Perspectives
Teaching Legal Research and Writing

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In This Issue

Micro Essays: Read some of the most thought-provoking submissions from your colleagues inspired by the prompt "Will Artificial Intelligence (AI) change how or what we teach in LRW classes? What do you anticipate the impact of AI will be on teaching or learning?"

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Perspectives is for anyone who teaches legal research or legal writing—in law schools, libraries, courts, and law offices. Perspectives articles are short, readable, and explore a broad array of teaching theories, techniques, and tools. The idea can be large or small but if it provides a fresh and creative way to teach or learn about legal research or legal writing skills, Perspectives editors would like to publish it. Writing for Perspectives allows you to add to your resume and get published quickly while reaching the people who share your passion for this area of the law.

Perspectives appears twice yearly. Articles are typically between 1,500 to 7,000 words, lightly footnoted, and highly readable. They may focus on curricular design, goals, teaching methods, assessments, etc.

Author Guidelines

New in this Volume and looking ahead to Vol. 27, No. 1!

In the last issue, we asked our readers to submit micro-essays in response to the following prompt:

- "Will Artificial Intelligence (AI) change how or what we teach in LRW classes? What do you anticipate the impact of AI will be on teaching or learning?"

We received such an enthusiastic response we decided to publish half here but you'll have to wait for next issue to read the rest!

The Board

Authors are encouraged to submit brief articles on subjects relevant to the teaching of legal research and writing. The *Perspectives* Author's Guide and Style Sheet are posted at http://info.legalsolutions.thomsonreuters.com/signup/newsletters/perspectives/perstyle.aspx. Manuscripts, comments, and correspondence should be sent to:

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Finding Your Muse: Seeking Sources of Scholarly Inspiration

By Abigail L. Perdue

Abigail Perdue is a Professor at Wake Forest University School of Law.

"The single best way to find your muse is to keep an open mind."

Legal analysis, writing, and research ("LAWR") professors often encounter difficulty generating research ideas, in part, because of the many obstacles we face when producing scholarship. Chief among them are our heavy teaching loads, the onerous burden of providing quick yet thoughtful feedback on assignments, and the significant time invested in conferencing with students and continuously developing new exercises.[1] Indeed, LAWR professors often spend so much time and effort providing thoughtful feedback on student drafts that we leave little time to focus on our own scholarly endeavors.[2] Exacerbating this problem is the fact that some institutions neither encourage nor support scholarship from LAWR professors by offering them research grants, research assistants, or reduced teaching loads. This lack of institutional support is particularly prevalent at law schools that do not award tenure to LAWR faculty. Without incentives to write or the institutional support to do so, many LAWR professors simply find scholarship too daunting to attempt. In such circumstances, it can naturally be difficult, if not impossible, to feel inspired. Therefore, this essay addresses how every LAWR professor can find his or her muse, or source of scholarly inspiration.

I. Sources of Scholarly Inspiration

The single best way to find your muse is to keep an open mind. Scholarly inspiration can come anytime from anywhere. Be equally receptive to ideas inside and outside the office. When an idea or question pops into your head, do not risk losing it; immediately email or text it to yourself. Maintain a personal idea bank to store your good ideas. Consider using a journal or an electronic email folder labeled "Idea Bank" or "Potential Projects." Whatever you name it and wherever you store it, it will maintain a running list of scholarly ideas – your personal wellspring of inspiration. When you complete a project, review your idea bank to see if there is a new piece on which you can begin. If someone scoops your idea or you lose interest, remove it from the bank. Continuously update your file to keep it current.

While countless sources of inspiration exist, some are certainly more potent than others. These include prior work or educational experience, past scholarship, teaching, service, engagement in the field via conferences and presentations, personal interests and experiences, as well as pop culture, news, and current events.

1 *See* Susan P. Liemer, *The Quest for Scholarship: The Legal Writing Professor's Paradox*, 80 Or. L. Rev. 1007, 1021 (2001) ("All law professors spend time preparing for class. The typical LRW professor, however, spends some twenty hours a week providing individualized teaching for students, by critiquing papers, holding conferences, and generally answering questions. This twenty hours per week, multiplied over two fourteen-week semesters during the academic year, equals fourteen forty-hour work weeks. So during the academic year the typical doctrinal law professor may have the equivalent of fourteen forty-hour work weeks to spend on scholarship, while for the typical LRW professor that same amount of time becomes student contact hours.").

2 *See* John A. Lynch, *The New Legal Writing Pedagogy: Is Our Pride and Joy a Hobble?*, 61 J. Legal Educ. 231, 237 (2011) ("The new pedagogy increases a professor's workload enormously by requiring review of preliminary drafts of student work and requiring that a professor spend many hours in individual conferences with students. These duties create a crushing workload for any conscientious legal writing teacher and interfere with the ability of those instructors to produce scholarship.").

So if you seek inspiration, explore your passion. Draw from your personal past and present experiences. Use your teaching, service, and scholarship as a platform to launch an article. Put differently, finding your muse involves discovering your perfect scholarly fit. To facilitate this process, thoughtfully complete the idea inventory below to generate creative new ideas.

"So if you seek inspiration, explore your passion."

IDEA INVENTORY

Your Passion: What is an issue or area of law that really interests you or breaks your heart? What is your passion?

Your Teaching: Have you encountered something in your teaching that would be the subject of a good article? This can relate to the *subject* you teach (e.g., discrimination law) or *how* you teach it (*e.g.*, pedagogical innovation). Do any of the course books or materials you use have notable gaps?

Your Prior Scholarship: Did you encounter any tangential issues or questions in your past scholarship that you would like to more deeply explore in a new article? Can you turn your favorite footnote from your last article into its own paper?

Your Presentations and Conferences: What is the most interesting presentation that you have given recently or conference that you have attended? Why was it so interesting? Does it give rise to a question suitable for further exploration in writing?

Your Service: What is the most interesting service you are doing for your institution? Your field? Your community? In what ways might your service launch a scholarly project?

Your Prior Work Experience: What was the most interesting case or legal issue you have encountered during your prior work experience? Your current practice or pro bono work? The clinic you oversee?

Your Education: Think about your favorite subjects from college and/or graduate school. Would any of them provide a fresh perspective on a current legal issue? Is there any topic you would like to explore more deeply?

Your World: What is the most interesting article or news story that you have read recently? Could it generate an article? Can you add a unique perspective?

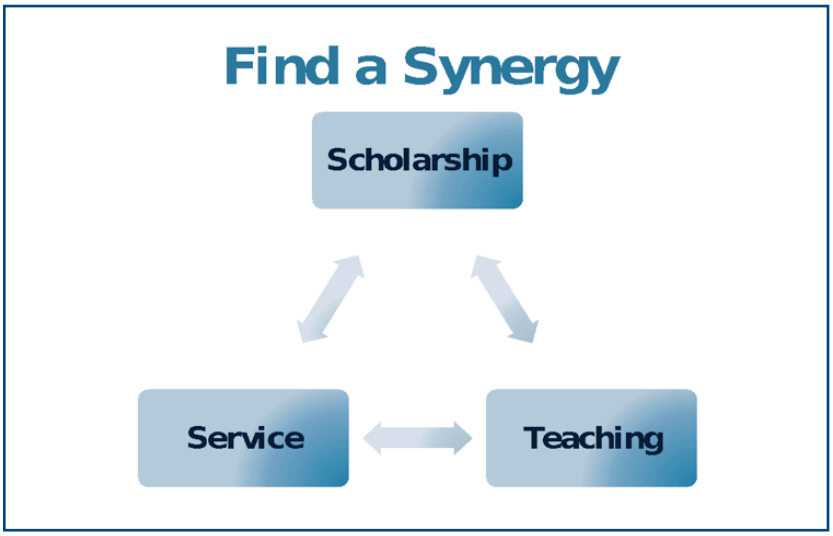
Your Environment: What kind of environment gets your creative juices flowing? Where do you feel most productive when you write?

"My book was a direct result of the culmination of these collective professional experiences . . . my clerkships, my teaching, my service, my development of the Program, and my engagement in the legal writing community."

II. Finding a Scholarly Synergy

Most importantly, find a productive synergy where your scholarship informs your teaching, your teaching enriches your service, your service strengthens your scholarship, and vice versa. In this way, whenever you devote time to one aspect of your profession, such as teaching, you will be simultaneously bolstering the other aspects – scholarship and service. Doing so will optimize your investment of time, energy, and resources. It will also enable you to produce higher quality scholarship while maintaining a healthy work/life balance.

Finding such a synergy in my own scholarship has proven tremendously beneficial. Perhaps the best example is my latest book—*The All-Inclusive Guide to Judicial Clerking*—which West Academic Publishing released in April 2017. Its origins perfectly illustrate the power of scholarly synergy.



1. *The All-Inclusive Guide to Judicial Clerking*[3]

After concluding two federal clerkships in Washington, D.C., I accepted a full-time teaching position at Wake Forest and immediately joined our law school's Clerkship Committee. A few months later, I founded Wake Forest's D.C. Summer Judicial Externship Program ("Program"), which places select law students into unpaid summer judicial externships in Washington, D.C. In addition to the externship component, Program participants meet weekly with me to take a three-hour course tailored to judicial clerking. The course, which I designed, thoroughly explores many aspects of clerking, such as judicial ethics, chambers confidentiality, professionalism, and judicial drafting. Yet I discovered a gap in the literature when I was unable to find a single, comprehensive resource that addressed everything the course aimed to cover. While I was struggling to compile various readings to address the diverse topics we discussed, I attended an informative LWI presentation on how to draft a book proposal.

My book was a direct result of the culmination of these collective professional experiences: my clerkships, my teaching, my service, my development of the Program, and my engagement in the legal writing community. In drafting the book, I conducted extensive research and consulted with judges, practitioners, law clerks, and professors across America. Therefore, every hour I spent researching and writing my book bolstered my teaching and service. That scholarly synergy tripled the value of each minute invested and now saves significant time when I prepare for my clerking class or advise clerkship applicants in my role as Chair of our law school's Clerkship Committee. And, as is often

3 Abigail Perdue, The All-Inclusive Guide to Judicial Clerking (2017), *available at* https://www.amazon.com/All-Inclusive-Judicial-Clerking-Career-Guides/dp/1634608224 (last visited June 7, 2017).

the case, one project breeds another. Indeed, as a result of the book's publication, I have been invited to speak on judicial clerking and book-drafting at several conferences and webinars, including the biennial LWI Conference held in July 2018.

2. *The Legacy Project*

My ongoing *Legacy Project* provides yet another illustration. I attended college at Washington and Lee University, which sits across the street from the Virginia Military Institute ("VMI"), a formerly all-male institution. During my junior year, I studied abroad at Oxford University and shared a townhouse with several VMI cadets. I got to know my housemates very well and upon our return to Virginia, even attended events at VMI. Two years later, I found myself studying *U.S. v. Virginia*[4] in law school. The case fascinated me because I knew the players and had studied gender relations in college. I felt personally connected to the story behind the opinion, which was too often overlooked.[5]

So a few years later when I was serving as an adjunct instructor at Washington and Lee University and School of Law, I asked a sociology professor, Dr. David Novack, and his wife, Dr. Lesley Novack, a retired psychology professor, to help me conduct an empirical study at VMI. I wanted to quantitatively assess the impact of *U.S. v. Virginia* on the institution and its student body. Their empirical expertise and my legal knowledge shaped the scope and nature of our inquiry. Our study formed the basis of my current *Legacy Project*, so named because it explores the lasting legacy of the landmark litigation on VMI and its students.

Because we gathered a vast amount of data, I quickly discovered that it was both impossible and unwise to discuss all the results in a single, massive tome; instead, I explore four to five data points per paper. Consequently, I have already published four pieces from the study,[6] and our rich data set will provide scholarly fodder for years to come. I could never have dreamed that my undergraduate experience would have such a profound effect upon my professional development and scholarly agenda, but it has. Moreover, since I teach D*iversity and Discrimination* as well as *Discrimination Law: Principles and Practice*, my research on the *Legacy Project* also enriches my teaching.

3. Other Examples

Prior work experience provides an especially rich source of scholarly inspiration, particularly for new scholars who have recently left the practice. Indeed, my first law review article and book arose from valuable connections made during a pro bono project I completed.

As illustrated above, pedagogy is another generous muse. For LAWR professors with onerous teaching loads, ask yourself whether an audience exists for scholarship regarding your unique pedagogical approaches or insights. For instance, my current book project arose from my development of a seminar inspired by my past law practice and prior scholarship. An acquisitions editor and I quickly realized that no existing text addresses the topics the seminar will cover, so she encouraged me to submit a book proposal, which I did. Once again, my prior work experience, teaching, and past scholarship culminated to inspire an exciting scholarly endeavor.

III. Seize Scholarly Opportunities

This last example illustrates another important point about scholarly inspiration—be ready to receive it. When the acquisitions editor encouraged me to submit a proposal, writing a book was the furthest thing from my mind. I was knee deep in a law review article and had a long line of other

> "... another important point about scholarly inspiration—be ready to receive it."

4 United States v. Virginia, 518 U.S. 515 (1996) (concluding that VMI's all-male admissions policy violated the Equal Protection Clause of the Fourteenth Amendment).

5 Perhaps that is because one of my most influential law school professors—Dr. Paul Lombardo—took a unique approach to legal scholarship, which he described as "legal archaeology." Through years of painstaking historical digging, Dr. Lombardo uncovered the disturbing behind-the-scenes story of *Buck v. Bell*, an infamous Supreme Court case that upheld Virginia's sterilization law. *See generally* Paul Lombarddo, Three Generations, No Imbeciles: Eugenics, The Supreme Court, and Buck v. Bell (2002); Paul Lombardo, *Legal Archaeology: Recovering the Stories Behind the Cases*, 36 J. L. Med. & Ethics 589 (2008).

6 *See, e.g.*, Abigail L. Perdue, *Transforming "Shedets" into "Keydets": An Empirical Study Examining Coeducation Through the Lens of Gender Polarization*, 28 Colum. J. Gender & L 371 (2015); Abigail L. Perdue, *The Solidarity Paradox*, 23 Duke J. Gender L. & Pol'y 45 (2015); Abigail L. Perdue, *Everafter: The Stories Told about* U.S. v. Virginia, The Second Draft (Fall 2015); Abigail L. Perdue, *Man Up or Go Home: Exploring Perceptions of Women in Leadership*, 100 Marq. L. Rev. 1233 (2017).

potential projects in the queue, not to mention a heavy, year-round teaching load. For several days, I labored over the decision, but, ultimately, I realized that being a productive scholar requires adaptability and a willingness to seize opportunities when they arise. The other projects could wait, but the window for this endeavor would soon close.

Make no mistake; you need not wait for an acquisitions editor to approach you directly. To the contrary, diligently check legal education listservs for calls to submit written pieces or propose presentations. These invitations provide the perfect push to prompt you to put pen to paper.

IV. Other Important Takeaways

Another important takeaway that I have learned through the years is that relationships are vital. If you develop subject matter expertise and a reputation for being collaborative and dependable, then opportunities will come to you; you need not search for them. People will invite you to participate on panels or co-author articles; get more traction out of these opportunities by converting the research you conduct for them into an essay, blog, article, or book chapter.

I have also discovered that the best ideas arise organically. Do not force yourself to write on topics that you believe others, namely law review editors, will perceive as important or scholarly. Instead, write about whatever interests you. Doing so will make your scholarship feel like an escape, not an obligation.

Most importantly, when you are in a writing mood, WRITE! Do not waste your day at the computer battling writer's block simply because Friday is your designated "writing day." Words and ideas will either flow or not; you cannot force them.

V. Finding Time to Write

But once inspiration comes (and it will), how will you find time to write without sacrificing other personal and professional commitments? This challenge, felt by all, is perhaps more difficult to overcome, but here are several suggestions.

"Do not force yourself to write on topics that you believe others, namely law review editors, will perceive as important or scholarly."

