.

While traditional law school courses should incorporate more student collaboration, oral presenting, and role playing whenever possible, legal-writing resource centers are uniquely situated to help students with these much-needed and desired soft skills.

While traditional law school courses should incorporate more student collaboration, oral presenting, and role playing whenever possible, legal-writing resource centers are uniquely situated to help students with these much-needed and desired soft skills. At The John Marshall Law School Writing Resource Center, professional writing advisors encourage students to meet with them for thirty minutes each week of their three years of school to help refine their legal-writing skills. Advisors, all Juris Doctors with practical legal-writing experience, tailor assistance to each student's needs. Although not an express goal of the Writing Resource Center, developing soft skills underlies every one of these student appointments. These meetings are not paper-editing sessions but rather back-and-forth conversations requiring the students to think critically and express themselves clearly. "Why did you include these facts?"; "What are you trying to say here?"; "Can you craft this idea more persuasively?"; these are just some of the questions posed by advisors to students during sessions.

Although students may not even realize it, through modeling, they learn and even practice their soft skills during these Writing Resource Center appointments. From polite hellos and firm handshakes to maintaining eye contact and proper email etiquette, advisors expose students to their own soft skills and expect these skills from the students in return. At the start and end of the appointment, greetings are exchanged, handshakes are given, and eye contact is maintained. Advisors model respect for colleagues by the manner in which they speak about the legal-writing professors with the students. The advisors all hold J.D.'s and have practical experience; hence, students conduct face-to-face conversations with a licensed practitioner simulating the senior attorney/junior attorney interactions they are likely to encounter as new attorneys. Because these conversations are conducted away from peers, where no grades are awarded and "class participation" is not recorded, students feel more comfortable making mistakes and learning from



them. While a first-year law student who schedules an appointment with the Writing Resource Center because he does not understand IRAC or she needs additional practice with proper citation will leave the appointment with the necessary tools, the student will also leave with the added benefit of soft skills modeled and practiced.

As legal-writing teachers, advisors, and experts, we spend countless hours helping students communicate effectively with the *written* word. We stress the importance of persuasive writing and thoroughly researched arguments. We explain the intricacies of *The Bluebook* and the necessity of proper citations. Let's not leave it there. The ability to speak clearly, problem-solve critically, and conduct oneself politely can only strengthen a lawyer's ability to persuasively advocate. Even if we have to instill soft skills by stealth, providing our students with the opportunity to learn and practice skills necessary to effectively communicate verbally and interact harmoniously with others will only create better lawyers.

NOTES

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13. Roepe, *supra* note 11.

Optimizing the Classroom Experience by Collaborating with Colleagues



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Collaborations with colleagues, whether those colleagues are legal professionals or one's doctrinal colleagues, can provide an enhanced learning experience for both professor and student in the Legal Writing classroom.¹ Through these collaborations, Legal Writing professors can provide more substantive knowledge on a subject matter than they may have been able to provide in an individual capacity during a classroom lecture. Moreover, multiple-source inputs to the learning experience provide various viewpoints with the potential to increase the knowledge absorbed.² Finally, collaborations have the potential of showing students the "big picture" that law is not an experience isolated within each class, while also demonstrating to doctrinal colleagues that our educational goals are intimately related and build upon each other.³

Throughout my years of teaching, I have incorporated different collaborations within my classroom. These range from the most basic level, to more involved collaborations. In all instances, even my most basic collaborations have not only given students the opportunity to expand their networks, but I also have the opportunity to "show off" my own teaching and the abilities of my students to both attorneys and doctrinal colleagues. Moreover, these collaborations have been able to, in many instances, provide a level of expertise to my students that I do not have.

On the most basic level, I have (as many others have done) had colleagues and alumni judge oral arguments, or have had practitioners come to the classroom for panel presentations on practice-ready topics. For my upper-level classes, I have used practitioners to teach individual practice-oriented skills, such as deposition strategy and negotiating an employment agreement. I have also invited colleagues to my upper-level Scholarly Writing class to share their experiences and answer questions about their own thought processes and organizational techniques when they embark on their own scholarly works.

However, the most beneficial and rewarding collaborations have involved engaging with doctrinal colleagues. My doctrinal collaborations have involved "mirroring" the subject matter of a doctrinal course in one of my legal writing projects (e.g. "crossover" collaboration) and inviting colleagues to lecture on the subject matter of a particular project I have assigned in Legal Writing that presents a new area of law for them.

