

Legal Research and Writing Resources: Recent Publications

Compiled by Barbara Bintliff

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E. Joan Blum & Kathleen Elliott Vinson, *Teaching in Practice: Legal Writing Faculty as Expert Writing Consultants to Law Firms*, 60 Mercer L. Rev. 761–790 (2009).

The authors explain the benefits of legal writing faculty serving as writing consultants to law firms, and describe the “nuts and bolts” of a consulting practice. Challenges and ethical issues that may arise during a consultant’s service are addressed.

Patricia A. Broussard, *Now You See It Now You Don’t: Addressing the Issue of Websites Which Are “Lost in Space,”* 35 Ohio N.U. L. Rev. 155–170 (2009).

This article tackles the problem of the lack of permanent availability of some Internet resources. It asks whether the “average law professor, who works mightily to churn out a large journal article every two years or so, [should] be penalized for relying heavily on Internet citations provided full and accurate credit is given to all sources?” *Id.* at 157. The author proposes guidelines for the use of Internet resources not included in stable databases (for example, HeinOnline and FindLaw®), given the common occurrence of those resources “disappearing” from time to time.

Susan M. Case & Beth E. Donahue, *Developing High-Quality Multiple-Choice Questions for Assessment in Legal Education*, 58 J. Legal Educ. 372–387 (2008).

“This paper begins with a brief summary of the relative merits of multiple-choice

questions as opposed to essay questions, and then focuses on how to construct multiple-choice questions to ensure that they will assess the competencies that are intended.” *Id.* at 372. The authors break down multiple-choice questions into pieces (the stem or scenario, the lead-in question, and the options) and give examples of how to write effective multiple-choice questions. A “Checklist for Writing Multiple-Choice Questions” is included in an appendix.

Charles A. Cox Sr. & Maury S. Landsman, *Learning the Law by Avoiding It in the Process: And Learning from the Students What They Don’t Get in Law School*, 58 J. Legal Educ. 341–350 (2008).

Description of a seminar at the University of Minnesota that is designed to “help students learn that they can resolve what the law should be, and usually is, just by ‘thinking it through.’ The technique is simple: focus on the facts of the case and remember that the law is only answers to human problems—and that those answers come from logic, instinct, judgment, experience, imagination, impulse, anger, common sense, and every other human mental activity.” *Id.* at 341. The authors state that the course teaches a thinking process applicable to every kind of legal thinking, and is intended to be used before students begin researching their issues.

James D. Dimitri, *Stepping Up to the Podium with Confidence: A Primer for Law Students on Preparing and Delivering an Appellate Oral Argument*, 38 Stetson L. Rev. 75–105 (2008).

This article is intended to assist law students, and especially first-year law students, prepare and deliver an appellate oral argument. It covers preparation, including outlining, delivering the argument, answering questions from the bench, rebuttal, and miscellaneous advice (including tips relating to appearance and demeanor).

Michael L. Eber, Comment, *When the Dissent Creates the Law: Cross-Cutting Majorities and the Prediction Model of Precedent*, 58 Emory L.J. 207–248 (2008).

This comment examines a conception of law and precedent that provides an alternative to the traditional “command model” of precedent “in which lower courts are required to follow only unified-majority rules that were necessary to the result of a particular judgment.” *Id.* at 211. The alternative model, labeled the “prediction model,” is one in which lower courts would “conform their decisions to expectations of how a higher court, if any, would rule on an issue.” *Id.* The author also posits that, based on the prediction model, “lower courts should treat cross-cutting majorities as maximally persuasive, albeit nonbinding, authority.” *Id.* at 212.

Robert C. Farrell, *Why Grammar Matters: Conjugating Verbs in Modern Legal Opinions*, 40 Loy. U. Chi. L.J. 1–47 (2008).

In answering the question “does grammar matter to the courts?” in the affirmative, the author illustrates his point with instances in which cases have “turned on the person, number, tense, voice, or mood of a verb, and on the use of a gerund, infinitive, or participle.” *Id.* at 43. Examples of problematic grammar are included.

Bernadette T. Feeley, *Training Field Supervisors to Be Efficient and Effective Critics of Student Writing*, 15 Clinical L. Rev. 211–237 (2009).

“This article discusses how law student externs can benefit if their field supervisors use legal writing pedagogical techniques to provide feedback on student writing. The goal of the article is to provide ten concrete techniques for legal writing critique that externship clinicians can pass along to their field supervisors to help them provide effective yet efficient critique of student writing projects.” *Id.* at 211.

Ian Gallacher, “*Aux Armes, Citoyens!*”: *Time for Law Schools to Lead the Movement for Free and Open Access to the Law*, 40 U. Tol. L. Rev. 1–51 (2008).