Create an environment that facilitates creative thinking and exploration, even if this means working outside the office. Work at a noisy coffee shop or in an empty, quiet meadow – wherever you think best. Know yourself and establish a teaching schedule that will maximize your productivity. For instance, if you need long periods of time to write, then ask your Academic Dean or Director for a teaching schedule that permits you to have one to two days without class. Make those days count. Escape to your writing oasis. Wear your "writing attire," play soft music, sip chai, or do whatever motivates you. Do not be afraid to work off campus; sometimes it is more important to be productive than present.

Get organized. Use software tools like Zotero, Dropbox, and TWEN to help you organize your research to facilitate efficient writing and editing. Create a TWEN or Sakai course page devoted to your project. Grant your research assistants ("RAs") access to it. Then create folders and subfolders within that course page keyed to components of your piece, whether subsections of a draft article or chapters of a book-in-progress. Include other folders for "Drafts," "RA-reviewed Drafts," and "Final Drafts" to help you and your RAs keep track of where the document is in the various stages of the writing process.

Consider different publication formats and venues. A multitude of publication formats and venues exist that accept submissions year-round.[7] Select the timeline and commitment that is the most suitable scholarly fit for you. During busy seasons, the best fit might be a blog post, media contribution, or short scholarly essay for *The Second Draft*.[8] At other points, however, you may have more time to draft a lengthy law review article,[9] book chapter, or book. Like publication formats, timelines also vary significantly. When drafting a book, you and

7 *See* https://www.lwionline.org/resources/publications-for-scholars.

8 *See* https://www.lwionline.org/second-draft-call-for-submissions-fall-2017-issue ("The Second Draft is a publication of the Legal Writing Institute ("LWI") published online biannually. We primarily publish essays, book reviews, and short, scholarly articles on a vast array of topics.").

9 For a ranked list of law review articles, see http://lawlib.wlu.edu/LJ/. *See also* The Journal of the Legal Writing Institute, http://www.legalwritingjournal.org/about-us/ (a peer-reviewed journal established in 1988 to "provide a forum for the publication of scholarly articles about the theory, substance, and pedagogy of legal writing and to encourage a broader understanding of legal writing and the teaching of it.").

your publisher will establish a mutually convenient schedule. With other formats, however, you may be at the mercy of the editor's timeline with far less flexibility. By comparison, with a media contribution or blog post, the timing may be entirely up to you.

To the extent that your institution provides RAs, use them effectively. One way to do this is to establish clear formatting and submission guidelines for them before they commence work so that no time is wasted redoing projects that failed to meet expectations. Require them to undergo training with a research librarian and/or your past RA. Provide them with an action item list for the month or the semester so that when the RA completes a project he or she moves directly to another, rather than waiting to receive direction from you. This requires significant planning on your part, but just like pre-writing enhances a final written product, "outlining" your scholarly agenda will significantly improve your productivity. Your RA will keep moving forward, and you can still flexibly interject time-sensitive "priority" assignments as needed. Introduce your RA to any editor(s) with whom you are collaborating and copy your RA, as appropriate, on correspondence with the editor so that he or she can hopefully resolve minor issues, such as providing a research source, before unnecessarily escalating them to your attention.

Establish a workable teaching schedule. Ask your Academic Dean or Director if you can enjoy a reduced teaching load during a semester when you are finishing a single, major project like a book. Never hesitate to request a schedule that will better fuel your productivity. For example, if you prefer to write in short bursts each day, ask your dean not to stack multiple classes on a single day so you can build in a few hours each morning or afternoon for scholarship. On the other hand, if you prefer long, uninterrupted periods of time to write, establish a teaching schedule that confines all your classes and office hours to two to three days per week. Keep at least one to two full days or afternoons to write. Then resist the temptation to saturate those designated times with student conferences, committee meetings, or other competing obligations. To avoid distractions, work off-campus on "writing days" and turn off your email and smartphone so you can exclusively focus on your scholarship.

Get traction.[10] Maximize the value of every minute you invest in scholarship by using each piece or presentation to prompt additional opportunities. For example, if you present on a topic, convert that presentation into a written piece. If you write a piece, present on it at a conference, webinar, or workshop during the writing process. The constructive feedback you receive will strengthen the final product, while the presentation will raise awareness of your forthcoming piece. Rather than reinventing the wheel, build on past pieces. In a subsequent article or presentation, deeply explore the curious question that arose while you were writing your last law review article. Let it be the basis for your next work. Repurpose longer articles into shorter, more accessible formats like blog posts or media contributions that refer readers to the original piece; the latter will reach a new and different audience that may not have otherwise discovered your work.[11]

VI. Conclusion

In conclusion, the best ideas often come from unexpected places. Keep an open mind and periodically complete the idea inventory above to get your creative juices flowing. Find a healthy scholarly synergy and when opportunities arise, seize them. Create a personal writing oasis that facilitates creative thinking and intellectual exploration. Most importantly, write whenever the mood hits and have fun!

"Maximize the value of every minute you invest in scholarship by using each piece or presentation to prompt additional opportunities."

10 I attribute this sound advice to my colleague and esteemed scholar Professor Ron Wright.

11 For pedagogical pieces, consider submitting to teachlawbetter.com, which posts blogs devoted to celebrating experiments in pedagogy. Other legal blogs exist, including Legal Writing Matters (Suffolk), LawProfs Blog, Appellate Advocacy Blog, and a blog for the Institute for Teaching and Learning.

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A Structural Approach to Case Synthesis, Fact Application, and Persuasive Framing of the Law

"Among the thorniest of these skills are synthesizing cases, applying facts, and persuasively framing the law."

By Lara Freed and Joel Atlas

Lara Freed is a Clinical Professor of Law, and Joel Atlas is a Clinical Professor of Law and Director of the Lawyering Program, at Cornell Law School in Ithaca, New York.

Introduction

Lawyering-skills courses, although typically writing-focused, address a wide array of topics. Indeed, to prepare an effective legal document, students must not only write well but analyze well. And, although teaching the pure-writing aspects of the course is certainly a challenge, teaching the analysis-related skills is often the most difficult.

Among the thorniest of these skills are synthesizing cases, applying facts, and persuasively framing the law. Professors struggle to teach these skills, and students consistently struggle to understand and implement them. To lighten the burden for both professors and students, we have approached these skills structurally and, in doing so, have identified the fundamental components of the skills and common pitfalls associated with understanding and implementing them. With this foundation, we have created teaching models and examples that provide professors with a systematic, refined method for helping students acquire these skills.

A. Case Synthesis

Case synthesis is the process of determining the rules that govern a particular legal question. These rules serve an educative function and form the "R" component of classic organizational structures known as "IRAC" (issue, rules, application, conclusion) or "CREAC" (conclusion, rules, explanation, application, conclusion). Underlying the need for case synthesis is the principle of rule-based reasoning—i.e., the principle that, to resolve a legal claim, a rule or set of rules is applied to a set of facts.[1]

> Our teaching model is as follows:
>
> Case synthesis = (1) extracting accurate rules from individual cases + (2) evaluating these extracted rules collectively to create a governing rule or set of rules.

The first step in this case-synthesis model is rule extraction: determining the rule or rules for which an individual case stands. The goal is to ascertain how the case contributes to the law governing the factual scenario.

On occasion, a case may state its rule or rules explicitly. Extraction may then require only selecting and later reporting the relevant statements.

More often, however, considerable analysis of the case is required. Indeed, where cases focus on facts and conclusions rather than reasoning or rules, rule extraction requires reading between the lines to assess the court's latent reasoning and root out the rules that logically follow from the court's resolution.

Most importantly, the extracted rule should be accurate. To be accurate, a rule must not be overly broad or overly narrow. And an overly narrow rule, apart from its potential inaccuracy, is of little (or no) value.

1 *See* Richard K. Neumann, Jr., Ellie Margolis & Kathryn M. Stanchi, Legal Reasoning and Legal Writing 9–16 (8th ed. 2017).

Example:

What is the rule to be extracted from the following result in a case?

When more than five witnesses allegedly saw the defendant's car pass through a red light and strike the plaintiff's vehicle, the court precluded testimony as to these facts from more than three witnesses.

Too broad (and thus inaccurate): "No more than three witnesses may testify for one party at a trial."

Too narrow (accurate, but of little future value): "In a vehicle-accident case in which the plaintiff alleges that the defendant's car passed through a red light and struck the plaintiff's vehicle, no more than three witnesses may testify as to these facts."

Accurate, and not too narrow: "Evidence may be inadmissible if it is cumulative and unnecessary."

Accuracy also depends on the proper use of words of authority (such as "may," "must," or "must not") that permit, mandate, or prohibit certain action. A rule or a set of rules that includes such language should specify the goal of the action (or inaction) or the consequence of failing to perform it.

Example (for a stand-alone rule):

Not this: "A non-resident defendant's print advertisements must regularly target the forum state."

But this: "To support general jurisdiction, a non-resident defendant's print advertisements must regularly target the forum state."

Likewise, to maximize value (even aside from persuasive impact), a rule that includes factors should indicate which way the factors cut.

Example:

Less helpful: "To evaluate whether a non-resident defendant's website establishes sufficient forum contacts for general jurisdiction, courts consider the website's level of interactivity and commercial nature."

More helpful: "Courts are more likely to hold that a non-resident defendant's website establishes sufficient forum contacts for general jurisdiction if the website is highly interactive and generates substantial business from forum-state residents."

The second step in our case-synthesis teaching model is to evaluate the rules and the courts' resolutions so as to create a collective rule (or set of rules) governing the factual scenario. This step, which ascertains what the cases stand for when read as a whole, requires identifying similarities and differences among the cases and evaluating why some cases were resolved similarly to or differently from each other.

In some situations, as illustrated below, a limited rule can confidently be extracted from an individual case, but additional cases expand the depth or scope of the rule.

Example:

Research question: At a guilty plea hearing, what type of factual recitation by the defendant is required?

Case #1: At a guilty plea hearing for robbery (i.e., forcible theft), the defendant admitted to the theft but never mentioned the use of force. Held: plea valid.

Extracted rule: "To plead guilty validly, a defendant need not admit to all elements of the crime."

Case #2: At a guilty plea to robbery, the defendant admitted to the theft but denied the use of force. Held: plea invalid.

Extracted rule: "To plead guilty validly, a defendant may not deny committing an element of the crime."

Synthesized rule: "To plead guilty validly, a defendant need not admit to all elements of the crime, but the defendant may not deny committing an element."

"A rule or a set of rules that includes such language should specify the goal of the action . . . or the consequence of failing to perform it."

"One common weakness of a fact-application section is that it fails to address the specific facts at all . . . ."

In other situations, the rule to be extracted from an individual case can merely be guessed, but a review of additional cases confirms or dispels the guess and thus allows the writer to confidently create a synthesized rule.

> Example:
>
> Research question: In a case of monetary theft, when is money possessed by the suspect admissible?
>
> Case #1: A $20 bill is stolen; upon arrest, the suspect possessed a $20 bill. Held: bill inadmissible.
>
> Extracted rule: "In a theft case, a bill possessed by a suspect upon arrest may be inadmissible." (The circumstances in which this is true are speculative, although one might surmise that the denomination of the bill is dispositive.)
>
> Case #2: A $2 bill is stolen; upon arrest, the suspect possessed a $2 bill. Held: bill admissible.
>
> Extracted rule: "In a theft case, a bill possessed by a suspect may be admissible." (As with case #1, the circumstances in which this is true are speculative.)
>
> Synthesized rule: "In a theft case, a bill possessed by a suspect upon arrest is admissible if the denomination of the bill is unusual and it matches the denomination of the stolen bill."

B. Fact Application

An effective fact application (the "A" component of IRAC or CREAC) links the facts with the rules and typically draws legally significant comparisons between the facts of the case and the facts of precedent.

One common weakness of a fact-application section is that it fails to address the specific facts at all but merely states that the facts meet the relevant legal test. Such a fact application would be conclusory.

> Example:
>
> Legal rule: "To be valid, a guilty plea must be knowing and intelligent. For a guilty plea to meet these requirements, the defendant must waive the right to a jury trial and understand the nature of the crime to which the defendant is pleading."
>
> Fact application (conclusory): "Here, at the guilty plea, the defendant waived the right to a jury trial and understood the nature of the crime to which he pleaded. Therefore, the guilty plea was knowing and intelligent."

Also common is a fact application that is disembodied from the legal rules, in that the writer merely repeats, rather than analyzes, the facts. Such a fact "application" fails to explain why the facts do or do not satisfy the governing rules and, as a result, mistakenly leaves analytic work to the reader.

> Example:
>
> Legal rule: "To be valid, a guilty plea must be knowing and intelligent. For a guilty plea to meet these requirements, the defendant must waive the right to a jury trial and understand the nature of the crime to which the defendant is pleading."
>
> Fact application (disembodied from rules): "Here, at the guilty plea, the defendant replied affirmatively when the court informed him that there would be no jury trial. The defendant also referenced the elements of the crime to which he was pleading. Defense counsel added that she had explained to the defendant the terms of the plea. Therefore, the guilty plea was knowing and intelligent."

A fact application should, therefore, both link the rules and the facts and include the reasoning that purportedly leads to a particular conclusion.

Our teaching model is as follows:

Fact application = (1) referencing the legally relevant facts (without devoting an entire sentence to pure fact) + (2) explaining

why the facts do or do not satisfy the legal rules, using key terms from the rules.

If factually similar precedent exists, step (2) should show why the proposed conclusion is consistent with that precedent. If the required analysis is complex, step (2) should also respond to potential counterarguments and distinguish adverse authority.

Example:

Legal rule: "To be valid, a guilty plea must be knowing and intelligent. For a guilty plea to meet these requirements, the defendant must waive the right to a jury trial and understand the nature of the crime to which the defendant is pleading."

Fact application: "Here, at the guilty plea, the defendant's affirmative and unequivocal response to the court's statement that there would be no jury trial established a waiver of the right to a jury trial. Moreover, that the defendant accurately recited the crime's elements, which were simple, established his understanding of the nature of the crime. Defense counsel's indication that she had explained to the defendant the terms of the plea likewise confirmed the defendant's understanding of both the waiver and the crime. Therefore, the guilty plea was knowing and intelligent."

The complexity of the necessary fact application depends on the nature of the legal test and the similarities between the current case and precedent. For example, the fact application in a case governed by a number-based threshold test may require merely a statement that the threshold has or has not been exceeded. And, the fact application in a case with facts identical to those of a binding precedent may require merely establishing the factual match. If, though, as is most often the case, the legal test is nuanced or subject to interpretation, and the facts of the current case are not identical to those in a binding precedent, the fact application will require a lengthier explanation of why the facts do or do not meet the legal test and match or do not match the facts of precedent.

Two sample fact applications follow. The first, a poor fact application, references the relevant facts but fails to link them to the rules or to explain the similarities between the client's case and the facts of precedent. The second, an effective fact application that exemplifies rule-based and analogical reasoning, not only cites relevant facts but also tracks and invokes the rules, explains the reasoning, compares key facts to those in precedent, and responds to potential counterarguments.

Example:

Research question: Are the defendant's song lyrics relevant evidence at his criminal trial?

Applicable rules and explanation of precedent

"Evidence is relevant if it tends to make a determinative fact 'more or less probable than it would be without the evidence.' Fed. R. Evid. 401. A defendant's song lyrics tend to make the defendant's involvement in a crime more probable if the lyrics are written in first-person tense and describe activity that resembles central aspects of the charged crime. *United States v. Stuckey*, 253 F. App'x 468, 482–83 (6th Cir. 2007). In *Stuckey*, for example, the court held that a defendant's first-person lyrics were relevant because the lyrics described shooting 'snitches,' wrapping them in blankets, and dumping the bodies in ditches, and the prosecution accused the defendant of murdering a government informant in the same manner. *Id.* at 482."

Poor Fact Application

"Here, the defendant's lyrics are likely relevant evidence. The defendant has been charged with the murder of two young men who were discovered dead on a porch and beside a trash can, respectively. In his song lyrics, the defendant recites, 'Smoked him on the porch/Point blank/Youngblood outranked.' Additionally, the reference in *Stuckey*, 253 F. App'x at 482, to shooting

"The complexity of the necessary fact application depends on the nature of the legal test . . . ."

"Existing court decisions (including dissents) or statutes may have already framed some of the legal rules persuasively . . . ."

'snitches' is like the defendant's reference to shooting a 'Youngblood.' Thus, the court will likely hold that the lyrics are relevant."