With respect to crossover collaboration, I am a firm believer in maintaining the autonomy of the curriculum in my classroom, but I have not been averse to incorporating assignments that might enhance my students' learning in one of their doctrinal classes. With the right "partner" in the enterprise, crossover exercises are beneficial all around. There is not much effort or coordination necessary. All that is needed is an awareness of what the other person is teaching and references within the classroom to what is being taught in the other classroom. This can be accomplished through sharing syllabi at the beginning of the semester, or even asking students what is being covered in their other classes. With repeated references and explanations as to how everything fits in the "big picture," students begin to make connections across the curriculum divide as they recognize the distinctions between conceptual/ theoretical learning (which ordinarily neither focuses on jurisdiction or year of decision) and how the concepts fit into actual practice. In a good collaboration of this type, students begin to understand that the theoretical concepts do have their place in realistic jurisdictional-based research and writing.

Approaching doctrinal collaboration as a fluid concept from year to year allows you to adapt to many different situations depending upon the nature of your relationships with doctrinal colleagues and the desired outcome.

One recent crossover collaboration of mine was with a Criminal Law professor. When she taught her unit on "transferred intent," she gave the students a short assignment based on a fact situation in her textbook. After approaching my colleague about how I might be able to help my students better prepare for her class, I used the same fact situation as the basis for my final Motion project, a Motion to Dismiss. Because of the double assignments and the additional, extensive research on the topic being studied in Criminal Law, the students became more well-versed on the topic

than they otherwise might have been. After the exam, I asked the Criminal Law professor how the students had done on anything involving transferred intent, and she said they did much better than in previous years in terms of understanding this particular legal concept. The crossover collaboration had the added benefit of impressing the Criminal Law professor who, up until that point, did not fully understand the integrated nature between her course and Legal Writing.

The second, and more extensive, type of doctrinal collaboration I have engaged in involved Constitutional Law professors teaching substantive subject matter for one of my Motion projects. These individuals, who are long-term colleagues of mine, will come into my classroom and lecture about the pertinent area of the law the students are writing on. At my law school, Constitutional Law is not a first-year subject, so there is no opportunity for crossover in their classes. However, I am lucky to have a large contingency of Constitutional Law professors who have backgrounds as appellate attorneys and clinicians. At least two of these professors not only teach Constitutional Law, but are often assigned to teach other first-year courses. These professors are two of the most popular professors in the school, and I have enjoyed the good fortune of having at least one of these professors teaching a course to which my own students have been assigned. The students tend to be thrilled to see these professors in their Legal Writing classroom and also enjoy the camaraderie I have with my doctrinal colleagues. These colleagues have also helped strategize with students about writing their briefs and, in a sort of friendly competition, have often taken opposite sides of the issue to "argue" in a way that both sides are presented to the students.

Although I would not ordinarily feel I had the expertise to be assigning relatively complicated Constitutional law issues to my students, collaborating with my doctrinal colleagues has enhanced my confidence to assign some contemporary issues I might not otherwise have assigned. These mostly include school speech cases that have made the news in the last few years. By having doctrinal colleagues with expert knowledge talk about the intricacies of the substantive law and recent developments, I have been better able to focus on the writing aspect of the projects. Learning from these experts has also enhanced my own level of expertise such that I am better able to answer students' questions about the substantive areas of law

analyzed in their writing. Finally, the integration of these contemporary issues has kept the students more engaged than they might otherwise have been with a less interesting fact situation.

Admittedly, this type of collaboration is not always possible depending on the mindset of the particular doctrinal professors involved and these relationships are not always so easy to build. To this day, there are some doctrinal colleagues who do not see the relationship between the learning in a Legal Writing class and the learning in a traditional podium class.⁴ This mindset often comes from a lack of interactions with Legal Writing professors, and those having that mindset may actively discourage any crossover assignments. Overcoming this mindset requires reaching out and getting to know one's doctrinal colleagues, often through committee work, participating in programming that the doctrinal colleague might be organizing, or merely being social and friendly in any kind of faculty gathering. Other doctrinal colleagues simply may not have the time for any crossover collaboration. However, in many instances where a Legal Writing professor proposes a collaborative plan, most doctrinal colleagues will respond positively to the connection. The plan itself need not be significantly involved; it can involve as little as one guest lecture on a particular legal topic,

or as much as concurrent coverage of the same subject matter for several classes. Approaching doctrinal collaboration as a fluid concept from year to year allows you to adapt to many different situations depending upon the nature of your relationship(s) with doctrinal colleagues and the desired outcome.

