

Cite as: Patrick Barry, *Faculty Briefs*, 27 PERSP. 19 (2019).

Faculty Briefs

By Patrick Barry

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The written advocacy of faculty members is an underused resource. That is one of the takeaways from “[Faculty Briefs](#),”¹ a lunchtime workshop at the University of Michigan Law School that students have described in glowing terms. “This was great!” one student wrote in the anonymous feedback form following the pilot session back in September 2016. Others added that it was “excellent,” “very compelling,” and “one of the best hours I [have] spent.”

Subsequent sessions produced similar reviews. In fact, the consensus from students was so strong and immediate that Faculty Briefs soon became a regular series. Here are three of its key components.

(1) A brief written by someone students might have had in class

Given that casebooks mostly contain judicial opinions, students report not seeing a lot of briefs in law school, particularly in their first year. So it can be refreshing and helpful to see what a good one looks like. “Great to see a successful brief and dissect it a bit,” is how one student put it on the feedback form. Another student shared that they “loved reading sentences of a real brief.” That the briefs are the work of faculty members students currently have or may have in the future seems to add an extra bit of meaning to the experience—and even help promote the faculty members’ work. As one student explained after a Faculty Briefs session featuring Professor Vivek Sankaran, “These presentations are beneficial not just for us, but for Professor Sankaran (and other presenters). I want to take his clinic now.”

(2) A writing lesson designed with the brief in mind

The first twenty or so minutes of Faculty Briefs is devoted to teaching students a discrete writing technique the brief employs particularly well. For a brief that bankruptcy expert John Pottow wrote in *Executive Benefits Insurance Agency v. Arkison*, a 2014 Supreme Court case Pottow won 9-0 for his client, we focused on how to vary the sentence structure of a paragraph.² For a brief constitutional law scholar Evan Caminker filed while a Special Assistant U.S. Attorney in Detroit, we focused on how to frame a narrative.³ And for a complaint—we’ve branched out from just briefs—civil procedure specialist Maureen Carroll worked on during her years doing impact litigation in Los Angeles, we focused on investigate advocacy and what lawyers can learn from journalists.⁴ The writing tips are valuable on their own—I’ve now used them with audiences outside the Faculty Briefs context. But they again added force because of their source: a winning brief from a faculty member students know and admire.

(3) Time for Q and A

Perhaps the best part of Faculty Briefs is the question and answer portion. Below is a list of topics that have been raised:

- **Drafting:** How many versions did this brief go through before you filed it?
- **Advice:** What’s the best piece of writing advice you have heard? What’s the worst?

² Brief for Respondent, *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. 25 (2014) (No. 12-1200), 2013 WL 6019314.

³ Brief for the United States, *United States v. Hixson*, 636 F. App’x 300 (6th Cir. 2016) (No. 15-1131), 2015 WL 4597925.

⁴ Complaint, *Bautista v. State of California Div. of Occupational Safety and Health*, No. BC494056 (Cal. Super. Oct. 18, 2012), 2012 WL 5305185.

¹ *Faculty Briefs*, UNIV. MICH. L. SCH., <https://www.law.umich.edu/currentstudents/writingbettersentences/Pages/Faculty-Briefs.aspx> (last visited Mar. 26, 2019).

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- Habits and Habitats: When and where do you do your best writing? In the morning? In the evening? At home? In your office?
- Development: How have you changed as a writer since you began to practice? What good habits have you developed? What bad ones would you like to shake?
- Models: Who are the writers you most often turn to when you want to be reminded of how to put together clear, effective sentences?

Students have a chance to send along these types of questions ahead of the event as part of their RSVP form. They can also ask new ones during the session. Things get especially lively when you pick briefs written by two or more co-authors. We did that with an amicus brief written by Professors Ted Becker and Margaret Hannon on behalf of the ACLU,⁵ and then again when the guests were Professor Matt Andres and Clinical Fellow Yulanda Curtis, both of the Veterans Clinic. The varying viewpoints—even on something like semi-colons—significantly enriched the conversation.

I. Missteps

As successful as Faculty Briefs has been, complications sometimes arise. Most, so far, have involved timing. Putting on Faculty Briefs sessions in the fall means talking about persuasive writing at a time when the 1L class (at least at Michigan) is still learning about objective writing. I didn't do a good job of acknowledging that disconnect originally. As a result, some 1Ls approached their first memo assignment with the wrong mindset, the equivalent of a new hire at a newspaper mistakenly thinking her job was to write an editorial when what her boss really wanted was a neutral piece of reporting.

Beginning the session with a disclaimer can help address this issue. Although upper-level students are the prime target, the audience Faculty Briefs draws is a mix of 1Ls, 2Ls, 3Ls, and LLMs. But 1Ls can still benefit so long as it is clear to them that the tips they are hearing

should be tucked away for a future date. A sentence or two of explanation usually does the trick.