Effective Fact Application

"Here, the defendant's lyrics are likely relevant evidence. First, the lyrics mostly use first-person tense. Although this tense does not appear in one of the stanzas, that stanza contains no actors and therefore fails to distance the defendant from the described conduct. Second, like the lyrics in *Stuckey*, 253 F. App'x at 468, the defendant's lyrics factually correspond to central aspects of the alleged crime by describing the manner and location of the crime—in this case, a close-range shooting on a porch. Moreover, the defendant's reference to a 'Youngblood outranked' could imply a gang rivalry, which corresponds with trial testimony about the rivalry between the defendant and the victim. Although the prosecution charged the defendant with a double murder and the lyrics reference only a single victim, this factual mismatch should not affect the lyrics' relevance because the lyrics deemed admissible in *Stuckey* described multiple shootings even though, there, the defendant had been charged with murdering only a single victim."

C. Persuasive Framing of the Law

Law students are typically exposed to persuasive advocacy in the second semester, and the switch from objectivity to advocacy is challenging for both professor and student. For the most part, students have until that point been exposed to only the mostly objective writing contained in court decisions; and as a result, students are largely unaware that the law can—and, in a litigation context, should—be framed persuasively. Below are models for teaching the persuasive framing of both legal rules and precedent.

1. Persuasive Framing of Legal Rules

Our teaching model is as follows:

Persuasive framing of the law = (1) determining the need for framing + (if necessary) (2) synthesizing rules that are favorable to your position (but still accurate) + (3) ordering the rules strategically.

a. Determining the need for framing

Existing court decisions (including dissents) or statutes may have already framed some of the legal rules persuasively and favorably to your client. If so, persuasive framing may well be unnecessary. If, however, the rules are stated objectively or framed persuasively but unfavorably to your client, framing is necessary for effective advocacy.

b. Synthesizing rules

To frame rules persuasively, one technique is to create defaults: rules synthesized so as to make a favorable result the norm rather than the exception. The key is to identify the end goal. What impression should be created from the rules? For example, is the goal for the reader to believe that a test is difficult to satisfy? Easy to satisfy? To create a default, accurately use limiting words and phrases, such as "unless," "as long as," "only," and "must," that satisfy the goal and thereby create the desired default.[2]

Example:

Consider a New York State statute that defines "possession" as "dominion or control."

A party seeking to secure a finding of possession would want to frame the definition broadly, creating a default in favor of possession.

That party might write the rule as follows: "A person possesses property as long as the person exercises either 'dominion or control.'"

A party seeking to avoid a finding of possession would want to frame the definition narrowly, creating a default against possession.

That party might write the rule as follows: "A person possesses property only if the person exercises 'dominion or control.'"

2 For additional discussion of this technique, *see* Bradley J. Charles, Applying Law 59 (2011).

Another technique is to use or avoid sympathetic or evocative words and phrases. For example, in a criminal-law context, the defense may choose to avoid framing rules to include the word "victim" (and instead use "complainant") or, to the extent that it would be adequately specific, to characterize property conjuring inflammatory images, such as narcotics or a machine gun, as "contraband."

Unfavorable aspects of the governing rules can be placed strategically to minimize their impact. Specifically, avoid stand-alone assertions of unfavorable law, and minimize unfavorable aspects of the rules by juxtaposing them against favorable aspects.

> Example (in a First Amendment school-speech case):
>
> Defendant-school's brief: "Although school officials cannot restrict student speech based on 'undifferentiated fear,' violent speech that targets an educator at the school supports a reasonable forecast of substantial disruption."
>
> Plaintiff-student's brief: "Although school officials perform discretionary functions, school officials cannot restrict student speech simply because the officials are embarrassed by the speech."

Finally, introducing controlling text, such as a rule or statute, with descriptive language may "prime" the reader to construe the text in a light favorable to the client.[3]

> Example:
>
> Before providing the text of a weapon-possession statute, write as follows: "The relevant statute bans a wide [or limited] range of items." Or, before noting the exceptions to a rule, write as follows: "Exceptions to the rule are numerous and broad" or "Exceptions to the rule are few and narrow."

To be accurate, synthesized rules must not enlarge or omit rule components. And, as noted earlier, rules should not be framed overly broadly or overly narrowly.

> Example:
>
> Consider the following free-speech rules. The overbroad example below inaccurately uses enhancing language ("especially if") instead of a qualifier ("provided that"). The overly narrow example below inaccurately uses a limiting word ("must") and fails to account for other bases upon which school officials can constitutionally regulate student speech.
>
> Plaintiff-employee's brief (too broad): "If the speech is in the public domain, visible to people, it is of public concern, especially if it relates to an issue of public debate."
>
> Plaintiff-student's brief (too narrow): "To regulate student speech, school officials must prove that they reasonably forecasted that the speech could substantially disrupt school activities."

c. Ordering Rules Persuasively

Rule statements should typically flow from the general to the specific. Also helpful is the common advice to begin each sentence with material that ended the previous sentence. But, to the extent that leeway exists, order rules strategically. For example, begin with and thus highlight rules related to factual or analytical strengths in your case, and defer and thus minimize rules related to factual or analytical weaknesses. Further, to the extent consistent with logic, list the factors of a legal test in an order that best shows your strengths.

2. Persuasive Framing of Precedent

An effective presentation of the law should include not only the rules themselves but also an explanation of those rules—i.e., fully educating the reader about the law requires not only citing supporting authority but also providing examples to prove the accuracy of the stated rules and show how a set of facts was resolved under those rules.

"Unfavorable aspects of the governing rules can be placed strategically to minimize their impact."

3 *See* Kathryn M. Stanchi, *Teaching Students to Present Law Persuasively Using Techniques from Psychology*, 19 Persp.: Teaching Legal Res. & Writing 142, 144–47 (2011).

"Generally, begin the explanation of precedent in an affirmative posture . . . ."

Our teaching model is as follows:

Persuasive framing of precedent = (1) phrasing holdings strategically + (2) using emphasis to favor the desired outcome.

a. Phrasing Holdings Strategically

In phrasing a court's holding, either in the text or an illustrative parenthetical, consider the following techniques:

- Choose words to support a narrow or broad interpretation of the case.
- Highlight analogous facts from favorable precedent.
- Neutralize adverse holdings by highlighting distinguishable case facts.
- Use phrases that suggest what the court in the current case should do.
- Emphasize the opponent's burden (if applicable).

b. Using Emphasis

Generally, begin the explanation of precedent in an affirmative posture by showing how courts have held in favor of, rather than against, the outcome sought in your case. Likewise, unless the primary challenge is to distinguish a leading, unfavorable case, provide greater depth and detail about precedent that resolved the issue favorably to your client and consider relegating unfavorable authority to illustrative parentheticals. Finally, use rhetorical tools, such as active voice and juxtaposition, to emphasize favorable facts and reasoning.

What follows is an example of persuasively framing the same precedent for competing sides.

Example (in a Title VII retaliation case):

In the explanation of precedent that follows, the case's holding is favorable for the employee. Accordingly, the employee's brief emphasized the court's rejection of a potential defense and, using juxtaposition, highlighted characteristics of the employment action that aligned with the employee's case.

Plaintiff-employee's brief

"In *Burlington*, 548 U.S. at 71, the United States Supreme Court rejected the defendant-railway company's contention that reassigning an employee from forklift duty to track-laborer tasks could not constitute retaliatory discrimination. Although the former and reassigned duties fell within the same job description, a reasonable jury could conclude that the reassignment was materially adverse because the track-laborer tasks were more arduous and less prestigious."

* * *

In the next explanation of precedent, because the *Burlington* holding is adverse for the employer, the employer's brief emphasized the employee's burden of proof, the objective standard, and distinguishing facts such as the co-workers' testimony. The employer also minimized airtime for the adverse case by using an illustrative parenthetical.

Defendant-employer's brief

"See *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 71 (2006) (holding that a jury could decide whether a railway employee's reassignment from forklift duty to track-laborer tasks was actionable where the employee provided 'considerable evidence'—including co-workers' testimony—that the track-laborer tasks were 'by all accounts more arduous and dirtier' and considered objectively worse)."

Conclusion

Our teaching models make these difficult and abstract analytical skills more concrete. Accordingly, the models help professors to show, rather than merely tell, students how to perform the skills effectively.

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How to Support International ELL Law Students When You Only Have a Few of Them

By Sue Liemer

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Many law schools in the United States, particularly those in large urban areas, have cohorts of international students pursuing a J.D. or LL.M. degree. Such schools often have separate sections of Legal Research and Writing (LRW) courses for their international law students. Using best practices, these law schools may have professors with expertise in teaching legal English, legal writing, and legal research to students from countries with a variety of primary languages and legal systems. These professors may also have experience translating United States legal, political, and social cultures to students from different cultural backgrounds. Law schools with large cohorts of international students may have additional programming in place to help them acclimate to their new environment, such as special orientation activities and a student organization that plans opportunities to socialize.

Other law schools, however, particularly those outside large urban areas, often have only a few international students at any given time, sometimes just one or two per class. This article addresses ways to meet the needs of a small cohort of international law students. Law schools admitting these students have the same obligation to provide appropriate support for them as law schools with larger cohorts of international students.[1] Law schools with just a few international students, however, may not be able to justify allocating significant additional resources for them.

"This article addresses ways to meet the needs of a small cohort of international law students."

International students with English as their primary language likely will be on a level enough playing field when they access the many types of support available to all law students. The support already in place in most United States law schools include formal academic support programs, faculty office hours, faculty mentors, upper level student teaching assistants or tutors, student organizations, wellness programs, financial aid counseling, and the like.

For the lone international student in the class who has English as a second (or third) language, however, different types of support often will be more helpful, especially before and during the first semester of law study. This article offers suggestions for supporting such students in ways that leverage existing resources, efficiently for the school and helpfully for each student.

I. What Could Go Wrong?

First, consider what could go wrong when a law school does not identify international students who are English Language Learners (ELL)[2] as needing specialized support and does not provide that support. Many highly capable students may struggle, or even fail, unnecessarily. As an example, here is a worst-case scenario from some time ago, when I taught in a different law school:

I learned after the fact about a J.D. candidate who came from an Asian country and for whom English was his second language. This student

1 The American Bar Association (ABA), the accrediting agency for law schools in the United States, requires that: "A law school shall provide academic support designed to afford students a reasonable opportunity to complete the program of legal education, graduate, and become members of the legal profession." Standard 309(b), ABA Standards and Rules of Procedure for Approval of Law Schools 21 (2017-2018).

2 Some readers may be more familiar with an older term, "English as a Second Language" or "ESL," which is now more commonly used to refer to instructional programs, rather than the students in such programs. For a helpful glossary, *see* http://www2.ncte.org/blog/2017/09/esl-ell-generation-1-5-why-are-these-terms-important/.

had not come to law school straight from his undergraduate studies. He was a young business executive, with a family of his own, a wife and children back home. He showed so much promise that his company decided to do something unprecedented in his home country: underwrite his J.D. degree at a law school in the United States. Some people from his country previously had had United States J.D. degrees underwritten by various government programs or non-profit foundations. But he was the first to have his *employer* send him to the United States to obtain an American law degree, in order to enhance his career and make him even more useful to the company upon his return. Evidently, he and his family were prepared to make the necessary personal sacrifices to take advantage of this plum opportunity.

When this student arrived at the law school in the United States that had admitted him, he was the only international ELL student in his class of some 130 entering first-year students. One criterion for his admission was his nearly perfect TOEFL[3] score. He had access to all of the same support programming that the rest of the first-year law students received. He worked hard, and he worked long hours, many more hours than the rest of his classmates. Indeed, he studied most of his waking hours, most of the week. He did not see his family back home until the winter break, and he was not known to socialize with his classmates. He had a lot riding on succeeding as a J.D. candidate. His legal writing professor predicted early on, however, that his English language skills were not strong enough to succeed in the legal writing course.

By the end of the semester, this lone international ELL student did not achieve a GPA sufficient to continue in law school with any chance of successfully acquiring a J.D. degree. He left, returned to his country, and by all accounts had a pretty miserable experience all around. Returning to his family and to an employer who had held him in such high regard must have been very difficult. Coming from a culture that highly values "saving face"[4] surely only compounded the personal and career cost for this student. As difficult as failing law school may be for any student, in the United States it is relatively common for young adults to start to prepare for one career and end up changing their life trajectories. In other countries, the shame of failure, particularly in an academic enterprise, may be far greater, so great as to ruin someone's lifetime prospects.

> "In the CESL office, I discovered kindred spirits, professors who love language just as much as legal writing professors do."

II. How Might a Law School Do Better?

The next time that same law school admitted an international ELL student as a J.D. candidate, the admissions office notified me during the summer, as I had requested in my role as the legal writing director. This student also came from an Asian country, a different one, and she had a nearly perfect TOEFL score, too. Determined to give this student a more reasonable opportunity to succeed, I contacted the university's International Students Center and explained the situation. That office provided information about its resources and also put me in touch with the university's Center for English as a Second Language (CESL). Most research universities in the United States, whether public or private, have some kind of office or center for international students akin to my school's CESL.

A. Work With the CESL Office

In the CESL office, I discovered kindred spirits, professors who love language just as much as legal writing professors do. The CESL professors were knowledgeable and genuinely excited about their work. Plus, they had bona fide training, expertise, and experience in working with international ELL students. They were used to working with ELL graduate students who arrived from many different countries to pursue Masters and Ph.D. degrees, and who then were expected to teach undergraduates in their fields.

Because the CESL professors were so knowledgeable about language acquisition skills for advanced university students, in one half-hour meeting, I

3 TOEFL is an acronym for Test of English as a Foreign Language.

4 To save face means "to avoid having other people lose respect for" you. *Save face*, Merriam-Webster Dictionary (2018) (https://www.merriam-webster.com/dictionary/) (last visited June 29, 2018).

was able to explain to two of them the language demands of studying law. They knew the difference between English language skills used to navigate daily life in the United States, English language skills needed to be ready to start an undergraduate curriculum, and English language skills needed to study for a language-intensive, advanced degree. They also understood quickly my explanation that studying law in the United States requires students to use English at a post-college level when reading, listening, speaking, and writing. They agreed that no TOEFL score could be relied on to accurately report a graduate student's skill level[5] in all these aspects of language usage. And they understood that even a perfect TOEFL score does not certify that a student has the English language skills to study law in the United States successfully.

In that same half-hour meeting, I learned about the CESL resources available for our lone entering international ELL law student. The CESL professors already knew how to look beyond the TOEFL score and assess the English language skills of international ELL students seeking higher degrees. Working together, with their knowledge of how to teach ELL and my knowledge of how to teach professional level communication skills for the practice of law, we devised a plan to assess our new law student's English language skills levels.

In addition, the CESL professors explained that they already had developed and fine-tuned English courses targeted specifically at the population of international ELL graduate students. These courses already were on the fall semester schedule. If appropriate, they informed me, a law student would be welcome to take one of these courses. If we ever had enough international ELL law students to fill a separate section, the CESL professors said they would be happy to teach it.

B. Assess Each Student's English Skills Level

Next, I created the assessment instrument that the CESL professors and I had spoken about. Our main goal was to assess how the English language skills of the new international student compared to her J.D. classmates, almost all native English speakers. An additional goal was to minimize, to the extent possible, the stress any student being tested might feel, so we could achieve a reasonably accurate assessment of her functional English language skills level, while helping her feel supported during the process.

> "An additional goal was to minimize, to the extent possible, the stress any student being tested might feel . . . ."

For the subject matter of the assessment, I purposely chose a topic that did not require any prior knowledge of the law but was law-related and indeed part of the law school curriculum. That subject turned out to be part of an introduction to negotiation skills, with an explanation of the two general types of negotiators' natural styles, either cooperative or competitive.[6] Many other topics would serve the goals of this type of assessment just as well.

The student did not receive the written instructions describing the assessment until it actually began. This approach meant that understanding the written instructions was a factor in the assessment. I did take special care to write the instructions in plain English,[7] and the CESL professors reviewed the instructions to ensure they were clear and lacked the need for any unusual cultural knowledge.