Gallacher describes the problems with the present computer-assisted legal research

environment, in which two large companies have significant control and gaining access to legal information is difficult for low-income and pro se clients and scholars outside the law school. He discusses the potential benefits of an open-access law, considers the existing alternatives to the large commercial databases, and concludes that law schools have both an opportunity and an obligation to provide some form of access to legal information. The goal of the article is to begin a dialog on this issue.

Wes Henricksen, *Making Law Review: The Expert’s Guide to Mastering the Write-On Competition*, 2008 [Durham, N.C.: Carolina Academic Press, 118 p.]

Written by a former law review editor, this brief work offers chapters on the benefits and drawbacks of law review membership and how membership is determined, with an overview of the write-on competition. Chapter 6 offers 12 steps to success in writing the write-on paper. Also included are tips on the editing exercise and preparing personal statements.

Robert J. Hume, *The Impact of Judicial Opinion Language on the Transmission of Federal Circuit Court Precedents*, 43 Law & Soc’y Rev. 127–149 (2009).

The author studied why some federal appellate court precedents are adopted in other circuits and others are not through an examination of “opinion language.” The primary hypothesis was that “precedents are more likely to transmit to other circuits when opinion writers communicate the importance of their decisions using opinion language such as the legal grounding, the amount of supporting evidence, and the decision to file a per curiam opinion.” *Id.* at 129.

Julie M. Jones, *Not Just Key Numbers and Keywords Anymore: How User Interface Design Affects Legal Research*, 101 Law Libr. J. 7–30 (2009).

The author applies information-foraging theory and current standards for optimal Web design to analyze whether and how LexisNexis® and Westlaw® may be affecting the research skills of law students and new attorneys, especially as more and more

secondary materials are available online. She concludes that, while Westlaw and LexisNexis have become indispensable for legal research, their search and browsing mechanisms, in particular, make them cumbersome to navigate and discourage effective use.

Denise M. Keele et al., *An Analysis of Ideological Effects in Published Versus Unpublished Judicial Opinions*, 6 J. Empirical Legal Stud. 213–239 (2009).

Based on opinions of the federal judiciary, this study used the attitudinal model of behavior to “empirically test whether published judicial opinions are representative of all opinions. . . .” *Id.* at 213. Opinions challenging the U.S. Forest Service were studied. The authors conclude that appellate judges generally followed their ideological preferences in published opinions, but not in unpublished opinions, whereas district court judges did not follow their ideological preferences in either. The conclusion notes that scholars should use both published and unpublished opinions in research on judicial decision making.

Jess M. Krannich, James R. Holbrook & Julie J. McAdams, *Beyond “Thinking Like a Lawyer” and the Traditional Legal Paradigm: Toward a Comprehensive View of Legal Education*, 86 Denv. U. L. Rev. 381–404 (2009).

The authors advocate a legal education that has a balanced focus between the “practical and humanistic” and the theoretical. They offer a critique of today’s legal education process, concluding that “the narrow perspective of traditional legal education has become antiquated.” *Id.* at 404. Their approach, they state, would result in new attorneys prepared to solve problems creatively, not just analytically.

The Law School Librarian’s Role as an Educator: Leading Librarians on Adapting to New Technologies, Maximizing Research Skills, and Helping Students Transition from Law School to Law Firm, 2008 [Boston, MA: Aspatore Books, 180 p.]

This book includes chapters on “Teaching Effective Legal Research,” “Teaching the

Questions, Not the Answers,” “Training the Next Generation of Lawyers: Teaching Essential Research Skills,” and “Working with Students and Faculty in the Research Process.”

Linus E. Ledebur, Comment, *Plurality Rule: Concurring Opinions and a Divided Supreme Court*, 113 Penn St. L. Rev. 899–921 (2009).

The author begins by asking if “an opinion signed onto by only a single [U.S. Supreme Court] Justice can be binding precedent” (*id.* at 900) and answers the question in the affirmative. The article examines the problems caused by the evolution of concurring opinions and their relation to plurality opinions, and reviews several existing proposals to solve the problem. The author concludes with his own solution that proposes a new Court rule that would eliminate concurring opinions entirely and require a single, majority opinion.

Cheri Wyron Levin, *The Doctor Is In: Prescriptions for Teaching Writing in a Live-Client In-House Clinic*, 15 Clinical L. Rev. 157–186 (2008).

The author describes her experiences in incorporating advanced legal writing into the clinical program. While writing is a part of the clinical experience, integrating the formal teaching of writing into clinical teaching combines the benefits of both. She notes that the student’s responsibility of representing a live client and the “fear of failure” result in powerful motivation to do well in all aspects of the clinical experience, and thereby increase the attention paid to the writing instruction.