Collaborations, on any level, provide a great opportunity for both students and professors. They not only increase the pool of knowledge available to students, but broaden the students' view of the "big picture" of the law. They also provide the opportunity for those of us teaching Legal Writing to demonstrate just how similar all our missions are and how we can benefit one another in educating our students.

NOTES

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Moral Foundation Theory as the Basis for Legal Argument Themes



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During the second semester of 1L year, many law school curriculums dive into persuasive writing and oral advocacy. This is usually the first time students are introduced to themes,¹ and aside from presenting a persuasive narrative of a hypothetical problem, they are asked to find the “right” solution. This is beyond what the precedent may call for; this is advocating on behalf of a client or cause for the most “just” outcome. This puts students in touch with making real-world arguments—arguments that win cases.

As lawyers, we are familiar with all kinds of legal reasoning and arguments: rule-based arguments, analogies and distinctions, inductive reasoning, and policy arguments.² Since most moot court problems usually end up based in a fictitious Supreme Court, many arguments in an educational setting frequently come down to policy. In other words, we often prompt our students to think about their arguments with this question in mind: The Supreme Court *can* do whatever it wants—what *should* it do? In introducing the craft of thematic policy arguments to students, certain definitive ideas may come to mind, like government overreach, privacy, or judicial economy and efficiency. These ideas seem to have no overarching method of determination. They have to be brainstormed and dreamt up by the students, or gleaned from dicta. However, there may be a more predictable and systematic way to discover and organize these disparate ideas, and it might be found in something psychologists call Moral Foundation Theory.

In his book, *The Righteous Mind: Why Good People Are Divided by Politics and Religion*, Jonathan Haidt, a research psychologist, has examined the origins of morality.³ Haidt takes a science-based, and in fact Darwinian-based, approach to determining where morals come from and how they persist throughout myriad societies. His research is fascinating in many ways, but for our purposes none more so than in how this theory can be applied to legal argument.

Haidt has found that across societies there are six general moral foundations: Care/Harm, Fairness/

Cheating, Authority/Subversion, Sanctity/Degradation, Loyalty/Betrayal, and Liberty/Oppression.⁴ Each pair shows the positive side of the moral, and the negative side. For example, people who have Care as a strong part of their moral foundation are deeply affected when they see Harm. This is frequently associated with events like taking care of people, seeing depictions of motherhood, caring for elders, and caring for animals. The Fairness/Cheating foundation goes to equality and reciprocity. We don't like it when people get benefits they don't deserve, and we don't like to be taken advantage of. The Loyalty/Betrayal foundation recognizes the value of trust, the love of teammates, and a hatred of traitors. The Authority/Subversion foundation includes an acknowledgment that a hierarchy is needed for an organized society, and those who subvert the rules will be punished—prison, for example. The Sanctity/Degradation foundation began as a rule to maintain health (don't eat rotting food), but today is more closely associated with religious beliefs, such as adhering to rules about certain kinds of food or holding some relics sacred. Sanctity can even be seen in healthy trends we engage in to take care of our bodies, like exercise and detoxing. Finally, the Liberty/Oppression foundation is somewhat of a corollary of the Authority/Subversion foundation. When Authority becomes too stifling, the Liberty impulse will be to throw off the dominating force, as seen in "freedom fighters" or the teenager who just doesn't want to make curfew.

Moral Foundation Theory holds that these six foundations are found consistently throughout both historical and modern societies. The same amount of importance may not always be placed on each foundation, but all are common to human existence. In Haidt's work, he is interested in understanding how these morals interact with each other, and how people hold out some morals as more important than others. From an evolutionary point of view, Haidt seeks answers to why all these morals in some varying degree seem to be necessary for a functioning modern society.

The Righteous Mind is an intriguing read for understanding the science of morality, but as a tool to discover an order to legal arguments it is extremely useful. In reviewing these different morals as societal foundations, it seems that nearly all legal arguments—even ones based on more objective legal reasoning

By recognizing the importance of moral foundations and their connection to legal arguments, our own advocacy can become more persuasive and powerful.

theories—can be categorized into these moral foundations. Rule-based arguments flow from the Authority foundation. For example, a body that has been recognized as having Authority has promulgated the law, and therefore it must be respected. Equal rights and laws against discrimination are easily linked to the Fairness/Cheating moral foundation. Debates over abortion, the death penalty, euthanasia, and even legalizing marijuana for recreational use can be linked to the moral foundation of Sanctity/Degradation. Laws prohibiting treason or fraud, or requiring fiduciary duties, rest on ideas of Loyalty/Betrayal.