Each portion of the assessment had a time limit, calculated to be at least twice the time a native speaker might need to complete each portion and to keep the length of the full assessment no longer than two hours. The varying dynamics of the test helped break up the time span and provided natural pauses. Another reasonable choice might have been allowing the student whatever amount of time she needed on each portion. The amount of time a student needs

5 *See, e.g.,* Lan Thi Vu & Phu Hoang Vu, *Is the TOEFL Score a Reliable Indicator of International Graduate Students' Academic Achievement in American Higher Education?,* 1 Int'l J. on Stud. Eng. Language & Literature 11, 18 (2013) (concluding that "[t]here is no or very low significant correlation between the TOEFL scores and GPA according to the objective data of international graduates' input, so TOEFL scores cannot be regarded as an effective predictor of academic success.").

6 *See* Stefan H. Krieger & Richard K. Neumann, Jr., Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Fact Analysis (5th ed. 2015).

7 *See generally* Richard C. Wydick, Plain English for Lawyers (5th ed. 2005).

"For the reading component of the assessment, I chose a law school textbook reading assignment on [a] negotiation topic . . . ."

to complete each portion could provide useful information about skills levels. We decided that the standardization of time limits would be useful. Time limits would help us figure out how to fine-tune the assessment instrument based on our initial experience with it. They would also make it easier to compare the results of future students with the results obtained from this first assessed student. And they would provide the student being assessed with a reliable sense of whether she was proceeding with each task at a pace we expected.

The student was allowed to bring her laptop, pen, pencil, eraser, and a dictionary of her choice into the assessment room. She was told ahead of time that she would be able to continue to access these items during the assessment. Paper was provided for her. These allowances were meant in part to minimize unnecessary stress on the student. We did not want one or two vocabulary words to trip up her up as she was working in her second language. When studying law, she naturally would be able to look up words and would gain additional vocabulary. The professors most involved in the assessment, the legal writing director and one of the CESL professors, were working in nearby rooms, in case a question arose.

For the reading component of the assessment, I chose a law school textbook reading assignment on the negotiation topic, about two pages of singled-spaced text.[8] A shorter reading assignment, such as a single paragraph, might not have realistically assessed the student's ability to follow and understand the meaning of longer passages in law school textbooks. An even longer reading assignment likely would not have provided the assessors with much additional information. And obviously reading it would have taken more time. Perhaps more important, a longer assignment had the potential to overload the cranial language center[9] of a student who may have been a little rusty working in her second language, affecting subsequent parts of the assessment and creating additional stress.

Because the reading was not a case or statute, it was in fact easier to read than most law school homework assignments. I reasoned that few entering first-year law students had solid experience reading cases and statutes; most of them would learn how to read such materials during their first semester of law school. I was more interested in finding out whether the entering international ELL student could read and understand more ordinary English, written at a level we assume entering law students will understand easily. The student was allowed to underline, highlight, and write notes on the hard copy as she read. The time limit for the reading portion was 25 minutes, roughly twice the amount of time a careful, fluent reader likely would need.

For the listening portion of the test, I had on hand a video recording of a law professor introducing negotiation skills to a first-year class. I used the part where the professor explained that generally negotiators have one of two natural styles, either cooperative or competitive. Similar video recordings should be easy to find, either by asking a professor who teaches the chosen subject matter or by searching online. This excerpt was about seven minutes of a law professor's lecture, delivered with all of the non-verbal cues of ordinary, in-person speech,[10] and at the level of vocabulary and syntax commonly used in a law school classroom. Again, it did not cover legal theory, legal doctrine, or black letter law, specifically because most law students do not arrive at law school already familiar with how to process that type of information. They do arrive, however, ready to start learning those processes. To simulate a law school's classroom conditions, the student saw the video recording only once. She was allowed to take notes as she watched and listened. The time limit for this

8 Krieger & Neumann, *supra* note 6.

9 *See* Rosa Kim, *Lightening the Cognitive Load: Maximizing Learning in the Legal Writing Classroom*, 21 Persp: Teaching Legal Res. & Writing 101 (2013) (stating that "[t]here is little doubt that law school learning taxes the working memory and stretches its limits . . . . Even if some students are able to take in the new information, the ability to process complex concepts is compromised when the working memory is overtaxed.").

10 *See* Michael J. Higdon, *Oral Argument and Impression Management: Harnessing the Power of Non-Verbal Persuasion for a Judicial Audience*, 57 Kansas L. Rev. 631, 636-652 (2009) (explaining that much of oral communication is non-verbal and relies on characteristics such as volume, inflection, pitch, timing, non-words, facial expressions, and body language).

portion of the assessment was fifteen minutes, to allow time to transition to and from it.

Next, the writing component of the test consisted of a prompt for the student to answer, in her choice of either handwriting or typing. The prompt simply asked the student to write one page on what she had learned about the two types of negotiating styles.[11] No particular format was required or suggested, so the student could decide how best to organize and express the information learned.

Giving ELL students the choice of whether to handwrite or type may be important for some. English uses the "qwerty" keyboard.[12] Many other languages that use the Roman alphabet have different keyboards. And obviously, languages using other alphabets have their own keyboards, too. Thus, the keyboard that an international ELL student uses may be quite different from the qwerty keyboard that most readers of this article use instinctively. A student used to a different keyboard for her first language may type instinctively in that language and then have to think through more consciously how to type on a qwerty keyboard, hunting and pecking more. Any native English speaker who has ever tried to type on a different Roman alphabet keyboard can attest to how much it slows down and frustrates the writing and thinking processes. However, the assessment's goal was not to assess the student's typing or handwriting skills. Presumably the typing or handwriting skills of an able-bodied young adult using English would improve with practice. Thus, the student was given the choice.

The time limit for the written portion of the test was 50 minutes, again roughly twice what this portion of the assessment should take a native English speaker. In addition to the items she already had with her, the student was allowed to keep a hard copy of the reading assignment, her notes from the reading, and her notes from watching and listening to the video recording. She was told ahead of time that she would be able to continue to access these items as the assessment proceeded.

Once the assessment was completed, the legal writing and CESL professors both found it helpful to assess the written portion. All legal writing professors can compare the fluency, clarity, and mechanical accuracy of the prose to those of typical incoming first-year law students. Any legal writing professor with a few years of experience critiquing first-year law students' papers should be able to perform this part of the assessment. The legal writing professor can apply the same criteria used for the writing mechanics and clarity of a first legal writing assignment. Many legal writing professors assign a short diagnostic writing assignment at the beginning of the first semester. The legal writing professor could edit the appropriate parts of a rubric or other assessment instrument used for one of those diagnostics (or almost any first-semester legal writing assignment) for use in this context. As with all mechanical errors made by new law students, the same exact error that shows up repeatedly should count as just one error, in the sense that it shows just one misunderstanding. However, different types of language errors should count separately.

The CESL professor's assessment of the student's writing should be required, in part, to fill the gaps in the legal writing professor's expertise or experience. Some legal writing professors will be strong grammarians, have first-hand experience working in multiple languages, or bring other task-specific skills to the ELL assessment. Few legal writing professors, however, will have all of the same expertise that a CESL professor brings to the task. Conversely, few CESL professors will be familiar with the level of language skills needed to succeed in law school. Even if the legal writing professor and the CESL professor arrive at similar conclusions, having each assess the writing of an ELL student provides a worthwhile check on the

"Giving ELL students the choice of whether to handwrite or type may be important for some."

11 The exact text of the prompt read:

> Please write a summary of what you learned during the reading and listening portions of this evaluation. Please summarize the main points and include examples to help illustrate the main points. Your examples may come from the reading, the videotape, your own imagination, or any combination of these sources.
>
> You may write your summary with a pen and paper or your computer. Please use regular paragraphing. Please do not write more than one page.

12 "Qwerty" refers to the layout of the alphabet on the keyboard, a pattern of letters that was developed in the 1800's for typing in English. *See Jimmy Stamp, Fact of [sic] Fiction? The Legend of the QWERTY Keyboard,* Smithsonianmag.com (May 3, 2013) (last visited July 10, 2018).

other. Writing is the crucial communication skill for law students and lawyers. If you are going to expend the effort of assessing your lone international ELL student's English skills, you might as well double the likelihood of getting the writing results right. Thus, both an experienced legal writing professor and a CESL professor should assess the written work of an entering international ELL student.

"To make this part of the assessment less stressful than being called on in a Socratic method law school classroom, we structured it as a conversation."

Mechanical writing errors that are common among entering first-semester law students may be overlooked for this assessment. For example, an international ELL student may use the wrong preposition after a verb or to start a prepositional phrase. Choosing the colloquially correct preposition is the last aspect of a new language that a non-native speaker consistently performs correctly. Increasingly, first-year law students who are native speakers choose the wrong preposition too and will need correction, instruction, and practice. Another example of a mechanical error that many first-year law students will need instruction in anyway is achieving parallel structure in lists of items, especially if each item in the list is a phrase. The legal writing professor should pay more attention to the types of mechanical writing errors that rarely are seen among native English speakers in the first-year class, such as odd word order in a sentence or multiple errors in verb tenses.

The final portion of the assessment focused on the ability of the international ELL student to speak in English. To make this part of the assessment less stressful than being called on in a Socratic method law school classroom, we structured it as a conversation. Two of the CESL professors and two law professors, including a legal writing professor, were present. Of possible significance for some international students, depending on their native culture, is for the professor doing the assessment to take gender into account. In some circumstances, it may be preferable for a female professor to assess a female student. Our assessing professors also varied in age. In retrospect, one CESL professor and one legal skills professor would have sufficed because many incoming law students regardless of their language fluency would be plenty nervous in a conversation with four professors.

The CESL professors began the conversation by exchanging informal pleasantries with the student, asking questions about her background and the like. They asked the law professors ahead of time not to join in the conversation until the topic turned to the subject matter of the earlier portions of the assessment. This initial conversational exchange gave the student something very familiar and easy to talk about, herself. From the law professors' perspectives, this exchange helped create some rapport with the student and let her know the professors were genuinely interested in getting to know a little about her. To the extent it helped her relax a bit, it allowed her to function in spoken English more as she would in a non-assessment situation.

From the CESL professors' perspectives, the initial conversation was an integral part of their assessment of the student's spoken English skills. They reported that they use routine conversational exchanges to assess a student's baseline level of fluency in spoken English. What the law professors perceived as an ice breaker turned out to be an important part of the CESL professors' assessment. Thus, this seemingly trivial[13] aspect of the assessment turned out to be important for our goals of accurately assessing the student's English language skills, while simultaneously limiting her stress and helping her understand our overall intent was to be supportive.

The law professors then proceeded to ask the student to describe what she had learned during the assessment and asked follow-up questions related to the subject matter. The student had already absorbed the information via reading and listening. She also had consolidated her learning by thinking about how to write about the new information. And then, as she was writing, she had figured out what vocabulary and syntax to use to describe what she had learned. At this point in the assessment, she had reinforced her use of English related to the subject matter four different ways. The subject matter was not difficult for a college graduate to

13 After initial introductions, the CESL professors asked questions like: "What city do you come from?" "How long have you been in the United States?" "Have you found a place to live in our town?" As instructed, the law professors only listened during this part of the conversation.

understand. Thus, her spoken description of what she had learned was likely a reasonably accurate representation of her ability to express herself in spoken English on a topic relevant to the study of law.

At the end of the conversation, a CESL professor asked the student how she felt she performed during the assessment. An open-ended question may provide additional useful information at the end of the assessment. Sometimes a student's perception of her language skills is not accurate, and she may need guidance on that topic; other times a student's perception may confirm the assessors' conclusions.

Our assumptions that the oral English assessment was reasonably accurate was reinforced by the fact that it was occurring in the context of an informal conversation. Although she was speaking with four professors, they were not in a classroom, they were dressed casually in mid-summer attire, and they were careful to use supportive and encouraging language and non-verbals. The situation differed greatly from the performative speaking when a first-year law student is called on to answer Socratic questioning in front of their classmates, who may number anywhere from 60 to 120, depending on the law school. This assessment conversation took place at a leisurely pace, over approximately 20 minutes.

As a word of caution, although many law professors may think they can identify a non-native speaker's level of spoken English fluency, the assessment of oral English skills is best left to the professionals. Native speakers not trained to make this type of assessment may place undue weight on aspects of oral communication that make listening more difficult, such as the speaker's accent or inflection. Mirroring the legal writing professor's expertise and experience in diagnosing and weighing written English problems, the CESL professors have expertise and experience in diagnosing and weighing spoken English problems. Just as the legal writing professor will know which writing skills are typical of entering law students and likely to improve quickly upon immersion in legal studies, the CESL professor will know which speaking skills are typical of entering graduate-level international ELL students and likely to improve quickly upon immersion in an entirely English language environment.

I have heard tales of law schools assessing entering international ELL students in ways far less likely to produce accurate results. Suffice to say, a single conversation on the telephone with an administrative assistant is not adequate. The assistant may not really know who is on the other end of the telephone conversation. And, of course, few administrative assistants have actual expertise in assessing ELL skills.

A conversation using Skype or a similar platform is also problematic in other ways. The student may experience the exchange as more of a formal interview, less of an everyday conversation. Conversely, a student used to communicating via Skype with friends may approach the exchange too casually. A student also may not be savvy about simple production adjustments needed to create the type of video that the professors on the other end of the conversation are used to seeing on a screen.[14] If your goals include helping the student feel supported and getting an accurate read on the student's oral English skills, Skype is less likely to be helpful.

Conducting the type of in-person assessment described above, the total law school resources used consisted of about two days of the legal writing director's time, most of it in the middle of the summer. Once the assessment instrument was created, simply scheduling and administering it takes only a few hours of the legal writing director's time. The CESL professors are also less busy in the summer, making it the ideal time for conferring about and creating the assessment instrument.

First-year law students typically arrive on campus for an orientation program a week before others. Many law schools encourage their first-year law students to move into new housing the week before orientation starts, as law school orientations typically include academic work. Other international university students usually

"[A]lthough many law professors may think they can identify a non-native speaker's level of spoken English fluency, the assessment or oral English skills is best left to the professionals."

14 While serving on law school hiring committees, I have seen young lawyers participate in Skype interviews without adjusting the height of their screen, the background in the room, or their non-verbals in ways that would make what the committee sees on the other end of the conversation more flattering to the candidates.

arrive during law school orientation. So the CESL office is less likely to be swamped the week before. Encouraging new international ELL law students to arrive even earlier than their first-year law school cohort will allow the professors involved to complete the assessment sooner and to have more time to put any needed accommodation in place. The ELL student will have more time to acclimate, too.

"[T]he legal writing professor gave detailed feedback on the student's written English throughout the semester . . . ."

C. Provide Appropriate Accommodations

Once the law school has a reasonably accurate assessment of the English language skills of an international ELL student, what happens next? In the case described here, the legal writing director, the CESL professor most involved, and the law school's associate dean for academic affairs had a conversation about the assessment results. Based on the student's prior academic record, we started with the assumption that she was highly motivated, had strong language skills in her first language, and knew how to learn at the level expected for the study of law. Based on the in-house assessment, the legal writing director noted significant aspects of core English writing skills that the student needed to work on to achieve fluency in basic written English. Also based on the in-house assessment, the CESL professors noted significant aspects of English speaking skills that the student needed to work on to achieve fluency in spoken English. Remember, this student had an almost perfect TOEFL score.

We concluded that the student was fully capable of succeeding in achieving a J.D. degree, if she were given time to strengthen her English language skills. We understood that her immersion in an English language environment would contribute to quickly improving her core English skills. We also understood that all first-year law students have to learn new, discipline-specific vocabulary and language conventions. The combination of improving her English language skills while meeting the challenges that all first-year law students encounter seemed to be more than educators should expect a student to handle successfully in just fourteen weeks. Overloading the student was not a sound pedagogical approach.[15] Instead, we decided to provide a course accommodation.

We chose to drop a first-semester course from the student's schedule. In its place, the student took the highest level language course the CESL professors taught to international ELL students entering the graduate school. However, the student did not receive credit for that course, and she had to complete it to continue in law school. She also had to make-up the dropped first semester course the following fall semester. The accommodation specified that a review would take place to determine how best to proceed after one semester. In essence, this incoming law student had the equivalent of an Individual Education Plan (IEP). It was in writing and signed by the student, the assessment professors, and the associate dean.