Lance N. Long & William F. Christensen, *Clearly, Using Intensifiers Is Very Bad—Or Is It?* 45 Idaho L. Rev. 171–189 (2008).

The authors explain that “[a]lthough scholars have generally found that overusing intensifiers (words such as ‘clearly,’ ‘obviously,’ and ‘very’) negatively affects the persuasiveness or credibility of a legal argument, no one has studied actual appellate briefs to determine whether there is a relationship between intensifier use and the outcome of an appeal. This article describes two empirical studies of appellate

briefs, which show that the frequent use of intensifiers in appellate briefs (particularly by an appellant) is usually associated with a statistically significant increase in adverse outcomes for an ‘offending’ party. But—and this was an unexpected result—if an appellate opinion uses a high rate of intensifiers, an appellant’s brief written for that appeal that also uses a high rate of intensifiers is associated with a statistically significant increase in favorable outcomes.” *Id.* at 171. Also included is a discussion of the use of intensifiers in judicial opinion writing, and a call for further research into the question before clear causal relationships are identified.

Amanda Martinsek, *Legal Writing: How to Write Legal Briefs, Memos, and Other Legal Documents in a Clear and Concise Style*, 2009 [New York, NY: Kaplan Publishing, 263 p.]

As noted in the preface, despite the glamour of TV law, “most courtroom battles are fought, won, and lost on paper. Writing a coherent, persuasive legal argument is an advocate’s most powerful weapon.” *Id.* at v. The author moves from basic writing skills, including organization, style, mechanics, demonstrative aids, and citation form, to applying these tools to specific writing types, including memos, pleadings, discovery documents, letters, and appellate writing.

Elisa Mason, *Internally Displaced Persons: Guide to Legal Information Resources on the Web*, LLRX.com, April 8, 2009 (available online at <www.llrx.com/features/internaldisplacement.htm>).

Research guide to resources and organizations focused on the legal framework for dealing with displaced person, based on human rights and humanitarian law norms.

Lisa T. McElroy, *From Grimm to Glory: Simulated Oral Argument as a Component of Legal Education’s Signature Pedagogy*, 84 *Ind. L.J.* 589–636 (2009).

“In proposing that law professors regularly use simulated oral argument exercises to supplement traditional Socratic dialogue, [this article] meets head on the concerns

expressed by Best Practices and Carnegie that over-reliance on the Langdell method neither mimics law practice nor nurtures student learning.” *Id.* at 589. The author argues that “for experienced advocates and law students alike, practice oral argument may be a starting point, rather than a mere end point, for teaching, learning, and executing the fundamentals of legal analysis.” *Id.* The examples given use precedent based on children’s fairy tales, which give a familiar and nonthreatening context for the exercise.

Diane Murley, *What Second Life Taught Me About Learning*, 100 *Law Libr. J.* 787–792 (2008).

The author, an experienced legal research instructor, describes her experiences in learning to use the “virtual world” Second Life. She concludes with a recommendation that teachers understand their own learning preferences to help them better prepare for class and more effectively teach their students.

Michael D. Murray & Christy H. DeSanctis, *Legal Research Methods*, 2009 [New York, NY: Thomson/Reuters/Foundation Press, 247 p.]

This book addresses “the process of legal research and will examine in detail the sources of the law available on-line, through web-based research services, and in print form.” *Id.* at 1. The text is process-based, focusing on legal research from a practitioner’s perspective. Part of the “Interactive Texts for Legal Research and Writing” series, purchasers also receive access to an electronic version of the book with links to numerous online resources.

Michael D. Murray & Christy H. DeSanctis, *Legal Writing and Analysis*, 2009 [New York, NY: Thomson Reuters/Foundation Press, 377 p.]

This book provides a process-oriented approach to legal writing and analysis in objective and adversarial contexts. The authors describe how to use TREAT (thesis, rule, explanation, application, thesis restated as a conclusion), which they consider a more sophisticated tool than the more-common IRAC model for teaching writing and analysis.

Richard K. Neumann Jr. & Sheila Simon, *Legal Writing*, 2008 [New York, NY: Aspen Publishers, 314 p.]

The goal of this book is “to explain analytical writing in ways that are concise, accessible, and occasionally conducive to provoking the type of smile that enhances learning.” *Id.* at xxiii. Special coverage is included on the process of writing, storytelling, and the CREAC formula. The final chapters cover appellate briefs and oral arguments. Appendixes include sample office and motion memoranda, and appellants and appellee’s briefs.

Nicholas Pengelley & Sue Milne, *Researching Australian Law*, LLRX.com, March 21, 2009 (available online at <www.llrx.com/features/researchingaustralianlaw.htm>).