By organizing arguments from the perspective of each moral foundation, likely all possible themes can be discovered. This approach also allows students to explore their opponents' themes—a necessary exercise to craft strong arguments. For example, a 1L appellate problem may have the following facts: a sixteen-year-old high school student is suspected of associating with terrorists. Law enforcement has received a tip that this student may have planted a bomb at a high school football game. Law enforcement canvasses the stadium, apprehends the student after a foot chase, and upon finding his cell phone, manages to immediately access it and finds incriminating text messages. Later, the student wants to suppress the evidence of the text messages based on violations of his Fourth Amendment rights. What kind of arguments, based in Moral Foundation Theory, could each side bring?

Thematic arguments the student may want to make might touch on government overreach or invasion of privacy. These themes point toward the Liberty/Oppression foundations. Liberty would be in jeopardy through the idea that law enforcement was overzealous, perhaps due to bias or simply

a generalized callousness toward the population, resulting in searches that were too heavy handed. A second assault on Liberty would be the invasion of privacy. A failure to respect privacy directly implicates our foundational beliefs in the protection of the Fourth Amendment from unreasonable searches.

Students may also make arguments based on themes of police brutality, or innocence due to age. Those themes would prompt Care/Harm arguments. They might emphasize the innocence of a sixteen-year-old who was simply attending a high school football game and show the imbalance of power. This overwhelming power of the police is no match for a kid, prompting a sympathetic argument. We would refer to this type of argument as an emotional argument—pulling on the heartstrings. Through open-ended brainstorming we may discover this argument, but by using Moral Foundations to prompt our thinking we can be more confident we have exhausted all possible arguments.

On the other side of the case, the government might want to bring arguments that justify its actions based on national security and protecting innocent life. Therefore, the government would be asserting an argument of Authority/Subversion, and also cleverly using the Care/Harm moral to generate empathy for innocent people who may be in harm's way if an active bomb is found. The government would make a concrete Authority argument justifying exceptions to warrantless searches in exigent circumstances. It would then attempt to connect Care/Harm by emphasizing its duty to protect the public. Therefore, police have the power to depart from the rules when public safety is in danger.

To introduce the concept of moral foundations to students, a recommendation is to first discuss the psychological research by Haidt. In his book, Haidt gives numerous examples of how each foundation is triggered, so it is easy to illustrate possible thematic arguments prompted by each foundation. Next, short videos could be shown that tell stories. Ask the students to identify what themes are present, and by connection, which moral foundations are implicated. Videos that work well for this exercise are both music videos⁵ and cinematic product advertisements.⁶ Finally, using problems the students will be working on for their memos or briefs, brainstorm themes in a

structured way, exhausting the possibilities for each foundation. In this way, strengths and weaknesses can be identified, and various thematic arguments can be prioritized.

For each side, the Moral Foundation Theory backdrop gives the theme the moral authority of the argument—the "righteousness of the cause." Judges know what the law is, but they need a reason to apply it on behalf of your client that makes sense in a moral way. Finding a moral foundation for the legal-based argument may be the key to persuading the court, and particularly the jury.⁷

In the real world, judges and juries may not always clearly indicate which moral foundations their opinions rely on, but by recognizing the importance of moral foundations and their connection to legal arguments, our own advocacy can become more persuasive and powerful. This is how we find the "just" outcomes for our clients and for our causes.

NOTES

1. See Mary Ann Becker, *What Is Your Favorite Book? Using Narratives to Teach Theme Development in Persuasive Writing*, 46 GONZ. L. REV. 575, 576 (2010-2011) (discussing the problems students have when first presented with developing themes in legal skills classes). A related idea in legal storytelling is the development of the hero archetype. Persuasion is achieved through a narrative based on a folkloric structure, allowing the main character to have flaws but to generate support from the audience by overcoming difficulties. See Ruth Anne Robbins, *Harry Potter, Ruby Slippers and Merlin: Telling the Client's Story Using the Characteristics and Paradigm of the Archetypal Hero's Journey*, 29 SEATTLE U. L. REV. 767, 775-76 (2006).
2. See also Wilson Huhn, *The Stages of Legal Reasoning: Formalism, Analogy, and Realism*, 48 VILL. L. REV. 305, 311-18 (2003) (examining the stages, or really, a theory, of evolution of legal reasoning).
3. Jonathan Haidt, *THE RIGHTEOUS MIND: WHY GOOD PEOPLE ARE DIVIDED BY POLITICS AND RELIGION* (2013).
4. *Id.* See also Colin Prince, *Moral Foundation Theory and the Law*, 33 SEATTLE U. L. REV. 1293, 1296-98 (2010) (describing five of the initial pairs of moral foundations and referencing Haidt's studies).
5. The video *Breezeblocks* by Alt-J serves an additional interesting storytelling purpose in that its story is told in reverse. This helps students open up to alternative narrative arrangements. YOUTUBE (Mar. 23, 2012), <https://www.youtube.com/watch?v=rVeMiVU77wo>.
6. Tullamore Dew Irish Whiskey has won awards for its ads. In *The Parting Glass*, a traditional Irish funeral song is paired with a story that ends much differently. The surprise ending is enjoyable, but the theme of friendship and family, linked to loyalty, is especially illustrative of how the foundations can be used for many aspects of a story. YOUTUBE (Nov. 22, 2013), <https://www.youtube.com/watch?v=RL9yB0ne67A>.
7. See Becker, *supra* note 1, at 576 (reiterating that a theme causes a "visceral reaction that allows the reader to be immersed in the story, not just the law at issue").