The dropped course was a casebook course, not the legal writing course. Our reasoning was that the legal writing course provided detailed instruction and recursive practice using English in a legal context. The legal writing class sessions were held in small sections, and frequently included small group exercises. Thus, the student had more opportunities to speak English during these classes than other ones. The setting for speaking in those classes was also less stressful than in the larger Socratic classes. The legal writing professor was used to frequent in-person conferences with students, providing additional opportunities for conversations within the context of the discipline. And the legal writing professor gave detailed feedback on the student's written English throughout the semester, in addition to feedback the student received in the course taught by CESL. Because the legal writing course is the one with the most language instruction and practice, arguably it should be the last one cut from an international ELL student's schedule.

Another benefit of being in the legal writing course was the access it gave the student to a Teaching Assistant (TA) who was a strong writer. The legal writing TAs always received training and ongoing guidance from the legal writing professors and helped

15 *See* Kim, *supra* note 9.

to increase the professors' reach. For an international ELL student (as for any first-year student with more language challenges than their peers), the legal writing professor can assign a TA to meet once a week with that student. Past experience shows that simply telling the new student to meet once a week with the TA may not work. Likewise, simply having the TA contact the student to encourage a weekly meeting may also not work. International students from many cultural backgrounds may shy away from extra assistance and may not want to admit that they could use some help. The way to bypass this reluctance is to have the TA tell the international student that the professor, who is the TA's work supervisor, has assigned the TA to meet once a week with her, and if the TA fails to do that, he will lose his job. The international student will likely not want that to happen. So she will meet weekly, start talking, and eventually have useful tutoring sessions.

Thirty percent of law schools in the United States today also have a Writing Specialist,[16] often a professional with a Ph.D. in English, focusing on the teaching of rhetoric and communication. The in-house Writing Specialist is a prime resource for an international ELL student (again, as for any student with more language challenges than their peers). The legal writing director or associate dean can assign the student to meet once a week with the Writing Specialist, starting during orientation week. At first, those meetings may be guided by the ELL student's questions stemming from the CESL course lessons, the use of written English throughout the law school learning experience, or even daily life in the United States. Once the first short legal writing course assignment is returned with the legal writing professor's written critique, that feedback then can guide the weekly meeting between the Writing Specialist and the ELL student. Those meetings about written law school course work are far more likely to happen and to be productive if they are routine and some rapport has already been established, even before the first legal writing paper is returned.

Even at a university with services and programming in place for international ELL students, if the law school fails to identify students who need that assistance and connect them to it, a student's academic experience may be disastrous. The first missed opportunity may be when a law school admissions director fails to flag an international ELL student early for extra support. Ideally, the academic support director and legal writing director should be informed about a student's ELL needs in mid-summer. Another missed opportunity may take place when the law school registrar assigns the student randomly to a legal writing section. The student may end up in a section taught by an inexperienced professor who is ill-equipped to identify the student's specific needs or know where to locate assistance. Educators preparing students for a profession literally ruled by language and its nuances should not be missing these opportunities to provide appropriate academic support to students they have admitted.

D. Work With the International Students Center, Too

The assistance of the International Students Center need not end where it began, providing the law school with information on resources available around the campus. Law students are, indeed, different from other international students in some ways. In many ways, however, they have the same needs as other international graduate students. They typically are younger adults, away from home for an extended period of time, learning to live, work, and study in a foreign country and culture.

Although law students likely will have less time than other international students to enjoy the educational and social programming geared to international students' unique needs, they can still benefit from being connected to the International Students Center's information stream. Until true fluency is achieved, functioning in a second language alone can drain a student's mental, emotional, and physical energy[17] (even before taking into consideration the impact of the study

> "The in-house Writing Specialist is a prime resource for an international ELL student . . . ."

16 Question 18.2, ALWD-LWI Survey 2016-2017, p. 197 (https://www.lwionline.org) (last visited June 29, 2018).

17 *See* Alissa J. Hartig, *Legal Writing and International Students: Reconsidering "Complete Immersion,"* 30 The Second Draft 1 (newsletter of the Legal Writing Institute, Spring 2017).

of law). A lone international ELL law student can find a necessary respite when she meets others at, or through, the Center who speak her first language. She will also feel supported when talking to other graduate students who are experiencing the same types of adjustments to living and studying in the United States that she is. If she needs help with the logistics of opening a checking account or finding transportation to the airport, she will have ready resources at the Center. Likewise, she will have ready access to visa information. If she wakes up one morning to some disturbing tweets from the President of the country in which she has made a commitment to study for three years, she will know informed individuals to contact for clarification and reassurance. If a family emergency arises or a natural disaster takes place in her home country, the Center will have contacts to draw on and ways to assist.

Especially for a law school that has just an occasional international student, maintaining a relationship between key personnel in the law school and the International Students Center, and then helping international law students connect to that Center's resources, will offer an important layer of support. In turn, the student's law school experience is likely to be more comfortable and successful.

"Everyone involved agreed that the student was ready to enter her second semester of law school situated on an even playing field with the other first-year law students."

III. What Could Go Right?

The student who first used the assessment and accommodations described in this Article was a little tentative at first, then came to embrace this approach with enthusiasm. From the start, the effort was explained to her in positive terms, as meant to help her do her very best work at a challenging yet reasonable pace. Her fall semester grades were discussed among the legal writing director, the CESL professor who taught her ELL course, and the law school's associate dean, as well as with the student. Everyone involved agreed that the student was ready to enter her second semester of law school situated on an even playing field with the other first-year law students. This student went on to complete law school in the routine three years and earn her J.D. Along the way, her unique perspectives added immeasurably to discussions in the classroom and outside it. Her peers easily learned as much from her as she did from them. When she returned home during vacations and after completing her degree, she did so as a success story, having been an excellent cultural ambassador from her country and having had a productive, positive experience as a law student in the United States.

The contrast between this law student's experience and the experience of the previous lone international ELL student was huge. However, it only required a modest commitment of resources to make that difference. If a small rural law school can figure out how to approach this aspect of legal education successfully, your law school can too.

Micro Essay

Introducing Law Students to Artificial Intelligence

Using artificial intelligence technology in the practice of law may sound futuristic, but artificial intelligence is already changing the legal landscape. It has revolutionized legal research and document discovery. It is also radically changing the ways law firms manage their practices. But the most important application of artificial intelligence for law students to learn is outcome prediction, where the technology helps lawyers analyze prospective case outcomes more accurately. Exposing students to outcome-prediction tools (e.g., Lex Machina and Ravel Law Legal Analytics, both of which are now available on Lexis) while in law school will better prepare them to practice law.

Mark K. Osbeck, Clinical Professor of Law, University of Michigan Law School.

Cite as: Annalee Hickman, *Engaging Legal Research Students Through Supplemental Readings from the Last Decade*, 26 Perspectives: Teaching Legal Res. & Writing 67 (2018).

Engaging Legal Research Students Through Supplemental Readings from the Last Decade

By Annalee Hickman

Annalee Hickman is the Faculty Services Librarian and a Legal Research Professor at the Howard W. Hunter Law Library, Brigham Young University.

The 2017–2018 school year was my first year as a legal research professor. Among the many lessons I learned along the way that will influence my future years in teaching, the one that resonated most is the helpfulness of supplemental readings for my legal research students. While I do not advocate the replacement of legal research textbooks, I think the best way to teach students legal research and engage them in the course is by using supplemental readings as well.

In my first year of teaching, I used several and found them irreplaceable in my curriculum. As I prepared for my second school year over the summer, I scoured high and low for additional supplemental readings I could add, looking in publications such as the *Student Lawyer* magazine, *Law Library Journal*, *AALL Spectrum*, and, of course, *Perspectives: Teaching Legal Research and Writing*. Following up on an article published in *Perspectives* ten years ago,[1] I present additional outstanding supplemental readings from the last decade that could be assigned to students in a legal research course.[2]

Below is a selected annotated bibliography of supplemental readings from the last decade, divided into the following topics: readings for the first day, primary sources, secondary sources, specialized legal research, electronic legal research, and legal research tools. At the end of this article, I also list additional supplemental readings that I came across in my search that could be helpful in a legal research course. Each of the readings in this article could be used in an advanced legal research course, and most are readings that would be appropriate at the basic 1L legal research level or for an LL.M. legal research course.

"I think the best way to teach students legal research and engage them in the course is by using supplemental readings . . . ."

Readings for the First Day

Shawn G. Nevers, *The Importance of Legal Research*, 41 Student Law. 19 (2013).

In a short article for the *Student Lawyer* magazine, Nevers writes directly to students about how they can "gain an appreciation for the importance of legal research." He suggests three tips to help them do so. First, they should broaden their understanding of research to see that it is a process and not just the database or platform used. Second, Nevers encourages students to take research seriously and to practice it. Third, he strongly recommends that they take advanced legal research if it is offered at their law school.

This article can kickstart a legal research course because it gives tips that will lay the foundation for the rest of the course. These are tips that I want my students applying as they read their legal research textbook about the different sources and legal research techniques throughout the semester. It is a short article that catches their attention and helps them understand the big picture of why they are even enrolled in a (usually required) legal research course.

1 *See* Shawn G. Nevers, *Legal Research Readings to Inspire and Inform Students*, 17 Perspectives: Teaching Legal Res. & Writing 6 (2008).

2 While the principles of researching law tend to stay the same, the logistics and the resources seem to be ever-changing. Even for the selected readings from the last decade collected in this article, some aspects are already out-of-date. With these, and with readings from more than ten years ago that I still use to supplement my 1L legal research course, I include an addendum correcting a few pieces of information here and there. Students do not seem to mind, and it is better to have these applicable readings that are engaging and helpful than to not assign them for fear of a few out-of-date details.

"This article gives practical tips for students in a way that serves as both an introduction and an overview of legal research."

Richard Buckingham, *Thinking Like a Librarian: Tips for Better Legal Research*, 12 T.M. Cooley J. Prac. & Clinical L. 1 (2009).

Buckingham introduces students to legal research by expounding on four research tips that will help any law student: (1) understand the assignment before researching, (2) begin with secondary sources, (3) use library catalogs and indexes, and (4) ask for help. In the second tip, he gives short summaries of the following secondary sources—annotated codes, legal encyclopedias, law review articles, legal treatises, and resources for multi-state research—that help serve as an introduction to sources that are likely new to first-year law students.

This article gives practical tips for students in a way that serves as both an introduction and an overview of legal research. While its style is more like a law review article, it is written for a student audience, which makes it an easy supplemental article to read and understand. Buckingham's article is most useful as either an assigned reading for the first class, as an overview and introduction, or during the class where you teach about the legal research process.

Primary Sources

Shawn G. Nevers, *Don't Underestimate the Importance of Statutes*, 40 Student Law. 18 (2011).

Nevers explains the importance of statutes while giving students practical examples of how statutes can affect them as practicing attorneys. He covers topics such as the index, table of contents, statutory schemes, annotations, and how each are tools to help in statutory research.

This article helpfully reiterates the research processes covered by most legal research textbooks, but it is Nevers' examples explaining the importance of statutes that makes the article especially engaging and valuable to students. Further, it gives them a context for understanding why they will need to research statutes as attorneys. This makes the article a helpful supplemental reading when covering statutes in any legal research course.

Mary Whisner, *The* United States Code, *Prima Facie Evidence, and Positive Law*, 101 L. Libr. J. 545 (2009).

Beginning with a brief overview of bills, the *Statutes at Large*, and the *United States Code*, Whisner provides a good review of these topics which are likely already being taught in a legal research course. However, she then dives into the more complex aspects of the *Code* with which most law students are likely unfamiliar: only some titles in the *Code* are positive law (meaning they are legal evidence of the law); and the rest of the titles are simply prima facie evidence of the law (meaning if there is any conflict between them and the text in the *Statutes at Large*, the *Statutes at Large* governs). She then gives real world examples of instances when these have been legal issues for clients. Finally, she gives the detailed history of why the *Code* is only prima facie evidence of the law.

While Whisner's article will most likely be used only in an advanced legal research course, it provides more detail than most legal research textbooks on this positive law aspect of the *Code* that surprisingly is rarely taught to law students but could arise in practice. The article is lengthier and written in a more formal, academic tone than many of the other supplemental readings in this annotated bibliography, but it is a source that will teach law students when they need to check the *Statutes at Large* in practice and will give them a working knowledge of the history of why some code sections are positive law and others are not.

Travis McDade, *Regulations Play a Key Supporting Role in the Research Show*, 37 Student Law. 12 (2009).

McDade begins with a vivid anecdote about when he realized he needed to understand "regs." He then gives a description of how regulations are created, what they do, and where to find them (including the differences between the *CFR* and the *Federal Register*). He also briefly mentions state regulations.

Much of the information, and even some of the text, is taken verbatim from McDade's earlier

article in the *Student Lawyer*,[3] but this article is more recent and has more up-to-date examples. It nicely complements what legal research textbooks cover about regulations, and it is written in a way that makes it easy for students to grasp how important regulations are and how to use them.

Secondary Sources

Mark Cooney, *Let the Experts Serve You—Starting Legal Research with Treatises*, 43 Student Law. 16 (2014).

Cooney helps students realize that treatises have "relevant cases worth reading with care." He emphasizes the benefit and efficiency of treatises with specific examples of legal research questions they will likely encounter in practice. He also compares and contrasts starting with treatises versus starting with case law.

The specific examples Cooney provides of the usefulness of treatises will engage students long enough for them to understand when they should use treatises in practice and why they would want to. So, go ahead and "cheat" (as Cooney advises students to do with treatises when they are researching), and use this supplemental reading to reinforce the value of treatises for your students.

Jackie Woodside, *Introducing Students to Online Research Guides*, 17 Perspectives: Teaching Legal Res. & Writing 171 (2009).

Woodside provides a helpful and unique explanation of online research guides because many students are likely unaware these guides exist. She concisely, yet thoroughly, covers in this article the following: (1) the four purposes of an online research guide; (2) who publishes research guides; (3) how to evaluate research guides (by giving a clever acronym to help students remember—"How much is this guide T.E.A.C.H.ing me?"); and (4) how to find research guides on a certain topic.

Since the audience for the article is the legal research professor, I would suggest telling your students to skip the introduction. Instead, have them read the heart of the article where Woodside shares her advice about when to teach students about online research guides. If you do not have time to cover online research guides in class, Woodside's short article gives your students the information they need.

Specialized Legal Research

Patrick Charles, *Reading and Understanding a Source Credit in the United States Code*, 22 Perspectives: Teaching Legal Res. & Writing 46 (2013).

In this short article on source credits (which are the information that appear after *U.S. Code* sections that give enactment and amendment details for each section), Charles briefly covers the principle of positive and non-positive law titles in the *Code* in a very quick way that is a perfect fit for a 1L legal research course. Then he describes the three reasons source credits are useful, the basic elements of source credits, and examples of source credits for both positive and non-positive laws.

This article could be used when teaching legislative history because source credits are a hard concept for students to grasp. A foundational understanding of source credits, provided by Charles' article, will help to strengthen law students' abilities to research legislative history.

Shawn G. Nevers, *Litigation Practice Materials*, 41 Student Law. 15 (2012).

Nevers succinctly describes seven different litigation practice materials that law students may find useful: (1) in-house work product, (2) PACER, (3) state court documents, (4) legal forms, (5) secondary source books that discuss trial preparation, (6) jury instructions, and (7) verdicts and settlements. He provides specifics about where to find these materials, how to use them, and what the potential drawbacks may be.

I have found this article provides information about litigation practice materials that I do

"This article could be used when teaching legislative history because source credits are a hard concept for students to grasp."

3 *See* Travis McDade, *Don't Overlook Regulations as an Important Source of Law*, 34 Student Law. 10 (2005).

not see in most legal research textbooks. This article also provides a quick overview on specific materials that law students can use as a starting point if they are interested in becoming litigators. This article fits nicely into a 1L or advanced legal research curriculum where the professor spends at least twenty minutes discussing litigation practice materials.

"[Mart's] article fits nicely into my class on the limitations of electronic legal research."

