

Library Research Labs: A Hands-On Approach to Taking the First Step with Your Students to Reflect Good Practice in Legal Education

By **Samantha A. Moppett and Rick Buckingham**

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Law schools should incorporate research labs into their curriculum because good legal research skills are a cornerstone skill of an effective attorney. Faced with the somewhat daunting task of teaching legal research to first-year law students, law schools have developed various approaches: assigning textbook readings about conducting research, lecturing in class on the research process, presenting a “show and tell” of the sources in class, and sending students off to the library to complete a research assignment for a grade.

Talking to students about legal research and then sending them to the library—with its vast volume of books—seems to us to be like telling children how to swim and then sending them to jump off the edge of the pool into the deep end. To most first-year students, a law library is as much of an unknown as the deep end of the pool is to a nonswimmer, and both struggle to keep their heads above water. In teaching swimming, one begins by getting in the water with the children to help them acclimate to their new surroundings.¹ Similarly, we should take the first steps into the library with new law students to provide them with a better understanding of the legal research process.

To address this disconnect in the legal research curriculum, we began to offer optional research

labs in the fall of 2002; initially to the 51 students in Samantha’s three legal practice skills (“LPS”) sections.² Given the success of the labs in the fall of 2002, the entire LPS faculty and Suffolk’s reference librarians offered optional³ research labs

² Under the law school’s core academic requirements, all first-year students take a year-long, three-credit LPS class taught by a full-time LPS professor.

³ We do not require the research labs because we do not have enough time during the semester to incorporate the lab into regularly scheduled LPS class time. Although the labs are optional, the attendance has been generally high. In the fall of 2003, attendance was good for the first two labs but fell markedly for the third. For the first series of labs on reporters and digests, 70 percent of day students and 32 percent of evening students attended a lab. For the second lab on statutes and *Shepard’s*, 69 percent of day students and 30 percent of evening students attended a lab. For the third series of labs on secondary sources, 35 percent of day students and 8 percent of evening students attended a lab. In the fall of 2004, 90 percent of day students and 34 percent of evening students attended a reporters and digests lab, and 82 percent of day students and 17 percent of evening students attended a lab on statutes and *Shepard’s*. We did not offer labs on secondary sources in 2004 because of the low attendance in 2003.

¹ For 15 years Samantha taught four- to 12-year-olds to swim.

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to all 550 first-year students in the fall of 2003.⁴ As we explain below, the research labs we designed reflect the *Seven Principles of Good Practice in Legal Education* (“Seven Principles”) that were developed to improve student learning, enhance law school teaching, and increase faculty and student personal satisfaction.⁵

Research Lab Design

The research labs give students the opportunity to tackle their first legal research exercises as part of a small group with the ready assistance of a reference librarian and an LPS professor. Research labs for day students are scheduled by LPS section, and the section’s LPS professor and designated library liaison facilitate the lab.⁶ Research labs for evening students are offered at various times during the evening and on weekends. Evening students do not have assigned labs and may sign up for the one that best fits their schedule. Volunteer LPS professors and reference librarians facilitate the labs for evening students.⁷ All research labs are held in library classrooms and occur after the LPS professor has introduced and discussed the subject in class and before a corresponding library assignment on the subject is due.

We initially offered four 30-minute labs on the topics of reporters and digests, statutes, *Shepard’s*, and secondary sources. In the fall of 2003 we

extended the labs to 50 minutes and combined the labs on statutes and *Shepard’s*.⁸ We discontinued the lab on secondary sources that year due to poor attendance.⁹

At the beginning of the lab the students are divided into groups of three to five students, and each group is presented with a set of questions and a set of books.¹⁰ As the groups work on the assignment, the facilitators respond to questions and periodically check on the progress of each group.

The reference librarians design the questions to take the students through the basic steps of the research process and to point out the important features of the sources they are using. The questions also prepare the students to complete the required, graded research assignments.

A review of the research lab on reporters and digests illustrates the process. Each small group of students is given a set of books that includes digest volumes, a volume of an official reporter, and a volume of an unofficial (regional) reporter. The assignment requires the students to:

1. read a short fact pattern and select keywords, then look up the keywords in the digest *Descriptive Word Index*,
2. choose a topic and key number and read the issue summaries under that topic and key number to locate a specific case,
3. look up the case in both an official and unofficial reporter and answer questions designed to highlight the similarities and differences between the two versions, and

“The research labs give students the opportunity to tackle their first legal research exercises as part of a small group with the ready assistance of a reference librarian and an LPS professor.”

⁴ Suffolk University Law School enrolls over 1,600 J.D. students, and the first-year class comprises approximately 370 full-time day students and 180 part-time evening students. Each LPS professor teaches three sections of LPS, with 17 to 20 students in each section.

⁵ Gerald F. Hess, *Seven Principles for Good Practice in Legal Education: History and Overview*, 49 J. Legal Educ. 367, 367–368 (1999). The Seven Principles are modeled on the *Seven Principles of Good Practice in Undergraduate Education* that was published in 1987. *Id.*; see Arthur W. Chickering & Zelda F. Gamson, *Seven Principles of Good Practice in Undergraduate Education*, AAHE Bull., March 1987, at 3.