Exploring Diversity with a “Culture Box” in First-Year Legal Writing



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Studying law is in many ways like studying another culture. New law students may often feel as if they are learning a new language with unfamiliar vocabulary and different styles of communication. They are also exposed to a profession comprised of unique traditions and expectations. The study of law can be both engaging and frustrating and may even challenge some students’ values and belief systems. The value system reflected by the legal system can make some students feel alienated.

This year, I decided that a good place to begin the study of law would be for students to take time to examine who they were as well as what they thought about the law and why they wanted to pursue a law degree. Exploring their own values and cultural backgrounds, I reasoned, could help them feel more comfortable in the unfamiliar cultural milieu of the law and recognize how the law itself reflects culture. It would help me connect with my students early on and understand their motivations for attending law school, which would help me guide them through the conventions of legal writing. Finally, it might even ultimately help the law reflect the diverse community in which it operates.

So I started my legal writing class with an exercise to help my students learn about themselves as well as each other’s culture and worldview—and to help

them learn to appreciate diversity. I asked my students to create a “culture box” to share on our first day of class.¹ In an e-mail that went to all forty of my first-year legal writing students the week before classes started, I explained that the culture box would be a collection of objects of their choosing, which they feel define them or their social identities. I told them that the goal of the culture box was to help them, their classmates, and me understand their life stories and who they are today.

In these preliminary instructions, I asked my students to pick two or three items, focusing on three areas: 1) Things that represented who they were, which might include significant events that shaped them and their view of the world; 2) things that represented who they were in a professional sense or illustrated significant past experiences, perceptions, or insights that led them to their choice to study law at this particular time; and 3) things that represented what they thought about the law, the legal profession, and their vision in regards to a legal education.

Their culture box could be a tangible box containing physical objects or it could be pictures or representational objects, verbal descriptions, quotes, single words, family stories, or narratives of important events. The choice was theirs. I asked them to be prepared to briefly share some of the contents of their box with the class on our first day. After the class, I asked them to write a 500-word reflection on what they included in their culture box and why. I also asked them to share in the writing what they thought would make them a successful law student and how, at this moment, they imagined they would use their legal education.

I devoted the whole first class to the culture box exercise instead of going over the syllabus and doing my typical introduction-to-the-legal-system lecture. At the start of class, I urged my students to be selective about what they discussed from their culture box, keeping in mind that they had only three or four minutes to present, and for the most part, students were able to keep within the time limit with little urging from me. I asked everyone to listen actively and empathetically, but not to ask questions since we did not have time for that. No one was reluctant to participate, although one student mentioned that he had prepared something relatively unrevealing and then at the last minute decided to share something more personal after he heard what others were sharing. I discussed my own culture box at the start of the sharing.

My class and I heard some amazing things on that first day. One of my students explained that she had wanted to come to law school since her family's seventeen cows were rustled from their farm when she was a child and she sat through the criminal trial that ensued. We heard about two professional soccer careers, as well as a hockey scholarship that shaped an undergraduate experience. A thirty-five-year-old student revealed that his shoulder had been destroyed in a horrible car accident that happened just after college, and he talked about the years of recovery necessary to pursue his original plan to attend law school.