Shawn G. Nevers, *Transactional Law Research*, 41 Student Law. 18 (2013).

Nevers gives a brief introduction to four useful resources for conducting transactional law research: (1) EDGAR (and the commercial alternatives), (2) in-house precedents, (3) Practical Law Company, and (4) Bloomberg Law. He lists the transactional law areas covered in each resource and how to access them.

Like the *Litigation Practice Materials* article above, Nevers' article on transactional law research is a great introduction for any 1L or advanced legal research course where the professor has at least twenty minutes to discuss specialized legal research for transactional law. Since legal research textbooks typically do not cover this topic, I use this reading to prep my students before I spend about thirty minutes in class on transactional law research.

Electronic Legal Research

Catherine M. Dunn, *Use Terms and Connectors for Precise Search Results*, 43 Student Law. 21 (2015).

Dunn explains terms and connectors within the framework of how to create a Boolean search, including steps like brainstorming various search terms, identifying key terms, expanding by breadth and depth, and determining how multiple search terms for a single query should relate to one another. She also reminds students to assess and adapt their searching in light of the results they receive. Moreover, she shows how terms and connector searching is used to prove a negative (meaning the search retrieves no results, proving that a particular law does not exist), a concept that none of the legal research textbooks I have considered for my class addresses.

This article is brief, direct, and written with law students in mind. Using it as a supplemental reading for your class will help students understand further the importance of adding this style of searching to their skillset, rather than solely relying on natural language (i.e., Google-like) searching.

Susan Nevelow Mart, *Every Algorithm Has a POV*, 22 AALL Spectrum, 40 (2017).

Mart exposes how the designers of legal research search engines control the algorithms and explains what legal researchers should know about those algorithms (like the variables employed to retrieve results) so that they can tweak their research habits to take them into account. She summarizes (using colored graphs) her research study in which she concluded that the top ten results from the same search run on Westlaw, Lexis Advance, Google Scholar, Fastcase, Ravel, and Casetext produces different results. Her conclusion demonstrates to law students that they should be cautious about relying on a single platform and only looking at the first few results of any search.

This article fits nicely into my class on the limitations of electronic legal research. Mart's candid analysis of various search engine algorithms and users ignorance about how these providers write their algorithms serves as an eye-opening warning to law students that supplements well the warning I give them in class on the limitations and pitfalls of electronic legal research.

Legal Research Tools

Lisa T. McElroy, *Motivating Students to Use Citators: Lessons from Litigation*, 18 Perspectives: Teaching Legal Res. & Writing 140 (2010).

McElroy, in this brief article, describes her own litigation experience where a citator, or rather her opposing counsel's failure to use a citator, created an awfully embarrassing, and cautionary, moment in that person's career. Although she does not provide substantive information about how to use a citator or its main functions, McElroy, instead,

entertains new law students with her anecdotal experience, while reinforcing why citators matter.

Her article supplements the textbook reading I assign on the use of citators by providing a vivid and exciting real-life example of the importance of citators. Like the infamous citator example from the O.J. Simpson case,[4] McElroy's example is another powerful warning to always use citators.

Patrick Charles, *West Topic and Key Numbers: Focusing on the Basic Structure*, 18 Perspectives: Teaching Legal Res. & Writing 130 (2010).

Charles concisely explains the West topic and key number system in a way that helps students better understand it. He breaks down this tool and describes how each portion of the West topic and key number system works. Charles thoroughly explains the nuances of the key number system without going into so much detail that could be lost on first-year law students. He compares side by side what a topic and key number looks like in a West reporter versus what it looks like on Westlaw, including providing pictures and screenshots. He also provides an example of a headnote that has been assigned two topics and key numbers. He even addresses the occasional practice of renaming key numbers.

This reading is especially helpful if you teach print digests because of the side-by-side comparisons. The screenshots of Westlaw are out-of-date, but I think there are enough similarities to its current iteration that it will help students better decipher these tools because of Charles' helpful explanations.

Alena Wolotira, *Googling the Law: Apprising Students of the Benefits and Flaws of Google as a Legal Research Tool*, 21 Perspectives: Teaching Legal Res. & Writing 33 (2012).

Wolotira enumerates the strengths and weaknesses of Google (and Google Scholar) in an article that is simple to read. In addition to covering case law, she also covers using Google Scholar to search for scholarly articles, which may be beneficial for students since many law schools require law students to write an academic-style paper in order to graduate.

Wolotira's article is most useful for legal research courses where the professor has the time to spend on an in-depth discussion of non-traditional research tools like Google. In that case, this article will make a valuable classroom supplement. While only published six years ago, the article is already slightly outdated since it talks about "Legal Documents," which Google Scholar now calls "Case Law." Nonetheless, this drawback is small enough that it is far overshadowed by the usefulness of the rest of the article.

Conclusion

Overall, using supplemental readings helps engage my legal research students because these readings tend to provide specific examples and increase awareness about legal research issues that may encounter in practice that resonate with students more than relying just on legal research textbooks. Further, the readings tend to be shorter, which helps to more effectively retain the students' attention longer than textbook readings. Especially for more challenging topics and concepts, supplemental readings clarify, explicate, and reiterate material for students so that they understand the material better. Thus, I enjoy adding a supplemental reading to most of my legal research class periods. My hope is that this bibliography can alert other legal research professors to supplemental readings they might also find engaging for their students as well.

Additional Supplemental Readings

- Robert C. Berring, *Title 51 of the* U.S. Code *and Why It Matters*, 14 Green Bag 2d 251 (2011).
- John Cannan, *A Legislative History of the Affordable Care Act: How Legislative Procedure Shapes Legislative History*, 105 L. Libr. J. 131 (2013).
- Patrick Charles, *How Do You Update the Code of Federal Regulations Using FDsys?* 20 Perspectives: Teaching Legal Res. & Writing 128 (2012).

"This reading is especially helpful if you teach print digests because of the side-by-side comparisons."

4 *See OJ Simpson Murder Trial—Shepard's Clip*, YouTube (July 16, 2009), https://www.youtube.com/watch?v=QFOY0Glg0gU.

- Catherine M. Dunn, *Conducting Effective Legal Research "On the Cheap,"* 43 Student Law. 18 (2014).
- Peter J. Elger, *Using Congressional Committee Prints for Research*, 19 Perspectives: Teaching Legal Res. & Writing 130 (2011).
- Annalee Hickman Moser, *Go Ahead and Google. Then Do a Subject-Based Search*, 46 Student Law. 8 (2018).
- David Houlihan, *How Research Efficiency Impacts Law Firm Profitability*, Law 360 (Sept. 11, 2014), https://www.law360.com/articles/575667/how-research-efficiency-impacts-law-firm-profitability.
- Erin McClarty, *Legal Research with No Down Payment: 7 Cost-Effective Research Tools*, 44 Student Law. 18 (2016).
- Travis McDade, *Keep Up with Current Cases that Address Unsettled Issues*, 37 Student Law. 10 (2008,).
- Travis McDade, *Print Digests Make it Easy to Find that One Good Case*, 37 Student Law. 10 (2008).
- Travis McDade, *Uniform Laws Aren't Always Uniform or Law*, 37 Student Law. 12 (2009).
- Shawn G. Nevers, *Becoming a Better Online Researcher*, 40 Student Law. 17 (2012).
- Shawn G. Nevers, *Becoming a Cost-Effective Researcher*, 41 Student Law. 18 (2012).
- Shawn G. Nevers, *Citators: The Power Tools of Legal Research*, 38 Student Law. 8 (2010).
- Shawn G. Nevers, *Getting to Know Administrative Decisions,* 40 Student Law., Dec. 2011, at 21.
- Shawn G. Nevers, *Legal Encyclopedias: Research 'Well Begun,'* 39 Student Law. 12 (2010).
- Shawn G. Nevers, *Local Ordinances: The Often Overlooked Laws*, 42 Student Law. 17 (2014).
- Shawn G. Nevers, *Restatements: An Influential Secondary Source*, 42 Student Law. 19 (2013).
- Shawn G. Nevers, *Smart Researchers Save Time by Starting with Legal Treatises*, 38 Student Law. 8 (2009).

Micro Essay

Will AI change how or what we teach? Yes and no. Librarians have been teaching AI for years. Every time we talk about how databases parse natural language searches differently, or discuss how the web works we teach "AI." But the rise of AI awareness gives us an opportunity to address information literacy in a big way. Students need to know the strengths and weaknesses of AI systems like document automation and algorithmic searching so that they STOP seeing computers as infallible and START seeing them as another tool in their toolbox.

By Virginia A. Neisler, Faculty Services & Reference Librarian; Adjunct Professor of Law, University of Michigan Law School.

Cite as: Patrick Barry, *Alliteration, Restraint, and a Mind at Work*, 26 Perspectives: Teaching Legal Res. & Writing 73 (2018).

Alliteration, Restraint, and a Mind at Work

By Patrick Barry

Patrick Barry is a Clinical Assistant Professor at University of Michigan Law School.

Alliteration is great—until it's not. You can pretty quickly overdo it, though I don't think any major professional sports franchise has yet. The Boston Bruins, the Seattle Seahawks, the Cleveland Cavaliers: these names all have a nice ring to them. As do countless others, from the Washington Wizards to the Tennessee Titans to the Buffalo Bills. The sounds run quickly off your tongue and not unpleasantly into the air. They're not irritating or obnoxious—unless maybe you're a fan of the opposing team.

I once played for a team, however, that pushed the appeal of alliteration perhaps a bit too far, even for the home fans: "The Rochester Raging Rhinos."

At the time, the Rhinos—they have since dropped the "Raging" part—were members of the A-League, a minor-league soccer division now folded into the USL, which itself recently partnered with the country's top soccer division, the MLS. I was, without question, the worst player on the team.

I was probably also the only one who eventually traded in soccer cleats for a backpack: once my playing days were done, I headed off to both graduate school and law school.

In each of those academic environments, and now as a professor at the University of Michigan Law School, my experience with the Rhinos has come in handy, not because I have been asked to join any intramural soccer teams. (I haven't.) Nor has it been handy because I am responsible for teaching Sports Law. (I'm not.)

My experience has come in handy because the name Rochester Raging Rhinos gives me a playful way to teach students about the perils and promise of alliteration, which in turn gives me a chance to teach them about the perils and promise of effective language more generally.

The perils spring to mind the most quickly when it comes to alliteration. For every *Pride and Prejudice* or *Sense and Sensibility*, for every *Mad Men* or *Breaking Bad,* there are countless alliterative constructions that really irk people. Several come from the books of Amanda McKittrick Ros, an Irish writer who once earned the following headline from Britain's *The Daily Telegraph*: "Awful Author Addicted to Alliteration Achieves Acclaim Again."[1] The article includes a sample from Ros's first novel *Irene Iddesleigh*.[2]

> The living sometimes learn the **t**ouchy **t**ricks of the **t**raitor, the **t**ardy and the **t**empted; the dead have evaded the **f**lighty earthy **f**uture, and **f**orm to swell the **r**etinue of **r**etired **r**ights, the **r**ighteous school of the invisible and the **r**ebellious **r**oar of the **r**aging nothing.[3]

No wonder the entry for Ros in the *Oxford Company for Irish Literature* reads: "uniquely dreadful."[4]

Falsehoods and Fallacies

Alliteration does have its fans. For example, some past and present members of the Supreme Court have shown a penchant for it.

Note how Justice Louis Brandeis relies on it to add a little extra rhetorical flourish to his concurrence in *Whitney v. California*, an opinion that civil

> "The perils spring to mind the most quickly when it comes to alliteration."

1 Tom Peterkin, *Awful Author Addicted to Alliteration Achieves Acclaim Again*, The Telegraph (Sept. 18, 2016 12:01 AM), https://www.telegraph.co.uk/news/uknews/1529100/Awful-author-addicted-to-alliteration-achieves-acclaim-again.html.

2 Ros's other two novels have similarly alliterative titles—*Delina Delaney* (1898) and *Helen Huddleson* (1969)—as do two of her books of poetry: *Poems of Puncture* (1912) and *Forms of Formation* (1933).

3 Peterkin *supra,* note 1(emphasis added).

4 The Oxford Companion to Irish Literature (Robert Welch & Bruce Stewart eds., 1996).

liberties scholar Vincent Blasi has called "arguably the most important essay ever written, on or off the bench, on the meaning of the First Amendment."[5]

> If there be time to expose through discussion the **f**alsehood and **f**allacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.[6]

Brandeis didn't have to pick two words that start with "f" to makes his point. Nor did Chief Justice John Roberts when he summed up the Court's unanimous position in *Riley v. California*. "Modern cell phones are not just another technological convenience," he explained. "With all they contain and all they may reveal, they hold for many Americans 'the privacies of life.' The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection **f**or which the **F**ounders **f**ought."[7]

The alliteration in these sentences is obviously only a small part of the overall opinions. Neither Brandeis, nor Roberts, nor any other Supreme Court Justice has ever quite reached the famously—and perhaps overly—alliterative words future *New York Times* columnist William Safire penned in 1970 for Vice President Spiro Agnew, for whom Safire was working as a speechwriter. "In the United States today," Agnew said in his address to that year's California Republican state convention, "we have more than our share of the **n**attering **n**abobs of **n**egativism. They have formed their own 4-H Club—the '**h**opeless, **h**ysterical **h**ypochondriacs of **h**istory.'"[8]

"What each of these examples illustrates . . . writing is about making choices."

That said, Justice Neil Gorsuch came close with his own kind of "4-D" club in the opening sentence of his first opinion for the Court. "**D**isruptive **d**innertime calls, **d**ownright **d**eceit, and more besides drew Congress's eye to the debt collection industry," he wrote in *Henson v. Santander Consumer*, a case that examined the contours of the Fair Debt Collection Practices Act.[9] And Justice Ruth Bader Ginsburg created her own kind of "3-B" club when she titled a speech she delivered in 2003 at the Brandeis School of Law "From **B**enjamin to **B**randeis to **B**reyer: Is There a Jewish Seat?"[10]

What each of these examples illustrates, beyond just a certain playfulness with language, is something that is not necessarily profound or novel but is still worth saying, particularly to people, like lawyers, who spend much of their working lives in front of a keyboard: writing is about making choices.

Every phrase or sentence or paragraph that is put together could be put together differently. There is judgment involved. There is, to use a phrase one of my own law professors, James Boyd White, used all the time in class, "a mind at work." What I love about alliteration is the way it calls attention to this process. Justice Ginsberg didn't have to title her speech about Jewish Justices "From Benjamin to Brandeis to Breyer"; she could have titled it "From Cardozo to Brandeis to Breyer" or "From Brandeis to Frankfurter to Breyer." At the time she gave the speech, there were actually seven Jewish justices to pick from: Louis Brandeis, Benjamin Cardozo, Felix Frankfurter, Arthur Goldberg, Abe Fortas, Ginsburg herself, and Stephen Breyer. (Elena Kagan became the eighth in 2009).

Any combination of those would have worked. An alliterative title wasn't inevitable.

There is also effective alliteration in a more consequential document: the Federalist Papers. In Federalist Papers 78, which the Supreme Court has cited more than any other of the Federalist Papers,[11] Alexander Hamilton described the

5 Vincent Blasi, *The First Amendment and the Ideal of Civic Courage: The Brandeis Opinion in* Whitney v. California, 29 Wm. & Mary L. Rev. 653, 668 (1988).

6 Whitney v. California, 274 U.S. 357, 377 (1969).

7 Riley v. California, 134 S. Ct. 2473, 2495 (2014). Another fan of an alliterative "f" appears to be Justice Benjamin Cardozo, who wrote in *Steward Mach. Co. v. Collector*, 301 U. S. 548, 591 (1937): "In ruling as we do, we leave many questions open. We do not say that a tax is valid, when imposed by act of Congress, if it is laid upon the condition that a state may escape its operation through the adoption of a statute unrelated in subject matter to activities fairly within the scope of national policy and power. No such question is before us. In the tender of this credit Congress, does not intrude upon **f**ields **f**oreign to its **f**unction."

8 116 Cong. Rec. 32017 (daily ed. Sept. 16, 1970) (address of Vice President Spiro T. Agnew to the California Republican State Convention).