⁶ The Suffolk University law library has six full-time reference librarians (one of whom is also electronic services librarian). Each reference librarian is assigned to act as liaison to one or two LPS professors. As liaison, the reference librarian coordinates library tours, gives Westlaw® and LexisNexis® trainings for the professor’s day students, and reviews the professor’s library assignments.

⁷ Weekend labs and labs with fewer than 10 students signed up are facilitated by a single reference librarian.

⁸ We combined the statutes and *Shepard’s* labs because the students receive a library assignment covering both topics.

⁹ See *supra* note 3 and accompanying text.

¹⁰ When we first conducted the labs with only three LPS sections, we gave the students a list of books to collect from library shelves and bring to the classroom. When Suffolk extended the research labs to all first-year students, the reference librarians decided that the books needed for the labs would be kept on a cart at the library circulation/reserve desk and brought into the labs. Although this meant the students would not have the opportunity to see where the books were in the library, it eliminated the risk that students would mis-shelve the books at the end of the lab and ensured that the books needed for the labs would be available.

“Working as a team during the labs helps to combat the competitiveness of law school and the high anxiety levels that law school fosters.”

4. use a different topic and key number from the case to return to the digest and find other cases on the same issue.

Students are told that they do not have to turn in their answers but that at least one person should record the group’s answers so they can be checked by one of the facilitators.¹¹ We have placed sample research labs online at <www.law.suffolk.edu/library/services/researchlabs/>.

The Seven Principles of Good Practice in Legal Education

This approach to teaching the research process reflects the Seven Principles.¹² In 1998, the Institute for Law School Teaching began to apply the Seven Principles of Good Practice in Undergraduate Education to legal education.¹³ The Seven Principles “assert that good practice in legal education encourages student-faculty contact, encourages cooperation among students, encourages active learning, gives prompt feedback, emphasizes time on task, communicates high expectations, and respects diverse talents and ways of learning.”¹⁴

The research labs **encourage student-faculty contact**¹⁵ because they provide students, LPS professors, and reference librarians with an opportunity to meet outside of regularly scheduled class to work together to help the students to become proficient in the legal research process. This additional interaction between the faculty and students during the research labs helps to foster a better faculty-student rapport, which in turn assists in combating the feelings of isolation and

alienation that law school tends to breed.¹⁶ In addition, regular student-faculty contact, like that which takes place during the research labs, is a major factor in motivating students to perform to their potential and to get involved with the learning process.¹⁷

The research labs not only foster student-faculty relationships, but also **encourage cooperation among students**.¹⁸ The research labs provide students with what is most likely their first, and perhaps only, opportunity during their first year in law school to work together in small groups on a common goal: conducting legal research to answer the research lab questions. Working as a team during the labs helps to combat the competitiveness of law school and the high anxiety levels that law school fosters.¹⁹ Moreover, compared to competitive learning environments, students achieve a deeper understanding of the research process if they learn in a group atmosphere because they have the opportunity to share information, hear various viewpoints, and learn how others approach the research process.²⁰

In addition to fostering beneficial relationships, the research labs encourage **active learning**²¹ and provide the students with **prompt feedback**²² from the LPS professor and reference librarian. Conducting research in the lab, albeit on a small scale, allows students to evaluate whether they in fact

¹¹ Nevertheless, we recommend that they take notes because the questions and answers are a good resource for them when completing the graded library assignment.

¹² See *supra* note 5 and accompanying text.

¹³ Hess, *supra* note 5, at 368; see generally, *Seven Principles for Good Practice in Legal Education*, 49 J. Legal Educ. 367 (1999).

¹⁴ Hess, *supra* note 5, at 367; see Chickering and Gamson, *supra* note 5, at 4–6.

¹⁵ See generally Susan B. Apel, *Principle 1: Good Practice Encourages Student-Faculty Contact*, 49 J. Legal Educ. 371 (1999).

¹⁶ See Robin S. Wellford-Slocum, *The Law School Student-Faculty Conference: Towards a Transformative Learning Experience*, 45 S. Tex. L. Rev. 255, 287 (2004).

¹⁷ Apel, *supra* note 15, at 371.

¹⁸ See generally David Dominguez, *Principle 2: Good Practice Encourages Cooperation Among Students*, 49 J. Legal Educ. 386 (1999).

¹⁹ See Clifford S. Zimmerman, “Thinking Beyond My Own Interpretation:” *Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 Ariz. St. L.J. 957, 970 (1999).

²⁰ See Zimmerman, *supra* note 19, at 1000.

²¹ See generally Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. Legal Educ. 401 (1999).

²² See generally Terri LeClercq, *Principle 4: Good Practice Gives Prompt Feedback*, 49 J. Legal Educ. 418 (1999).

understand the research process they read about and discussed in class.²³ Moreover, this hands-on approach is consistent with today's students' expectations of their learning environment; as students who have grown up with instant messaging, e-mail, and limitless Internet resources, they expect to "try things rather than hear about them."²⁴ While the groups are engaged in the research process, the LPS professor and reference librarian are available to respond to questions, occasionally check in with each group to keep them on track, and verify all answers with each group when they finish. This prompt feedback in the labs lets students know whether they are "getting it" before they are asked to conduct research for a grade.