A research guide to Australian law, including explanations of the organization of the legal system, with a brief history and background of the development of the Australian Constitution. Sections include coverage of Parliament and statutory resources, courts and judgments, treaties, secondary sources, and general reference sources. Major texts are identified.

Katherine Pratt, Jennifer Kowal & Daniel Martin, *The Virtual Tax Library: A Comparison of Five Electronic Tax Research Platforms*, 8 Fla. Tax Rev. 931–1009 (2008).

This article evaluates and compares the electronic tax library platforms of BNA, CCH, LexisNexis, RIA®, and Westlaw, and includes comparisons of the primary and secondary source content of the subscription services to free information available on the Internet. Detailed “search pathways” are provided to enable tax researchers to navigate better through the resources.

Bret Rappaport, *Tapping the Human Adaptive Origins of Storytelling by Requiring Legal Writing Students to Read a Novel in Order to Appreciate How Character, Setting, Plot, Theme, and Tone (CSPTT) Are as Important as IRAC*, 25 T.M. Cooley L. Rev. 267–302 (2008).

This article states that effective, persuasive legal writing should employ storytelling, in addition to IRAC, and that legal writing

instructors should assign a novel as part of their course to make this point. Included are examples from the author’s experience and a diagram developed to assist students in learning.

Sheila Rodriguez, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, 86 U. Det. Mercy L. Rev. 207–244 (2009).

This article examines how integrating structured feedback into a first-year legal writing course can help students develop legal writing expertise by reinforcing students’ feeling of autonomy and confidence and minimizing students’ perception of the imbalance of power between students and instructors. Numerous examples of instructor/student dialog are presented, including how the proposed six-step feedback model can avert “feedback failure.”

Jennifer Sheppard, *The “Write” Way: A Judicial Clerk’s Guide to Writing for the Court*, 38 U. Balt. L. Rev. 73–163 (2008).

This article examines the types of documents judicial clerks are most commonly asked to draft for a judge—opinions, bench memoranda, jury instructions, and orders—and then provides detailed information about them and guidance on writing each document. Numerous examples are included. The author concludes with several important writing tips that can apply to all written work.

David M. Sollors, *The War on Error: The Scrivener’s Error Doctrine and Textual Criticism: Confronting Errors in Statutes and Literary Text*, 49 Santa Clara L. Rev. 459–493 (2009).

“The scrivener’s error doctrine, broadly speaking, is a common law doctrine allowing courts encountering legal documents they believe to be in error due to a vitium scriptoris—literally ‘the mistake of a scribe,’ or any ‘clerical error in writing’—to ignore the error and apply instead what they believe to be the correct law.” *Id.* at 461. It allows courts to exercise discretion similar to that of literary translators, who must decipher writings and results of the publication process in one language and translate them

into another. “This article compares the ways that judges and textual critics address these errors, and looks to the history of textual criticism for guidance in determining the scope of discretion that should be afforded to judges applying the scrivener’s error doctrine.” *Id.*

Sabrina Sondhi, *Should We Care if the Case Digest Disappears?: A Retrospective Analysis and the Future of Legal Research Instruction*, *Legal Reference Services Q.*, No. 4, 2008, 263–281.

After reviewing briefly the development of the West key number digest system, the author examines how the shift from case digests to electronic full-text searching has affected library collections and legal research instruction. She concludes with four lessons for legal research instruction and a call for more study of first-year law student research instruction to better understand the impact of the changing research environment and, consequently, to improve research instruction.

David I. C. Thomson, *Law School 2.0: Legal Education for a Digital Age*, 2009 [Newark, NJ]: LexisNexis/Matthew Bender, 158 p.]

In response to the extraordinary changes brought about by technology, the author “envisions a new sort of law school that will be more supportive of its students and embraces the pedagogical gifts that

technology has brought and will continue to bring us.” *Id.* at x. After tracing the changes in legal education since the early 1990s and describing the culture and learning preferences of the millennial generation, Thomson turns his attention to the practice of law and its changes, criticisms of legal education, and technology’s impact. He discusses the future of legal education in light of the changed circumstances, and concludes with a call for deliberate consideration of the role technology can play in changing legal education for the better.

Nolan L. Wright, *Standing at the Gates: A New Law Librarian Wonders About the Future Role of the Profession in Legal Research Education*, *Legal Reference Services Q.*, No. 4, 2008, 305–345.

The author asserts that, “if librarians want to participate more fully in and make more of a difference in the state of legal research education, then we will need to reconsider some aspects of our professional culture.” He offers specific comments on the decline of legal research instruction and recommendations for change.

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