A second issue involves not the macro-level timing of Faculty Briefs within a semester but the micro-level timing of how to structure each session. If the opening writing lesson goes too long, the Q and A suffers. That happened when the guest was Professor Richard Friedman. The brief was from his winning argument in *Davis v. Washington*, a case that marked the second time the Supreme Court adopted his approach to the Confrontation Clause.⁶ (The first was in *Crawford v. Washington*.⁷) Because I went beyond the time we allotted for the writing lesson, Rich had to rush through both the interesting story of how he got involved in the case and the major doctrinal shift the Court's decision represented. Better planning would have created a better experience.

II. Spinoffs

Even with the scheduling missteps, Faculty Briefs has had a large educational payoff—so much so that we'll soon be launching a spinoff called “Alumni Briefs.” The format will be the same, but the featured writer will now be drawn, not from Michigan's faculty, but from the ranks of our alumni. The hope is that this larger pool of people will bring a more diverse set of cases and writing styles to our students and perhaps also create some networking opportunities. A good way for students to learn about and connect with potential employers is for them to read an excellent brief and meet the lawyer who wrote it.

Law firms and public interest organizations could do a similar program, though perhaps focus their networking efforts more internally. Something like “Partner Briefs” might be a helpful way to teach young associates about the mechanics and strategy of advocacy while at the same time introducing them to the firm's best writers. The investment wouldn't have to be major—maybe a lunch meeting every month or two—for a regular series to develop. And by recording and livestreaming the sessions,

⁶ Reply Brief of Petitioner Hershel Hammon, *Davis v. Washington*, 547 U.S. 813 (2006) (No. 05-5705), 2006 WL 615151.

⁷ Motion for Leave to File & Brief Amicus Curiae of Law Professors Sherman J. Clark, James J. Duane, Richard D. Friedman, Norman Garland, Gary M. Maveal, Bridget McCormack, David A. Moran, Christopher B. Mueller, and Roger C. Park, in Support of Petitioner, *Crawford v. Washington*, 541 U.S. 36 (2004) (No. 02-9410), 2003 WL 21754958.

⁵ Amicus Curiae Brief of the ACLU of Michigan, *Johnson v. VanderKooi*, 903 N.W.2d 843 (Mich. Ct. App. 2017) (No. 330536); Appellants' Supplemental Brief, *Johnson v. VanderKooi*, 918 N.W.2d 785 (Mich. 2018) (Nos. 156057, 156058), 2018 WL 1115545.

the reach of the lessons and insights could extend well beyond just the people in the room, as well as be stored for future training opportunities.

For example, we tape the majority of the workshops I do at Michigan. Some we post online; others we place on a server reserved for students and alums. The benefits of being able to edit and distribute content have been immense—especially given that it is often more helpful to get the instruction that Faculty Briefs provides, not on the days when it is originally offered, but on the days when you are actually writing a brief. In-time education and training is now a viable option.

III. Predecessors

Faculty Briefs has had a couple of predecessors that are well suited for even a small group of law students or judicial clerks to host. When I was in law school at the University of Chicago, I teamed up with some folks to create “How I Write,” a lunchtime series modeled on a series of the same name at Stanford University.⁸ The Stanford series features writers from the entire campus—historians, biologists, engineers, computer scientists, the whole academic gamut. We, in contrast, focused on law professors and were definitely rewarded by the care and candor they put into their remarks. The guest at one, constitutional law scholar Geoffrey Stone, even took the time to

prepare a “Dos and Don’ts List” for all the attendees. The only thing we law students had to do was sit back, ask some questions, and listen as Professor Stone and others offered advice on everything from how to draft and how to edit, to how to make sure we hit deadlines. It was the best kind of education: practical tips from experienced professionals capable of articulating their writing process through helpful concepts and examples. Any law student with an interest in writing and a little bit of initiative could get something like this going.

The same is true of judicial clerks and interns. One of the best things a co-clerk and I did when we worked at the federal courthouse in downtown Las Vegas was set up coffee dates with the various judges in the building and then ask them about the nuts and bolts of writing opinions. Once, with Judge Jay Bybee of the Ninth Circuit Court of Appeals, we did this with a group of law students from UNLV in a formal setting. But most of the time we did it over coffee in the judge’s chambers. We called it “Wisdom Wednesday,” the deal being that we would provide the coffee if they provided the wisdom.

And that’s essentially what Faculty Briefs is: a chance to get some wisdom from top advocates about perhaps the most important skill any lawyer can develop—the ability to effectively communicate ideas in writing. You don’t need to be a professor to start a version of it. Nor do you even need to be in a law school setting. All that is required is an interest in becoming a better writer and a little entrepreneurial initiative.

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⁸ *How I Write Series*, Stan. U.: Hume Ctr. for Writing & Speaking, <https://undergrad.stanford.edu/tutoring-support/hume-center/about-hume-center/annual-events/how-i-write-series> (last visited Mar. 26, 2019).

Micro Essay

AI products do not belong in law schools until their efficacy is established through independent, qualitative, peer-reviewed study. Education and technology conglomerates herald the potential of AI in education but have offered no proof of concept. (See also, MOOCs, the last big ed-tech trend. Ten years in, efficacy still unproven.)

Law schools provide the means for students to develop analytical and critical thinking skills. Supplanting instructional time or resources with unproven AI is folly. Turning law schools into laboratories and students into guinea pigs, for the benefit of corporations intent on creating both a product and a need, is unethical.

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