The labs also **emphasize time on task**.²⁵ Specifically, going through the research process within the time allotted for the lab allows students to assess whether the time they spent studying the research materials is sufficient before they have to complete an assignment for a grade.²⁶ Students who attend a lab are also likely to save time on the graded assignment because of their increased understanding of the research process. In addition, during the research labs the LPS professors and reference librarians can evaluate whether they are correctly gauging how long it will take students to complete the correlating graded library assignment. Students may not be able to successfully complete the graded library assignments if LPS faculty underestimate how long it will take the students to engage in the research process and answer the questions.²⁷

Furthermore, the research labs **communicate high expectations**²⁸ to the students. The presence of the LPS professor and reference librarian at the labs, which are in addition to regularly scheduled class, sends a message to the students that their understanding of the research process is a priority and important enough for us to commit extra time and resources. The research labs communicate clear and high expectations of what is required on the subsequent graded library assignment because the questions on the graded library assignment are similar to the questions they complete during the lab.²⁹ By making extra efforts and offering the research labs, we are communicating not only high expectations of our students, but also of ourselves.

Finally, this model for research labs **respects diverse talents and ways of learning**.³⁰ Our research curriculum is already tailored to most learning styles: to verbal learners through the assignment of reading in the text, to visual learners through diagrams in the text and PowerPoint slides during the lecture, to oral learners through in-class discussion, and to aural learners through in-class lectures. The research labs complement this curriculum and recognize tactile learners who learn best by touching, feeling, and using the material that they need to learn and understand.³¹ Teaching to various learning styles helps students develop a better understanding of the research process and helps the students determine what learning style works best for them.³²

“The research labs ... recognize tactile learners who learn best by touching, feeling, and using the material that they need to learn and understand.”

²³ See Hess, *supra* note 21, at 402.

²⁴ Carole A. Barone, *Technology and the Changing Teaching and Learning Landscape: Meeting the Needs of Today's Internet-Defined Students*, AAHE Bull., May 2003, at <aahebulletin.com/member/articles/educause.asp> (accessed Feb. 27, 2005).

²⁵ See generally R. Lawrence Dessem, *Principle 5: Good Practice Emphasizes Time on Task*, 49 J. Legal Educ. 430 (1999).

²⁶ See *id.* at 431.

²⁷ See *id.*

²⁸ See generally Okianer Christian Dark, *Principle 6: Good Practice Communicates High Expectations*, 49 J. Legal Educ. 441 (1999).

²⁹ See *id.*

³⁰ See generally Paula Lustbader, *Principle 7: Good Practice Respects Diverse Talents and Ways of Learning*, 49 J. Legal Educ. 448 (1999).

³¹ See M.H. Sam Jacobson, *A Primer on Learning Styles: Reaching Every Student*, 25 Seattle U. L. Rev. 139, 155–156 (2001).

³² See Lustbader, *supra* note 30, at 455.

“The students themselves confirm that actively engaging in the research process during the research labs improves their learning.”

Feedback

After each year’s research labs, all first-year students have been asked to evaluate the labs through an anonymous survey.³³ Based on the results of the evaluations and feedback from participating faculty members, the research labs are a success. Reflecting the Seven Principles, the research labs improve student learning, enhance our teaching of the research process, and increase faculty and student personal satisfaction.

The students themselves confirm that actively engaging in the research process during the research labs **improves their learning**. Overall, 92 percent of the students who attended at least one lab felt that the research lab(s) helped them to understand the legal research process. One student noted that “The labs were a great introduction to the step-by-step research process. Nothing beats learning by doing.” Another student wrote, “The most daunting aspect of learning legal research is doing it the *first time*. The lab, obviously, is an easier way to jump that hurdle.” (Emphasis in original.) Furthermore, some students noted that their learning could have been improved through even greater involvement in the research process. Specifically, in the fall of 2004, nearly 60 students indicated on their evaluations that they would have preferred to get the books off of the shelves themselves for the labs.

Similarly, the LPS faculty noticed that the labs improved their students’ understanding of the research process. Several LPS professors commented that they had fewer questions from students about the graded library assignments that the students completed after attending a research lab on the topic. Moreover, many of the LPS professors discovered that their students were more proficient with the research they conducted to write an office memorandum at the end of the fall semester.

³³ For the three years that labs and evaluations have been done, 76 percent of all first-year students have completed and returned evaluations. Of those students, 82 percent have attended at least one research lab.

Adding the research labs to our research curriculum **enhanced our teaching of the research process** as well. Rather than focusing on the result, the research labs are integral to creating a process-oriented curriculum that incorporates four things that legal writing professors can do to make it more likely that students will develop transferable research skills that they will retain and apply to future research tasks.³⁴ First, the reading for class,³⁵ class discussion, research labs, and graded library assignments provide the students with numerous examples of the same research process. Second, the research labs increase the likelihood that the students will retain the steps of the research process because the research lab questions are presented in a different legal context than the required reading, class discussion, and library assignments. Third, the research labs force the students to compare the research problems they read about, that they work on during the lab, and that are on the required graded library assignment. Finally, our curriculum encourages students to look back at prior problems—examples in the text, class notes, research lab questions, and graded library assignments—for help when working on future research tasks. As evidence that the research labs increase the transferability of research skills, 90 percent of the students agreed that the research labs helped them when working on the corresponding graded library assignment. One student wrote that the labs “made the process of the library assignment not as foreign,” and another wrote that the “practice of looking up cases/statutes etc. was helpful for future research.”