A number of students brought physical objects: We saw business cards that represented expertise in other fields and identification cards from dead-end jobs people longed to escape. We saw passports from Germany, France, and the Ukraine; one student brought a photocopy of his grandmother's passport that she had used to enter the United States as a refugee from the Soviet Union. There were favorite books, textbooks, and poems. We saw a pair of cufflinks belonging to a student's grandfather, who served as a policeman and had taught this student "everything." We saw a cocktail wizzle stick that a student had used as a bartender – a job that taught him how to network. One petite female student pulled out a welding helmet saying it reflected her personality and ambition (when she was working as a lobbyist for the construction industry she became a welder to give her a better perspective on the people she was representing). Another female student revealed

The students were interested and enthusiastic, fully engaged with each other, with me, and with the work of this first assignment. They were clearly excited about entering their new chosen field of the law.

a shoulder full of tattoos and explained what each represented in relation to the law.

The students were interested and enthusiastic, fully engaged with each with each other, with me, and with the work of this first assignment. They were clearly excited about entering their new chosen field of the law.

The exercise helped me to connect with them at the start of the year. It has also helped me give feedback on their first legal memorandum, six weeks into the semester. It has allowed me to give personalized comments that draw on their initial excitement, point out their strengths, and encourage them to approach their challenges through the window of their interests and reasons for being here. For example, when I saw in a student's first memorandum that she was struggling with legal reasoning, I was able to look back at the paper she wrote about the contents of her culture box and remember that this was the student who shared the quote on her grandfather's office door: "Make the moments matter." I could then direct my feedback to a unique individual who wants to understand how to make each moment in law school matter. I also identified an at-risk student earlier than I might have and was able to help him because of what he said during his culture box presentation.

The culture box exercise has also helped me pedagogically. For example, I noticed that a student, who had captivated the class with the story of how he was falsely arrested, was struggling to analyze the law in the Discussion section of his first memorandum. However, his presentation of his client's story in the Fact section displayed that same ability to captivate an audience. Because I already knew this student was an excellent storyteller, I was able to acknowledge this strength to keep him engaged and to help him analyze the law. When I met with him, we talked about how he could think

of writing the memorandum as telling a story—a story that was not just about his client’s facts, but also about the results of his own research and his objective understanding of the legal standard. In other words, he needed to tell me the story of the legal precedent and how it applied to help or not help his client.

I anticipate that the culture box exercise will also help the students later on in the year, after all their exam results are reported. This is a low point for many of my students. The novelty of being in law school is lost for most students by then and many have to grapple with grades that are less than perfect. The experience can be a blow to their self-esteem. I will be able to remind them, indirectly, of the motivation and skills they confidently presented in that first class and rekindle their initial excitement.

The culture box exercise began as a way for me to get to know my students and to help them get to know each other. I wanted them to understand the diverse backgrounds of everyone in the class and to appreciate that each individual contributed something significant to the class. Without the exercise, these unique strengths and characteristics easily could remain hidden and become buried in the demands of legal education.

The exercise has added yet another dimension to my course. The students are engaging with the legal

writing material at a more personal level. They are thinking about how they can write about the law in the appropriate style and still use their unique voices. They appear better able to devise strategies to master the writing process they need to master.

Legal education leaves little room for reflection, particularly in the first year. Students must quickly acclimate to a legal culture that is demanding and arcane. Students have little opportunity to reflect on who they are and how the information they are receiving challenges their definitions of self. By specifically acknowledging that they are entering law school with a box full of experiences, the culture box can help students adapt to their new profession. It also gives them a vivid appreciation of their own and others’ diversity. If enough students started their legal educations with this exercise, the culture box might ultimately help the legal culture adapt to the diverse and inclusive world in which we live.

NOTES

1. I adapted this exercise from an exercise used by Dr. Abdesalam Soudi in his sociolinguistic class at the University of Pittsburgh. See Abdesalam Soudi, *First Person: What’s in Your Culture Box*, PITT CHRONICLE, Sept. 19, 2016, at 13.

The Unparalleled Benefits of Teaching Parallelism



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As a student, I never learned how to use parallel structure, or “parallelism,” as a writing technique. I didn’t even know the official term until I started teaching legal writing. But even if I couldn’t name it, I always knew I liked it. As a high-school history student, I felt its force in speeches like Abraham Lincoln’s *Gettysburg Address*, William Jennings Bryan’s *Cross of Gold*, and Martin Luther King Jr.’s *I Have a Dream*. Parallelism always felt to me like the place where poetry meets prose—where even the most mundane writing can start to sing.

But as a legal writing professor, although I have taught my students to use parallel structure, I only did it here and there. It would come up when we covered how to write a classic Question Presented for an office memo. It would come up when we worked with a list of factors that had to be presented in a numbered list. It would come up when we reviewed the proper grammar for correlative conjunctions, like both/and, either/or, and neither/nor. And it would come up when we discussed rhetorical techniques that could add persuasive oomph to an Introduction or a Statement of Facts.