9 137 S. Ct. 1718, 1720 (2017).

10 Ruth Bader Ginsburg, *From Benjamin to Brandeis to Breyer: Is There a Jewish Seat?*, 41 Brandeis L.J. 229 (2002).

11 Dan T. Coenan, *Fifteen Curious Facts about The Federalist Papers*, Popular Media (2007), Paper 2, http://digitalcommons.law.uga.edu/fac_pm/2.

proposed powers of the federal judiciary. Here's how he explained the concept of "judicial review," the notion that the courts—not Congress and not the President—are the ones who, as Chief Justice Marshall would make clear about 25 years later in *Marbury v. Madison*, "say what the law is."[12]

> The interpretation of the laws is the **p**roper and **p**eculiar **p**rprovince of the courts.[13]

Those three Ps are not an accident.

A. Restraint

What distinguishes the use of alliteration by Hamilton, Ginsburg, Gorsuch, Roberts, and Brandeis from the use of alliteration by Amanda McKittrick Ros is an important writerly quality: restraint. You need to know when to pull back, to withhold, to resist the pull of literary pyrotechnics. Just because you know how to string together five words that begin with "t" doesn't mean you should.

Although this point might sound like the oft-repeated advice that good writers should know how to eliminate their own unnecessary prose, or, in other words, to "Kill your darlings,"[14] I don't mean it to. Nonetheless, good writers should know the difference between when to eliminate certain flights of literary fancy, such as unnecessary alliteration, and when a certain eloquence in prose is beneficial. Stephen King really emphasizes the point in his wonderful book *On Writing* when he highlights the at times self-indulgent quality of a lot of writing when the reader seems to be pushed out of the way and replaced by the writer's own ego.[15]

This is a paraphrase, but when King repeats the "Kill your darlings" mantra in his book, he directly targets that kind of narcissism. "Kill your darlings," he says. "Kill your darlings. Even when it breaks your egocentric little scribbler's heart. Kill your darlings."[16]

It's sort of like an observation the journalist Ben Yagoda makes in another book on writing, *The Sound on the Page*. "Writers who are unaware of or uninterested in readers are like people who don't look at you when they're speaking to you."[17] If you are going to use alliteration, or any other writing move, it should be with the reader in mind. Will this construction help my audience better understand and remember what I am trying to communicate? Will it inform them? Will it persuade them? Will it entertain or improve them? If not, then by all means: go ahead and kill your darlings. A darling without a specific purpose is not much of a darling at all.

> "[G]ood writers should know the difference between when to eliminate certain flights of literary fancy . . . [and] when a certain eloquence in prose is beneficial."

12 5 U.S. 137, 177 (1803).

13 The Federalist No. 78 (Alexander Hamilton).

14 Forrest Wickman, *Who Really Said You Should "Kill Your Darlings"?*, Slate's Cultural Blog (Oct. 18 2013 1:09 PM), http://www.slate.com/blogs/browbeat/2013/10/18/_kill_your_darlings_writing_advicewhat_writer_really_said_to_murder_your.html.

15 Stephen King, On Writing: A Memoir of the Craft 224 (1999).

16 *Id.* at 222.

17 Ben Yagoda, The Sound on the Page 97 (2009).

Micro Essay

No AI Needed.

Not long ago, my nephew, Derek, told me I would soon be obsolete. Lawyers will be replaced by computers. With his new college degree, he felt righteous. I explained that algorithms are only tools. They do not replace a lawyer's skill or creativity. Computers cannot argue in court, cross-examine a witness, or counsel a client.

Derek enrolled in a law course taught by my husband who does not use technology in the classroom.

"Did you miss the visuals?" I asked Derek.

"Without Powerpoint, there was more interaction and discussion, I learned so much," he confessed.

By Deborah L. Weiss, Esq., Ralph M. Weiss & Associates, Woodland Hills, CA.

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Show and Tell

"But I also tell them that they can't just show and never tell—because writing that only shows is like a too-long weekend in Las Vegas . . . ."

by Patrick Barry

Showing can get out of hand.
—Poet Richard Blanco[1]

Patrick Barry is a Clinical Assistant Professor at the University of Michigan Law School.

"Show don't tell." Teachers preach these words. Style guides endorse them.[2] And you'd be hard pressed to find any editor or law firm partner who hasn't offered them as feedback in the last year, month, week, maybe even day. There's only one problem: "Show don't tell" is bad advice.

Or at least, it is incomplete advice.

I don't mean to deny the wisdom of an oft-quoted 1886 letter by Anton Chekhov to his brother Alexander about the importance of being concrete and specific when writing. "In descriptions of nature," Chekhov counseled, "one must seize on small details, grouping them so that when the reader closes his eyes he gets a picture. For instance, you'll have a moonlit night if you write that on the mill dam a piece of glass from a broken bottle glittered like a bright little star, and that the black shadow of a dog or a wolf rolled past like a ball."[3]

I agree with Chekhov wholeheartedly. Suggesting that to be a good writer his brother will need to "seize on small details" is incredibly helpful, as is explaining that he'll need to group those details together "so that when the reader closes his eyes he gets a picture." That's exactly what I tell my students. Be particular when you are writing legal briefs. Be particular when you are writing grant applications. Be particular when you are writing important emails and memos and text messages. Learn how to show and not just tell.

But I also tell them that they can't just show and never tell—because writing that only shows is like a too-long weekend in Las Vegas: at some point, people get sensory overload. Francine Prose, who is a great admirer of Chekhov, puts the point well in *Reading Like a Writer*, her bestselling guide to the mechanics behind some of the most elegant and effective writing around. Here is how she describes a great passage from Alice Munro, the winner of the 2013 Nobel Prize in Literature and an expert when it comes to knowing when to show and when to tell:

> The passage contradicts a form of bad advice often given young writers—namely, that the job of the author is to show, not tell. Needless to say, many great novelists combine 'dramatic' showing with long sections of the flat-out authorial narration that is, I guess, what is meant by telling.[4]

So the advice should really be "show and tell" not "show don't tell." Great writers, Prose notes, do both.

1 Amy Bloom, *Visiting Writer: Richard Blanco*, Coursera.org, https://www.coursera.org/lecture/craft-of-character/visiting-writer-richard-blanco-XegNq (last visited June 21, 2018).

2 *See e.g.*, Adam Lamarello and Megan E. Boyd, Show, Don't Tell: Legal Writing for the Real World (2014); William Zinsser, On Writing Well: The Classic Guide to Writing Nonfiction 68 (2006) ("Verbs are the most important of your tools . . . . Active verbs also enable us to visualize an activity because they require a pronoun or a noun or a person to put them in motion. Many verbs also carry in their imagery or in their sound a suggestion of what they mean."); Josephine Nobisso, Show, Don't Tell: Secrets of Writing (2004); William Strunk and E.B. White, The Elements of Style 21 (4th ed., 2000) ("Prefer the specific to the general, the definite to the vague, the concrete to the abstract . . . . The greatest writers . . . are effective largely because they deal in particulars and report the details that matter. Their words call up pictures."); George Orwell, *Politics and the English Language, in* A Collection of Essays 169-170 (1970) ("Probably it is better to put off using words as long as possible and get one's meaning as clear as one can through pictures and sensations. Afterward one can choose—not simply *accept*—the phrases that will best cover the meaning, and then switch round and decide what impressions one's words are likely to make on another person."); Chuck Palahniuk, *Nuts and Bolts: "Thought" Verbs*, LitReactor (Aug. 12, 2013), https://litreactor.com/essays/ chuck-palahniuk/nuts-and-bolts-"thought"-verbs ("In short, no more short-cuts. Only specific sensory detail: action, smell, taste, sound, and feeling.").

3 Anton Chekhov, The Unknown Chekhov: Stories & Other Writings Hitherto Untranslated 14 (Avrahm Yarmolinsky trans., 1999).

4 Francine Prose, Reading Like a Writer: A Guide for People Who Love Books and Those Who Want to Write Them 24-25 (2007).

Another master of composition, Phillip Lopate, takes a similar stance in a book he specifically titled *To Show and To Tell: The Craft of Literary Nonfiction*. As he explains, "It seems obviously desirable for a writing style to be able to move freely and easily from the concrete to the general and back."[5] In his view, "The initially salutary correction against abstract language (Williams Carlos Williams's 'no ideas but in things') has gone too far, extending to a virtual gag order in students' minds against abstraction."[6]

Two concepts familiar to folks who have taken a creative writing workshop may help: summary and scene. Learn how to distinguish between them and you'll develop a better sense of how to move from the concrete to the general and the general to the concrete. Your writing will become more earthy and alive, more vivid and affecting—but also more analytic and expository. It will, ideally, shed needless abstractions while at the same time retaining useful ones, maybe not quite as well as Alice Munro does but at least a little better than you do right now.

A. Time Passes

One way to think about the difference between a summary and a scene is that a summary is more general and usually covers a longer span of time. You don't describe one event or development, as you would in a scene; you describe many events and developments. You also might add in some analysis and context, synthesis and compression, grouping and classification. It's a way of communicating a lot of information in a short amount of space.

A great example in fiction comes in *To the Lighthouse* by Virginia Woolf. In a novel otherwise filled with many exquisite "scenes—by which I mean individual settings and moments described in close, intimate detail—there is a powerful section of summary in the middle. It's called "Time Passes," a perfect title for a section of summary.

In just twenty pages, Woolf covers ten years in the lives of her characters. People marry. People die. A house deteriorates and then is brought back to life. And there's a war—a world war in fact. World War I falls right in the middle of the section.

In a 2014 piece for *The Atlantic*, the author Maggie Shipstead praises the powerful economy of this section. "To me," she writes, "*To the Lighthouse*, a masterpiece if there ever was one, is defined and spectacularly elevated by [the section "Time Passes"]."[7] She describes it as "20 [sic] pages of expansive vision and extreme beauty,"[8] a nice combination of traits that highlights the best of what a summary can be.

But we don't have to look all the way back to the publication of *To the Lighthouse* in 1927 to find helpful examples of summary and scene. Nor do we have to read classic works of literature. We can do something much more commonplace and contemporary, something that many of my more athletically minded students do at least once and maybe even two or three times a day: Watch *SportsCenter*.

B. This Is *SportsCenter*

The success of *SportsCenter*, the flagship news program of sports giant ESPN, depends on the ability of its anchors to move back and forth between summary and scene. Anytime they are working with a highlight from a basketball game, a tennis match, or any other sporting event, they need to do what great writers do: skillfully pair detailed looks at certain key moments with more broad-scale, context-providing sections of narration.

It wouldn't be helpful if anchors simply showed an entire football game, baseball game, or NASCAR race. The *SportsCenter* audience doesn't want to see every little thing that happened. They want to see the important parts, the big plays, the good stuff. So the best anchors—no doubt helped by experienced

"Two concepts familiar to folks who have taken a creative workshop may help: summary and scene."

5 Phillip Lopate, To Show and To Tell: The Craft of Literary Nonfiction (2013).

6 *Id.*; *see also* Phillip Lopate, *Reflection and Retrospection: A Pedagogic Mystery Story*, The Fourth Genre: Explorations in Non-Fiction 143-156 (Spring 2005) *reprinted in* http://philliplopate.com/2011/08/reflection-and-retrospection-a-pedagogic-mystery-story/ (last visited November 4, 2018).

7 Joe Fassler, '*What Plot is Grander or More Essential Than Time Passing?*', The Atlantic (Apr. 8, 2014), https://www.theatlantic.com/entertainment/archive/2014/04/what-plot-is-grander-or-more-essential-than-time-passing/360341/ (last accessed November 4, 2018).

8 *Id.*

producers and other staff members—learn to summarize. They become experts at compression and consolidation as well as selection and synthesis. They figure out how to not just show, but tell.

"You don't rush through or abridge a golf putt that wins the Masters. Instead, you show it."

They still, of course, devote time to showing. You don't "tell" a last-second field goal or game-winning homer. You don't rush through or abridge a golf putt that wins the Masters. Instead, you show it. You slow down your commentary, you focus the audience's attention, and you let them try to experience the moment for themselves.

But you do this judiciously. Having too many scenes will ruin the story. You need the occasional summary not just to move things along but also to turn individual incidents into a more coherent whole. A summary provides connective tissue. It identifies patterns, organizes data, and imposes much-needed structure. Without summaries, you'll just have a collage of images and ideas. That wouldn't work well on *SportsCenter*, and it certainly won't work well in legal writing, where a premium is placed on organization and analysis.

Judge Edith Jones of the Fifth Circuit Court of Appeals, for example, articulated an approach to composition shared by many lawyers and judges when she wrote in a 1993 issue of *Scribes Journal of Legal Writing* that her own strategy followed what she learned doing high school debate: "Tell 'em what you're going to tell 'em; then tell 'em; and finally, tell 'em what you told 'em."[9] That's essentially summary-scene-summary.

"This is not a rule of redundancy so much as of forcefulness," Jones explains. "Moreover, the rule connotes that an argument is either not worth making, or it makes no sense, if it cannot be expressed as easily in summary as in complete fashion."[10]

The precise amount you summarize versus the precise amount you use scenes will, of course, vary depending on the circumstances. The proper ratio is not a scientific formula. But the more you remember the way each complements the other—the more you balance synthesis with specifics—the better your writing will be.

Same goes, perhaps, for your job prospects at ESPN.

9 Edith Jones, *How I Write*, 4 Scribes Journal of Legal Writing 25 (1993); *see also* Robert L. Haig. 4 N.Y. Prac., Com. Litig. in N.Y. State Courts § 40.27 (4th Ed. Sept. 2017); Steven J. Kirsch, et al.,5 Minn. Prac., Methods of Practice: Civil Advocacy § 1.3 (Sept. 2017); W. Dent Gitchel and Molly Townes O'Brien, Trial Advocacy Basics 242-243 (2006); James A. Johnson, *Jury Argument: Winning Techniques*, 90 Mich. B. J. 34 (Mar. 2011)

10 *Jones*, *supra* note 9, at 25.

Micro Essay

Will AI affect the way we teach legal writing? Definitely. And likely in some drastic ways. But as Kai-Fu Lee writes in a recent essay, "[W]hile AI is superhuman in the coldblooded world of numbers and data, it lacks . . . the ability to make another person feel understood and cared for."[1] In the legal writing world, writing specialists are uniquely situated to make students feel just that.

As technology continues its inevitable disruptions, writing specialists—through their supportive dialogues with students—will remain an essential force in providing the empathy and understanding that students need to thrive.

By Lurene Contento, Director, Writing Resource Center, The John Marshall Law School, Chicago.

[1]Kai-fu Lee's essay, printed in The Wall Street Journal, September 15-16, 2018, is adapted from his book "AI Superpowers: China, Silicon Valley and the New World Order." Dr. Lee is the former president of Google China and is currently CEO and Chairman of Sinovation Ventures.

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Reflections of a Legal Writing Advisor

By Paul Von Blum

Paul Von Blum is a Senior Lecturer in African American Studies and Communication at UCLA

Legal writing is a major feature of the American law school curriculum. For generations, this has been an emotional burden for thousands of law students who have struggled with the mysterious language and process of legal discourse. In recent years, however, progressive changes in the legal writing curriculum that align course requirements with the practical demands of legal practice have lessened the emotional toll and made legal education more relevant to what they will do as lawyers. Still, from my personal experience as a longtime legal writing advisor, more changes in those directions are necessary. Moreover, legal educators––and the public––should be wary of the desires of many students for easy solutions to their writing problems and to their growing lack of intellectual curiosity.

For almost thirty years, I served as a legal writing advisor at Loyola Law School in Los Angeles. Typically, I met individual students for 30 minutes to three hours a week; occasionally, I came to campus more than once a week when legal writing assignments were almost due. And because Loyola Law School has an evening program, I occasionally held extra conferences on weekends in order to accommodate students who had work responsibilities during weekday hours. I sometimes met with the legal writing faculty and also gave the occasional presentation on specific features of legal writing. In short, I came to know the culture of the legal writing community there as well as the law school community in general.