Likewise, the research labs enhance our teaching because they provide an opportunity for assessment, allowing the student, LPS professor, and reference librarian to evaluate what the student has learned.³⁶

³⁴ See Laurel Currie Oates, *I Know That I Taught Them How to Do That*, 7 *Legal Writing: J. Legal Writing Inst.* 1, 7–9 (2001).

³⁵ Currently, we assign reading in Amy Sloan, *Basic Legal Research: Tools and Strategies* (2d ed. 2003).

³⁶ See Kristin B. Gerdy, *Teacher, Coach, Cheerleader, and Judge: Promoting Learning Through Learner-Centered Assessment*, 94 *Law Libr. J.* 59, 69 (2002).

On the evaluations, many students suggested that they were glad to have an opportunity during the labs to assess their understanding of the research process. In particular, students appreciated being able to ask questions and receive prompt feedback from the reference librarian and professor during the lab. As one student put it, “Someone was always there to help.” Similarly, students appreciated the opportunity to first assess their understanding of the research process without the pressure of having to submit their answers for credit. One student commented, “It was nice to have hands-on experience where I wasn’t graded.” Moreover, the research labs provide us with a chance to assess our teaching of the research process and discover where students are struggling.

Additionally, the research labs enhance our teaching of the research process because we now encourage active learning and teach to more learning styles. On the evaluations, the students consistently referenced the benefits of using and becoming familiar with the various legal sources. For example, one student stated that “going through the steps in groups [was] much more effective than reading about the process.” Similarly, noting the difficulty of learning to research simply through reading and lecture, some LPS professors are pleased that the research labs allow for hands-on practice. Likewise, the reference librarians stated that the labs improved teaching because students were able to get immediate help while actually engaging in the research process for the first time.³⁷

Finally, the positive feedback we have received reflects **increased personal satisfaction for students and faculty**. When asked what they felt worked best about the research labs, many students said they enjoyed the faculty-student contact, which fights the feelings of estrangement and stress that students frequently develop in law school. In particular, they liked receiving the individual attention and guidance from the reference librarian

and LPS professor. One student commented that “The small group instruction was useful so that we could get extra attention if we were having trouble in an area.” Further, the students mentioned working collaboratively in small groups, which helps to alleviate the competitive atmosphere of law school. One student wrote, “The group collaborations were good in that [they] made for good problem solving and [were] actually fun!” In fact, many students, when asked how they thought the research labs could be improved, stated a preference for smaller groups.

In the same vein, many LPS professors stated that they enjoyed the informal interaction with their students at the beginning of the school year. Some reference librarians also thought the labs were beneficial because they gave them an opportunity to work with the students and get to know them better. In addition, they noted that they were able to assist students who might not otherwise be comfortable going to the reference desk to ask for help.

Conclusion

Although the labs are a success, they pose many logistical challenges that we are continually addressing. Taking into account limited room availability in the library and student, LPS, and reference librarian schedules, scheduling more than 60 research labs over a two-week period for 550 students is difficult. In addition, the labs require an additional time commitment from an already stretched faculty. Finally, to fit all the research labs on the schedule, it is often necessary to have two research labs at the same time. This means that there are two sets of questions using different sets of books, which is made more problematic by the fact that at the same time the research labs are being held, first-year students are working on assignments that may require them to use the same library resources.³⁸

“In particular, students appreciated being able to ask questions and receive prompt feedback from the reference librarian and professor during the lab.”

³⁷ Of course, reference librarians are also available at the reference desk to assist students who have questions while working on their library assignments. Some students, however, may work on their assignments at times when no reference librarian is on duty.

³⁸ To minimize conflicts between assignments and labs, when the reference librarians write questions for the labs they check with the library assignments, when available, to ensure that sources needed for the assignments are not used in the labs. In a few instances books used in the labs are also required for a library assignment. In these cases a note is taped to the shelf where the book would have been indicating that the book is available at the circulation/reserve desk.

Nonetheless, the benefits of the research labs outweigh the challenges that they pose. If LPS professors and reference librarians at Suffolk University Law School, one of the largest law schools in the country, can “get in the pool” with their students, then any program can surmount whatever hurdles may arise and do the same.

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Research Rhyme and Reason

Legal research teachers looking for fresh examples should consider demonstrating that there is both rhyme and reason in the law. Searching for “poem” or “rhyme” yields a number of quirky opinions, a few of which are listed below. Whether emulating “Casey at the Bat,” combining rhymes with alliteration, or offering original verse, they are all delightful.

Fisher v. Lowe, 122 Mich. App. 418, 333 N.W.2d 67 (1983) (using Joyce Kilmer’s poem to deny damages to a homeowner and “his beautiful oak tree”).