But this year, for the first time, I decided to go “all in” on parallelism. Here’s why: each year that I have taught legal writing, I have become more frustrated that so often the best writer on the first day of my class is the best writer on the last day of my class—two semesters later. The gap between the students who come in with some natural or well-trained sense of writing mechanics and style and the students who don’t is just too big to close completely in the first-year legal writing course.

But that doesn’t mean we shouldn’t try.

And when I thought about how to close that gap, the most appealing interventions were those that offered real bang for the buck. I wanted to focus on

techniques that would pay off quickly and could be applied widely.¹ Parallelism is perfect for this. You can use it almost anywhere, and once you get it, you get it—although your level of skill certainly improves with practice.

So in the fourth week of the fall semester, after my students had submitted their first memo assignment, I set aside an entire class for just parallelism. And it worked; it really worked. This could work for you, too, so let me describe what I did.

First, I started with the definition. Parallelism is the use of components that are “grammatically the same; or similar in their construction, sound, meaning, or meter.”² Then, I proposed a process to create parallel structure: (1) identify a pair or series of components, (2) make them as grammatically or rhetorically similar as possible, and (3) read them aloud to test.³

We then moved on to some obvious examples: silly sentences on slides where the lack of parallelism was almost painful, like the following:

- She spent time researching legal questions, reading judicial opinions, and with her cat.
- The court considered three factors: (1) the statute’s plain language, (2) interpretations by agencies with expertise, and (3) legislative history.

We used the three-step process to revise the sentences:

- She spent time researching legal questions, reading judicial opinions, and relaxing with her cat.
- The court considered three factors: (1) plain language, (2) agency interpretations, and (3) legislative history.

Next, we read the Gettysburg Address.⁴ I really love the Gettysburg Address. And the students love it, too. Some—although this number gets smaller every year—were required to memorize it as children. A handful have never seen it. But the vast majority of my students have at least read it, and in this setting, they greeted it like an old friend. After weeks of law school’s steep learning curve, they were palpably glad to see something in law school that was familiar.

There are so many ways to use the Gettysburg Address in a legal writing course. But I just handed it out and asked my students to find every use of parallel structure. The hands shot up so quickly. The

students couldn’t wait to share their finds, including the following:

- Now we are engaged in a great civil war, testing whether that nation, or any nation **so conceived**, and **so dedicated**, can long endure.
- But, in a larger sense, **we cannot dedicate, we cannot consecrate—we cannot hallow—** this ground.
- The world will **little note**, nor **long remember what we say here**, but it can never forget **what they did here**.
- and that government **of the people, by the people, for the people**, shall not perish from the earth.

After the Gettysburg Address, I handed out a few legal writing examples. My favorites are by Elena Kagan: one a brief she wrote as Solicitor General, and the other an opinion she wrote for the Supreme Court. In the brief from *United States v. Stevens*,⁵ she argued that 18 U.S.C. § 48, which prohibited the creation, sale, or possession of certain depictions of animal cruelty, did not violate the First Amendment. The students looked at this passage:

In any event, Section 48 would survive strict judicial scrutiny in a substantial number of its applications. As discussed above, three principal interests support Section 48. **First, the government has an interest in reinforcing** the prohibitions of animal cruelty in state and federal law by removing a financial incentive to engage in that egregious, illegal conduct. **Second, the government has an interest in preventing** the additional criminal conduct that is associated with the torture and mutilation of animals underlying the production and distribution of those materials. **Third, the government has an interest in protecting** public mores from the corrosively anti-social effects of this brutality. For the reasons stated, these interests are compelling.⁶

The students were able to see the parallelism here, and how it organizes the paragraph. The parallel structure of the sentences—each beginning with an ordinal adverb and then describing the government’s interest with identical language—guides the reader through the three listed arguments. The students were effusive in praising how the parallel structure made the paragraph’s structure and substance clear to the reader.

Before moving on to the next Kagan example, I gave the students a paragraph from a student memo from a previous year in which the writer, like Justice Kagan in her brief, had made three arguments in the same paragraph. I asked the students to use the parallelism technique from the *United States v. Stevens* brief to re-organize the paragraph. The students then compared the paragraphs from before and after the revision. They appreciated the way the use of parallel structure highlights the purpose and substance of the paragraph.