Now, after 49 years of faculty service at the University of California, I will devote my entire time to my regular undergraduate teaching responsibilities in African American Studies and Communication Studies and my own scholarly endeavors, largely in the humanities and the arts. My legal writing advisor responsibilities have always been an ancillary but gratifying feature of my professional life as an educator; throughout my long academic career, I have mostly taught undergraduates. Many of my students have gone on to law school and successful legal careers. I have also been fortunate to publish extensively in the humanities and social sciences, and I brought this background to my efforts as a legal writing advisor. Teaching and research have always been my chief professional focus since graduating from law school, even though I have also been an active member of the California State Bar since 1969. I will also continue, in a reduced way, my pro bono work as a lawyer in civil rights and related areas.

I generally enjoyed the one-on-one interactions with students, and I think highly of the legal writing faculty at Loyola Law School (L.A.). Over the years, however, I began to question the basic structure of its legal writing curriculum, which is similar to that of many other law schools throughout the country. Moreover, I began seeing distressing changes in the character, attitudes, and intellectual preparation of the law students, especially the entering students with whom I had the most contact.

Throughout my time as a writing tutor, I worked with students mostly on objective memoranda and persuasive points and authorities papers. Typically at Loyola Law School, first year students have been required to write two objectives memos and one persuasive paper. Until recently, they wrote one objective memo in Fall Semester and then the other in Spring Semester. Then students were assigned the persuasive brief. For the past few years, the legal writing faculty changed the schedule so that students wrote the two objective memos during their first semester.

Variations of these requirements are common in American legal education, although many law schools have responded vigorously to calls in

"For almost thirty years, I served as a legal writing advisor at Loyola Law School in Los Angeles."

recent scholarship about offering more practical legal writing instruction. Many law schools have expanded their legal writing programs to include exercises and assignments geared to actual legal practice. There is, of course, some value in these exercises dealing with legal memoranda and persuasive briefs. Some law students will work in law firms and their supervising attorneys will assign them memoranda. Points and authorities, moreover, are staples of legal practice. In the first year of law school, moreover, such writing assignments reinforce the mode of legal analysis that is new––and often very disconcerting––to most entering students.

"I know that there are few incentives, other than emotional satisfaction, for professors to spend numerous hours correcting grammar and punctuation."

When I worked with the students, I emphasized that both objective and persuasive papers were highly formulaic, but the formula was extremely unfamiliar and would take time and practice. The ultimate objective is to master the formula as much as possible and understand and play to the personal, often idiosyncratic, differences of each writing professor. That is no different from learning the formulas of law firms and courts and the idiosyncrasies of legal supervisors and judges. I helped students structure their papers, instructed them on how to avoid using passive voice, encouraged them to transform wordy sentences into more concise prose, cautioned them to avoid the first person "I" and contractions (although I find these both archaic practices), offered editorial suggestions on headings and topic sentences, provided guidance on applying legal precedents to specific facts, and generally did all the other things that writing tutors in law schools do throughout the country.

During the last 15 years or so, however, I have also spent increasing time correcting basic grammar, punctuation, and other technical features of language. I am distressed, but hardly surprised, that many law students are seriously deficient in these areas. Many Loyola students have graduated from large research universities like UCLA, USC, and similar institutions. Despite their high grade-point averages, they have often taken classes with minimal writing requirements. Even more disturbing, however, is when I ask to see their upper division "A" papers. These efforts are often full of technical errors that professors and, more usually, teaching assistants, have failed to correct. As the students told me regularly, they received high grades for their "content" and "ideas."

This is perfectly understandable to me. As a longtime University of California faculty member, I know that there are few incentives, other than emotional satisfaction, for professors to spend numerous hours correcting grammar and punctuation. Promotion and peer respect hardly depend on such professional responsibility and diligence; indeed, spending too much time on student papers can lead to quite opposite consequences. Moreover, many teaching assistants themselves are pressed for time, with multiple obligations far beyond their paper grading responsibilities. More distressing is a reality that many university officials are reluctant to acknowledge: many contemporary native English speaking teaching assistants themselves don't know the basic rules of English grammar and punctuation and cannot, therefore, correct errors in student papers even if willing to do so.

As a writing advisor, therefore, I spent many hours explaining the difference between "there" and "their," "principle" and "principal," and "because" and "as." Many times I also explained that a complete sentence required a noun or a pronoun and a verb (and often, I further explained what *those* words meant). I showed why "their" had to be replaced by "his" or "her" and why students should change "the Court decided in favor of the plaintiff and I" to "plaintiff and me." I had many similar examples over the years. I wish that I could say that I'm exaggerating, but I'm not.

I always tell students that this is not trivial. If they make these errors on legal writing assignments, they will lose points and grades. But when they enter legal practice, the consequences are more severe. They will be accountable to legal and judicial superiors who are properly intolerant about such errors. Moreover, their clients may also suffer the consequences of these errors and deficiencies.

Students often asked me to recommend a book that will get them up to speed quickly on technical writing matters; this is, I think, all too typical of the

desire for a "quick fix." I also strongly maintained that a mechanistic reliance on Internet grammar programs is a foolish strategy without also acquiring a deeper actual knowledge of proper grammar, punctuation, syntax, and the like. I always told them that the more durable cure is to continue writing and, above all, to read extensively, especially in areas beyond the law. Their inexperience in extensive reading, in my judgment, explains their technical deficiencies. For swift punctuation assistance, however, I point them to Richard Wydick's *Plain English For Lawyers*, which has the best and most concise section on punctuation I've seen. I even used it for my undergraduates at UCLA.

These problems are unfortunate, and they can be addressed, but they shouldn't occupy substantial time in law school settings. My deeper critique is the very nature of legal writing assignments. Typically, legal writing and research courses last for an entire year. That gives instructors substantial time to vary their assignments and to go vastly beyond the objective memorandum and the persuasive brief.

I have several suggestions for change, but I'd like to identify the chief structural source of the problem I perceive with legal writing. It is a subset of a more general problem with legal education. Many decades ago, as a law student, I read Jerome Frank's incisive 1950 book, *Courts on Trial*. In his chapter on legal education, he argued persuasively that law schools were crippled by historical inertia, reflecting the 19th century influence of Harvard Law School Dean Christopher Columbus Langdell, who initiated the so-called "case system" that still dominates legal education in the early 21st century. Instead, Judge Frank offered a persuasive argument for "lawyer-schools" instead of the present arrangement.

Frank stated his critique provocatively:

> I will be told––I have been told––that the law schools at most have but three short years to train lawyers, and that these years are already so crowded that there is no time to spend on the sort of first-hand material to which I have been referring . . . . For in most university law schools the major part of the three years is spent in teaching a relatively simple technique––that of analyzing upper court opinions, "distinguishing cases," constructing, modifying, or criticizing legal documents. Three years is much too long for that job. Intelligent [women and] men can learn that dialectical technique in about six months.[1]

He continues by claiming that once law students have learned that technique, they merely repeat it until they graduate. That was certainly my experience in law school. After my first year with such required subjects as torts, contract, property, and civil procedure, I found that I did the same thing with corporations, estates and trusts, family law, and so forth. The biggest consequence was boredom and I was hardly alone in that reaction.

Judge Frank's argument is specifically relevant to the legal writing curriculum. My years as writing advisor persuade me that a few weeks of conventional assignments would be perfectly adequate. One short objective memorandum and one short argumentative brief in the early part of the first semester should suffice. Students, after all, can take legal drafting, appellate advocacy, and similar writing intensive courses in the next two years, perhaps even preferring such courses to more doctrinal courses.

As Jerome Frank suggests, once students grasp the basic elements of legal knowledge, they should have little difficulty in applying those skills in the future. That principle should apply as well to legal writing. As every lawyer knows, law students really learn how to practice their profession after they graduate. This principle applies no less to legal writing than to any other feature of legal work.

Legal writing teachers have an entire year to encourage and assist students to improve their writing skills. I suggest that they diversify their assignments, especially in areas that actually conform to "real-life" legal experience, making legal writing a fundamental part of Judge Frank's lawyer-school proposal. The possibilities are enormous. What follows are writing assignments that I

"I have several suggestions for change, but I'd like to identify the chief structural source of the problem I perceive with legal writing."

1 Jerome Frank, Courts on Trial 236-37 (1950).

think would better prepare law students for their future professional responsibilities. I'm heartened that many of these suggestions are currently being implemented throughout the country.

They are responsive to the 2007 Carnegie report on "Educating Lawyers: Preparation for the Practice of Law" and similar critiques of legal education. These and similar reforms[2] are more interesting and reduce the pervasive dread that thousands of law students feel when they take their legal writing classes.

"Other imaginative legal writing assignments and options can augment the movement towards a more realistic preparation for legal practice."

Drafting Legal Documents

Students could be assigned to draft such simple legal documents as routine court complaints and pleadings, uncomplicated wills, trusts, sales contracts, rental leases and agreements, and similar writings. While this is common in upper level legal drafting courses, some modest exposure to such documents in the first-year course would be desirable. Thousands of law students graduate with little or no experience with such documents. There is no reason that legal writing instructors cannot correct language as well as provide guidance for proper legal format.

Letters

Lawyers write letters regularly in their practices. These documents require the careful and subtle use of language depending on their intended audiences. They provide a powerful opportunity for legal writing instructors to teach their students about rhetorical and argumentative strategies, concise language, verbal clarity, and every other objective they seek to accomplish. Typical letters include client communications, letters to opposing counsel, representation documents, demand letters, and suggested settlement offers. Students could also be encouraged to compose cover letters for possible employment; this would fit in well with the quest for summer positions during the first year of law school. I can add that I have reviewed many hundreds of such letters. Some are superb, but many others are appalling, leading inevitably to swift rejections.

Email Communications

In an email universe, clear and effective communications in this medium are crucial. Inter and intra office emails are routine in legal practice. Law students often get experience in this communication medium in summer jobs and externships, but they could develop even better skills in their first year as part of their writing requirements. Proper email protocols, including timely responses and ethical standards, are well within the pedagogical mandate of the legal writing faculty.

Other Possible Legal Writing Assignments

Other imaginative legal writing assignments and options can augment the movement towards a more realistic preparation for legal practice. Legal writing faculty can teach far beyond traditional curricular constraints if their law school superiors allow them the academic freedom to do so; they can experiment with different issues and activities that would engage and even excite their students. They might, for example, send students to local courts and ask them to summarize briefly the proceedings they observed. This would have the dual advantage of broadening their writing experiences and exposing them to the actual judicial world. These visits can range from trial to appellate courts, but trial courts provide exposure to the venues where most people have real-life experience with the judicial process. In their efforts, students should be expected to address both technical issues of law and the broader policy issues that the cases may raise.

Teachers might also have students write summaries and critiques of contemporary federal and state court decisions. Controversial cases are common and law students discuss them routinely; there is no reason why first year law students shouldn't write short and effective analyses of some of these decisions. Finally, teachers could encourage students to write letters about current legal topics to the editor, including school and local newspapers. They could also submit essays to online legal, political,

2 See, e.g., Building on Best Practices: Transforming Legal Education in a Changing World (Lexis 2015).

and public policy journals and blogs, and even contributions to national publications. These short documents, whether accepted for publication or not, are also available for careful instructor scrutiny and evaluation on such criteria as organization, clarity, and legal accuracy. Such assignments might also stimulate a longer commitment to civic activism, one of the historic roles of the legal profession.

I offered these suggestions to many students at Loyola Law School and the response was always favorable. To be sure, they were in the midst of the challenging process of drafting legal memos or points and authorities and, therefore, struggling with the emotional burdens of law school generally. Still, a diverse set of writing assignments that would link them to real world legal problems seemed very appealing.

I want to conclude with some observations about changes I noticed among law students in recent years. Far too many students who signed up for appointments with me merely wanted to know what they had to do to get better grades. They showed little interest in the deeper requirements of effective writing. They wanted my assistance in "fixing" things. When I made better word choices, they merely substituted my word without inquiring why. Some merely wanted me to polish their papers. At the extreme, I received a few emails with the heading "please edit."

This reflects, I think, a declining and ominous lack of intellectual curiosity among contemporary law students. I'm perfectly aware of the grading pressures, the problematic job market, and the astronomical debts that students often accumulate. These are real and I don't discount any of them. But even the most competitive law schools allow for some free time and some reading beyond the regular curricular materials.

As a writing advisor, I usually spent the first few minutes getting acquainted with students. I asked about their lives, their previous education, their interests, their aspirations and so forth. This enabled me to help them more effectively, especially if I saw them regularly. I do this regularly with my undergraduate students at UCLA and I have found it to be an especially useful teaching strategy. Also, it's enjoyable because it creates a human relationship that can be lacking in institutional settings like large universities and law schools.

Many of the law students responded well, even eagerly. Others, however, seemed anxious to move swiftly to fixing their errors in their papers. That reaction is troubling because a mere "quick fix" avoids a more structural confrontation with defects in writing generally. Until students delve seriously into how they can improve their writing for the long term, they are unlikely to succeed in a legal world where proficiency in language is a crucial factor in professional achievement.

I don't expect law students to follow my unusual personal path by devoting most of their professional lives to teaching and publication in the humanities and social sciences. Prospective lawyers, after all, like prospective periodontists and certified public accountants, are unlikely to be enchanted by the novels of Albert Camus or the paintings of Jacob

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Micro Essay

AI will inevitably impact all subjects, including LRW. The question becomes, then, how much of an impact? Legal research will continue to welcome new technologies with open arms. Legal writing will not, or at least should not, be as heavily impacted. Students' voices are conveyed in their writing through unique styles and approaches and contribute to their individual brands as future attorneys. Students can learn to use AI to collect legal data, but they alone should analyze and convey that data. We should preserve the human voices in legal writing that future clients will relate to on a personal level.

By Amany Awad, Writing Advisor, Writing Resource Center, The John Marshall Law School, Chicago.

Lawrence. Still, a broader life beyond the narrow confines of professional knowledge actually makes men and women better at their professional work. Among many other advantages, this exposure to humanistic knowledge often equips them with a greater sensitivity and perspective, attributes especially valuable in an increasingly multiracial, multicultural world. More importantly, especially for lawyers, a deeper intellectual curiosity enables them to function much better as active citizens, and with greater public respect, in the perilous environment of the early and mid 21st century.

I have some modest hope that my prescriptions for legal writing changes will come to pass because the legal writing community has begun to embark on some of these reforms. I am, of course, all too familiar with making educational suggestions that students and some colleagues applaud but that rarely make any institutional difference. Still, proposals for change can generate serious conversations among educators and legal practitioners and perhaps even propel incremental changes. For many decades, for example, I have urged University of California administrators to reward teaching as much as they do research and publication. There is considerable rhetoric about this issue, and some modest improvement. But insiders know well that faculty are rewarded, in promotions, money, and prestige, for their research and publication, while teaching remains a decidedly second level priority.

I also recommended in a published article that less reliance be placed on the Law School Admission Test. I know from extensive personal experience with minority students that they are at a powerful disadvantage with this and other standardized tests, for reasons that have been well documented in the literature. The reliance on such examinations will not change in my lifetime. I am heartened, however, that my lifetime of advocacy for increased enrollment of women and racial and ethnic minorities in universities and professional schools has made advances, although much more needs to be done.

My suggestions for legal writing changes might stimulate more legal writing teachers to augment their assignments with some of these suggestions or others of their own making. Perhaps entire writing programs may wish to consider how they can better prepare their students for the world of legal practice beyond the more narrow domains of corporate legal firms. Whatever they decide, there should be some critical realization about how much of the present arrangement is increasingly ill suited to the new realities of legal work in the next decades.

"My suggestions for legal writing changes might stimulate more legal writing teachers to augment their assignments with some of these suggestions or others of their own making."

Micro Essay

Indubitably. Think about spell check! Spell check is proto-AI. Features like autocorrect on your smart phone and autocomplete in your favorite web-based search engine are today so quotidian so as to be unremarkable, but this is AI today. We don't always think about it, but we already rely on AI to do much of our writing and research. The question is: how much power will HI cede to AI?

Duck.

Duck.

Duck!

You can't rely on autocorrect to accurately communicate meaning and information. We can teach our students to identify when to interrupt automatic processing with active HI.

By Kim D. Chanbonpin, Director of Lawyering Skills, The John Marshall Law School, Chicago.

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