Wheat v. Fraker, 107 Ga. App. 318, 130 S.E.2d 251 (1963) (entire opinion and footnotes in verse; “But kin and kin are still no more, related than they were before”).

Brown v. State, 134 Ga. App. 771, 216 S.E.2d 356 (1975) (a rare criminal case rhyme granting defendant a delay to permit his witness to testify; “to continue civil cases The judge holds all aces. But it’s a different ball-game in criminal cases”).

Porreco v. Porreco, 571 Pa. 61, 811 A.2d 566 (2002) (post-divorce lawsuit related to the value of the engagement ring with alliteration and rhyme; “A groom must expect matrimonial pandemonium when his spouse finds he’s given her a cubic zirconium”).

Omnipoint Communications Enters., L.P. v. Zoning Hearing Bd., 189 F. Supp. 2d 258 (E.D. Pa. 2002) (appendix includes a rhyming synopsis of the Telecommunications Act in the form of “Casey at the Bat”; “Oh, somewhere in this favored land, there stands a tower high, With happy cell providers grabbing signals from the sky”).

Aaron v. Life Ins. Co., 138 Ga. App. 286, 226 S.E.2d 96 (1976) (defeat for hammerin’ Hank Aaron on the fair market value of commercial real estate; “But there is no joy in Mudville; Mighty Aaron has struck out”).

What Can Legal Writing Students Learn from Watching *Emeril Live*?

By John D. Schunk

John D. Schunk teaches legal writing at Santa Clara University School of Law in California.

Over the decade I have spent teaching legal writing, I have tried to make sure students do not think legal writing is unique; in fact, I try to relate legal writing concepts to other things. Sometimes, the analogies are fairly straightforward like those to journalism and speech writing. Other times, they come from places one might not expect. One night while I was channel surfing, I found one courtesy of *Emeril Live* on the Food Network.

For those who do not know, *Emeril Live* is a popular show starring Emeril Lagasse. Emeril Lagasse became well-known after establishing a series of successful restaurants in New Orleans. On his show, he demonstrates how to make and cook a number of gourmet dishes. He is known for trying to “kick it up a notch” with his dishes by adding cayenne pepper with his signature “bam!”

During one episode, he stopped preparing a dish and took a moment to make sure his audience knew the difference between two types of recipes. In doing so, he provided a lesson many legal writing students should note.

As explained by Emeril Lagasse, there is a difference between a recipe for baking a casserole and a recipe for baking a cake. Essentially, one is a guideline to be followed generally and the other is a formula. In cooking, a recipe is generally a set of directions with a list of ingredients for cooking. Recipes for baking are more like a formula, that is, “a prescription of ingredients in fixed proportion.” For example, when baking a cake, one needs to use the correct ingredients in just the right proportion. Adding too little or too much of any ingredient can ruin the cake. In contrast, when making and baking a casserole, one follows the recipe generally, but one can add to or subtract from the list of ingredients to

suit one’s taste. Varying from this recipe by adding more spices does not ruin the dish and may improve the dish.

I took note while watching this episode because each year I have a number of students who struggle with the balance between the basic structure for presenting a legal argument and the desire for a precise formula they can follow when writing in order to achieve the desired grade. For example, these students often fail to see the differences between rule application arguments¹ and rule selection arguments.² They do not understand why certain arguments have longer rule explanation sections than others, why certain arguments may incorporate public policy while others do not, or why certain arguments rely more on analogies than some others. When talking with these students, thanks to watching *Emeril Live*, I now have a good analogy that students appear to accept and understand.

This analogy asks students to look at legal writing as more of a casserole than a cake. Each has a recipe, but good legal writing allows for more variations in presenting legal arguments than a fixed formula.

The basic recipe for any legal argument remains deductive reasoning in the form of a syllogism.³ While legal writing teachers often use acronyms

¹ As used in this article, a rule application argument refers to those in which the contesting parties do not dispute the generally applicable rules but dispute the application of those rules to the facts in a particular case.

² In contrast with a rule application argument, a rule selection argument, as this article uses the term, is one where the parties generally agree on the facts but dispute vigorously what rules a court should apply to the generally uncontested facts.

³ See Nadia E. Nedzel, *Legal Reasoning, Research, and Writing for International Graduate Students* 66 (2004).

“As explained by Emeril Lagasse, there is a difference between a recipe for baking a casserole and a recipe for baking a cake. Essentially, one is a guideline to be followed generally and the other is a formula.”

“I have had more success convincing students that a good legal argument follows a general recipe and dissuading students that legal writing exists as a formula.”

such as IRAC⁴ and CRAC⁵ to convey this concept to legal writing students, the syllogism still is the basic underlying organizational structure for most legal arguments.⁶ Analogical reasoning then supports and supplements the deductive framework.⁷ Most often, an analogy to previous decisions helps reinforce the minor premise in the syllogism.

If students view the recipe as one for a casserole rather than a cake, they often become more comfortable with varying from the recipe to the extent it helps make any legal argument. For example, one can “spice” a legal argument with a greater development of the major premise in a rule selection argument by appealing to legislative history, analyzing in detail a circuit split, or considering public policy. One also can “spice” a legal argument with a greater development of the minor premise in a rule application argument by increasing the use of the record in an appeal, or by making a series of comparisons or contrasts with seemingly analogous case law.