We then looked at Justice Kagan’s opinion for the Court in *Miller v. Alabama*.⁷ In that case, the Court held that the practice of sentencing juvenile defendants to life in prison without the possibility of parole is unconstitutional.⁸ In particular, we looked at the following two passages:

- Under these schemes, every juvenile will receive the same sentence as every other—the **17-year-old** and **the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one.**⁹
- **It prevents** taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how **brutal** or **dysfunctional**. **It neglects** the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, **it ignores** that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, **his inability to deal** with police officers or prosecutors (including on a plea agreement) or **his incapacity to assist** his own attorneys.¹⁰

The students appreciated the persuasive force of this parallelism in these examples. And they were able to see how once a writer has set up parallel structure, the choice to disrupt the parallelism can be forceful, too. For example, the students discussed how the additional adjective at the end of the first example, “abusive,” makes it stand out to the reader, who has grown used to the parallel pairs in the list. The parallelism of the other components makes the reader expect that in the last pair, there will similarly be a single adjective before “household.” But Justice Kagan instead breaks the parallel structure to emphasize that the opposite of a stable household isn’t just a chaotic one, but a chaotic “and abusive” one—a meaningful writing choice in a

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case involving a juvenile defendant who had been raised in just such a chaotic and abusive household.¹¹

Last, I asked the students to look at their own first writing assignment of the semester, a one-issue CREAC analysis, and find a place where they could have used parallelism. The students were eager to do this, having been convinced of the technique’s power through the examples they had spent the class analyzing.

I hesitate to declare that a class early in the first semester devoted solely to parallelism is a cure-all. We all know that there aren’t really miracles in legal writing. We all know that learning legal writing is the accretion of skills through practice and repetition, and I certainly saw some painfully clunky parallelism efforts in the assignments submitted after the stand-alone parallelism class. But even those inelegant attempts were encouraging. In past years, only the strongest writers used parallel construction regularly in their writing. But after the parallelism class, everyone used it. Even the students who struggled the most and received the lowest scores used parallelism in their documents. The class had convinced them that parallelism was a technique worth practicing.

Light-bulb moments do happen sometimes in legal writing. And I think that this parallelism class may have lit more bulbs than anything else I have done this year.

I love Annie Dillard’s well-known line from *The Writing Life*: “How we spend our days is, of course, how we spend our lives.” In addition to its lovely parallelism, that quote is a valuable reminder to spend our time on the things that matter. I think that applies as much to class time as it does to anything else. I want to spend my class time on the things that matter. And parallelism, a technique that can sometimes immediately make writing better, is one of those things.


NOTES

1. Indeed, Ross Guberman has identified the proper use of parallelism with complex correlative conjunctions as a skill worth mastering because it is “highly correlated with broader measures of writing ability.” Ross Guberman, *Six Rules You Should Master—And I Can Prove It!*, Legal Writing Pro: “The Science of Great Writing,” (Feb. 24, 2015), <https://www.legalwritingpro.com/blog/six-rules-you-should-master-and-i-can-prove-it/>.
2. *Definition of Parallelism*, Literary Devices: Definition and Examples of Literary Terms, <https://literarydevices.net/parallelism/> (last visited Dec. 1, 2018).
3. See Jill Barton & Rachel H. Smith, *THE HANDBOOK FOR THE NEW LEGAL WRITER* 142-43 (2d ed. 2019); Laurel Currie Oates & Anne Enquist, *THE LEGAL WRITING HANDBOOK* 642-47 (5th ed. 2010).
4. *The Gettysburg Address: Transcript of Cornell University’s Copy*, Cornell University Library (emphasis added to show parallelism), http://rmc.library.cornell.edu/gettysburg/good_cause/transcript.htm (last visited Dec. 1, 2018).
5. Brief for United States, *United States v. Stevens*, 559 U.S. 460 (2010) (No. 08-769), 2009 WL 1615365 (emphasis added to show parallelism).
6. *Id.* at *43 (citations omitted).
7. *Miller v. Alabama*, 567 U.S. 460 (2012).
8. *Id.* at 465.
9. *Id.* at 476-77.
10. *Id.* at 477-78.
11. *Id.* at 478-79 (“Miller’s stepfather physically abused him; his alcoholic and drug-addicted mother neglected him; he had been in and out of foster care as a result; and he had tried to kill himself four times, the first when he should have been in kindergarten.”); see also Ross Guberman, *Five Ways to Write Like Elena Kagan*, Legal Writing Pro: “The Science of Great Writing,” (Mar. 20, 2018), <https://www.legalwritingpro.com/blog/five-ways-write-like-justice-kagan/> (noting Justice Kagan’s effective use of “internal repetition and parallel structure” in the majority opinion in *Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743 (2017)).
12. Annie Dillard, *THE WRITING LIFE* 32 (1st ed. 1989).



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