In contrast, if they view the recipe as one for baking a cake, legal writing students sometimes fall into a trap of thinking that a syllogism requires a fixed amount of writing explaining their major and minor premises when, in fact, it will likely vary from argument to argument. In this situation, some students will ask questions like “how many cases do I need to cite in my argument?” as though the recipe for their legal argument has a fixed proportion of cases on the list of ingredients.

Since I began using this analogy with students, I have had more success convincing students that a good legal argument follows a general recipe and dissuading students that legal writing exists as a formula. The recipe analogy goes even further because it also conveys to students that they cannot do just anything and call it a legal argument. After all, if one varies too much from a recipe, one might cook something but it would not be the dish one intended to prepare. The same is true of a legal argument. If one veers too far from the basic syllogism, one may write a series of paragraphs that read very well, but these paragraphs would fail to qualify as a legal argument. In contrast, if one follows the general organization of the syllogism in structuring a legal argument, then one can “spice” the legal argument with a variety of materials. In short, if the student accepts the recipe analogy, the student receives both a structure providing guidance and the freedom to be creative within that structure.

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⁴ As most know, IRAC stands for Issue, Rule, Analysis or Application, and Conclusion in that order. This acronym serves to remind the law student or anyone else that after stating the Issue, one needs to state the Rule (i.e., the major premise) and show whether the stated rule Applies to a certain set of facts (i.e., proving the existence of the minor premise) in order to reach a Conclusion. If followed, the IRAC acronym reminds students to use a syllogism in analyzing legal issues.

⁵ The CRAC acronym serves the same function as IRAC, but it reminds the law student to start by stating his or her Conclusion or basic thesis before stating the Rule (i.e., major premise), Applying the rule (i.e., proving the minor premise), and reaching a Conclusion.

⁶ *Id.* at 66–69.

⁷ *Id.* at 66.

Designing Writing and Research Courses for International Students

Brutal Choices in Curricular Design ... is a regular feature of Perspectives, designed to explore the difficult curricular decisions that teachers of legal research and writing courses are often forced to make in light of the realities of limited budgets, time, personnel, and other resources. Readers are invited to comment on the opinions expressed in this column and to suggest other "brutal choices" that should be considered in future issues. Please submit material to Helene Shapo, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611, phone: (312) 503-8454, fax: (312) 503-2035.

By Mark E. Wojcik

Mark E. Wojcik is a Professor and Director of Global Legal Studies at The John Marshall Law School in Chicago, Ill.

U.S. law schools continue to recruit and welcome students from other countries. Some of these international students are already lawyers in their home countries (although in their home countries, a law degree may be only the equivalent of an undergraduate degree). Some students will come to participate in LL.M. programs that survey American law. Other students will study in specialized LL.M. programs for intellectual property law or a similar hot topic; their classmates in these programs will often be native-English speakers who have graduated from law school and who may have already been in practice for several years. Other international students will enroll in J.D. programs in schools that may waive up to one year of course credit toward that degree based on the students' previous legal study in their home country. Some students will plan to take the New York bar exam based on their foreign law license and American LL.M.; other students will simply come for the degree.

All of these international students will soon be asked to write seminar papers and final examinations in English. Most of these students speak English as a second language (ESL). Relatively few of these students will have had much experience in writing at levels that satisfy the high expectations of excellence that some native English-speaking law professors may demand.

Most law schools eventually realize the need to provide at least some minimal level of specialized training and support for these international students. But administrators and faculties at most law schools will notoriously underestimate the amount of support that international students may require to satisfy the high professional expectations being placed upon them. Only a handful of law schools provide sufficient levels of support for their international students.

This short article is on the "brutal choices" that legal writing professors must sometimes make in curricular design when teaching international students. This article is part of a series published in *The Second Draft*. In this series of articles, authors describe the brutal choices that legal writing professors must make in a variety of circumstances. The danger in writing an article for this series is that the article may be used to justify a minimal or insufficient level of support for international students and the faculty who teach them. Using this article for that purpose would be wrong; international students and their teachers deserve and require adequate institutional and personal support. This article merely recognizes the sad reality that most institutions now fail to provide appropriate levels of support. Given that reality, what is a legal writing professor to do with limited resources, time, and energy? If a writing professor has an opportunity to design a writing course for international students, what needs should that course address? What goals should the course have?

“Relatively few of these students will have had much experience in writing at levels that satisfy the high expectations of excellence that some native English-speaking law professors may demand.”

“To succeed in a classroom, ESL students will need to develop skills in listening to classroom lectures and in listening to conversations between native speakers on complex legal issues.”

What obstacles exist to achieving those goals, and how might those obstacles be overcome? What materials should be used or developed for the course? How should student performance be evaluated? And how could professors document the need to expand and improve the course so that future instructors (at that institution and others) might not face the same “brutal choices” now imposed?

There is no single, cookie-cutter answer to any of these questions. What follows is the next best thing: a set of essential questions that legal writing professors should consider when making their own brutal choices in curricular design.

1. Assess the Needs of Your International Students

Making appropriate choices for your students depends on their needs. For example, few international students will appear as trial lawyers in a U.S. courtroom, and they don’t need to learn how to draft a complaint. However, they may be called upon to draft international contracts. In such a case, the writing component of the course and its materials may be better focused on drafting contracts rather than drafting pleadings or an appellate brief.

To succeed in a classroom, ESL students will need to develop skills in listening to classroom lectures and in listening to conversations between native speakers on complex legal issues. ESL students will need to develop technical reading skills that will allow them to get through assigned materials. (Teachers should know that in some countries students are taught to read only the first sentence of each paragraph in a longer article or case; they are given this advice as a defense mechanism to cope with long reading assignments.) When teaching reading skills, students will need to be trained in why it will be important to use an English language law dictionary instead of relying (as many students do) merely on an electronic, bilingual dictionary that will not explain the legal contexts of words.

Students trained in civil law systems will also require some training in common law reasoning. In an area where brutal choices must be made, some teachers will leave the teaching of “reasoning skills” as such to other classes, and instead focus on improving the students’ writing and research skills. Most teachers will recognize, however, that the teaching of reasoning skills is both necessary and inherent in teaching writing skills.

Some choices on curricular design will also depend on the other courses that a student intends to take. If a student will be taking courses that require scholarly papers, some instruction must be given on basic research skills including how to find and update primary sources, how to use secondary sources to explain the primary sources, and how to attribute everything properly. The research component of a course should also keep in mind the fact that students will often not have access to many of the print-based primary and secondary sources once they return to their home countries, and that access to many of the electronic databases will be prohibitively expensive unless a special arrangement is made for access. The limitations on what students may face in the future does not mean that we should avoid teaching about the sources that are available here; it means instead that we must also teach other ways of accessing similar information once we no longer have access to the law school library.

In assessing needs, teachers should also look at what skills students already possess in other languages. One teacher was surprised to find that an ESL student spoke six other languages.

2. Set Reasonable Goals

It is not reasonable to expect that any ESL student will master all of the skills necessary within a single semester, or even a single year. It surprises many teachers (and students) that language mastery at the level expected in U.S. law practice could easily take five or six years to achieve, and even then only with sustained and intensive instruction. Mastery cannot be achieved within a single semester.

Reasonable goals for a course should be based on the students’ present levels of language proficiency and

comfort with source materials. In some cases a “goal” may be simply to introduce materials, identify necessary skills (including effective computer skills), and instruct students on how to access various sources of traditional and nontraditional academic support as deadlines approach for their papers. To take but a simple example, many international students may be unfamiliar with how to use a computer grammar program. Such programs can greatly improve writing skills, but students must be taught to identify when the suggestions of the grammar program are inappropriate for legal writing.

When I do not have a lot of time with students to have them develop their own written work, I have also found that it is often easier to teach students how to edit than it is to teach them how to write. My hope is that students will become better writers with the editing skills I teach them.

3. Find Appropriate Course Materials

There are more legal writing books now that take into account the special needs of ESL students. More books are needed, and teachers who are reading this column should consider contributing to the body of materials available to teach ESL law students. Choosing an appropriate legal writing book for a course is similar to choosing an appropriate tool from a toolbox. What may work in one situation may not be appropriate for another situation.

Writing assignments, in general, should be much shorter than in standard legal writing classes. There can be more assignments, but they should also be shorter.

Students will also need one or more standard reference works. An English language law dictionary should be essential, because students looking up one unfamiliar word will learn five or six other words in the process. (They will not learn those other words if they simply use a bilingual dictionary.) Bilingual law dictionaries are available for many languages, however they vary in quality and should be used only as an additional supplement to the English language law dictionary.

A grammar reference book (especially if focused on ESL students) will also be essential. You can find many good books simply by visiting the ESL section of your campus bookstore or a local bookstore. The grammar book will explain particular grammar points and usually offer some illustrations of proper use. A computer grammar program will also be necessary for most students, but do not assume that all grammar programs are the same or that students know how to use them correctly. Some students mistakenly believe that they are already using a grammar program because the word-processing program they use will flag mistakes. They may not know about the effective use of the full program, or how to change the writing levels of the program.

Some students may benefit from a special “Legal English” or “Introduction to U.S. Law Course” offered in the summer, before the fall semester begins. Several such courses are available now and can help students perform at higher academic levels when they begin the regular fall semester.

4. Evaluating Students, and Having Students Evaluate the Course

Properly evaluating students is difficult in any course, but it may prove especially difficult in an ESL course (and, more particularly, in a course designed with brutal choices). One recurring question is whether to give more weight to a student’s performance in a written assignment or to a student’s improvement since the course began. Because other teachers in substantive courses will commonly grade on the quality of the final product, most teachers will look also to that quality rather than to student improvement. But improvements can be recognized and nourished through thoughtful comments on student work.

Students should also be asked for their evaluations of the course, the assignments, and the course materials. In addition to (or in lieu of) standard evaluation forms for other courses, teachers may want to construct additional student surveys to collect feedback on how well (or not) the course identified and met student needs. Such surveys can be given in the middle of the course, at the end of

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“ Saving surveys from students about the importance of the course will assist teachers later when they have to argue for more support, more credit hours, or additional academic support. ... ”

the course, and, if possible, at some point long after the course was completed. Students will have a good idea of their own needs, their own learning styles, and the effectiveness of our teaching; we should use that knowledge to benefit future students.

5. Document the Need for the Future

Saving surveys from students about the importance of the course will assist teachers later when they have to argue for more support, more credit hours, or additional academic support for international students. Brutal choices being made now for students should not always be brutal—if we can document the need for special courses for ESL students.

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A Sampling of Legal Writing and Research Texts for International Students

Prepared by **Mary A. Hotchkiss**, *Perspectives* Editor

Teresa Brostoff and Ann Sinsheimer, *Legal English: An Introduction to the Legal Language and Culture of the United States*, 2d ed. (2003) [Dobbs Ferry, NY: Oceana, 480 p.]

Toni M. Fine, *American Legal Systems: A Resource and Reference Guide* (1997) [Cincinnati, OH: Anderson Publishing Co., 121 p.]

Rachel Gader-Shafran, *The International Student's Survival Guide to Law School in the United States: Everything You Need to Succeed* (2003) [New York, NY: iUniverse, 117 p.]

Debra S. Lee, Charles Hall, and Marsha Hurley, *American Legal English: Using Language in Legal Contexts* (1999) [Ann Arbor: University of Michigan Press, 276 p.]

Dana Neacsu, *Introduction to U.S. Law and Legal Research* (2005) [Ardsey, NY: Transnational Publishers, 186 p.]

Nadia E. Nedzel, *Legal Reasoning, Research, and Writing for International Graduate Students* (2004) [New York, NY: Aspen Publishers, 353 p.]

Jill J. Ramsfield, *Culture to Culture: A Guide to U.S. Legal Writing* (2005) [Durham, NC: Carolina Academic Press, 402 pp.]

Christine Rossini, *English as a Legal Language*, 2d ed. (1998) [Boston: Kluwer Law Intl., 320 p.]

Mark E. Wojcik, *Introduction to Legal English: An Introduction to Legal Terminology, Reasoning, and Writing in Plain English*, 2d ed. (2001) [Washington, DC: International Law Institute, 428 p.]

Contract Drafting Courses for Upper-Level Students: Teaching Tips

By Robin A. Boyle¹

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Contract-drafting courses are gaining in popularity in law school, and they are a pleasure to teach. On July 20–21, 2005, Northwestern University School of Law provided the location and Judith A. Rosenbaum² provided on-site assistance in hosting the first national conference, in recent times, on the topic of contract drafting. The conference was aptly called “Teaching Contract Drafting.”

Approximately 100 participants attended, which was significantly more than the organizers expected. The conference's large attendance indicates the need and growing enthusiasm for guidance on how to develop and teach contract-drafting courses. The organizers of the conference, Susan Irion,³ Richard Neumann,⁴ and Tina Stark,⁵

designed the sessions to cover both the substance of the course and various approaches to teaching the substance.

As Professor Neumann pointed out at the opening session, law schools have traditionally focused on litigation in both the skills and doctrinal courses. He described the typical first-year contracts course that teaches students contract law by analyzing cases that turn on poorly drafted contract provisions.⁶ He noted also that most professors who teach the traditional first-year course do not provide their students with sample contracts and instruction on how to draft them. Professor Neumann estimates that approximately half of law school graduates will eventually engage in a transactional practice and need the requisite skills of contract drafting. The need for contract-drafting courses has spurred some law schools to provide such courses. As a session at the conference indicated, some schools even offer contract drafting to first-year students.⁷

I teach contract drafting to upper-level students and, in this article, offer suggestions on course structure and teaching tips to those who wish to adopt such a course.⁸ The following material was the subject matter of my presentation at the Teaching Contract Drafting conference and participants found it useful.

“ [A]pproximately half of law school graduates will eventually engage in a transactional practice and need the requisite skills of contract drafting. ”

¹ The author wishes to thank the following people for their editorial contributions: Professors Thomas Brown, Eric Goldman, Richard Neumann, and Tina Stark.

² Judith A. Rosenbaum is clinical professor and director of Communication and Legal Reasoning at Northwestern University School of Law in Chicago, Illinois.

³ Susan Irion is national director of Professional Development for DLA Piper Rudnick Gray Cary US LLP where she is responsible for the firm's U.S. programs concerning attorney education and career development. Previously, she taught full time for five years as clinical assistant professor at Northwestern University School of Law. At Northwestern, Professor Irion taught entrepreneurship law and the Small Business Opportunity Center clinical program, as well as communication and legal reasoning.

⁴ Richard K. Neumann Jr., is professor of law at Hofstra Law School. Professor Neumann is a leading authority on legal education and the teaching of legal writing. At Hofstra, he has taught civil procedure, counseling and negotiation, pretrial litigation, legal writing, federal courts, trial techniques, and clinical courses.

⁵ Tina Stark has lectured on law and business issues at programs in the United States, Canada, England, and Italy. Currently, she is adjunct professor of law at Fordham University School of Law where she teaches a course in drafting commercial agreements, a clinic that teaches transactional skills, and a seminar on business. Professor Stark has been teaching at Fordham since 1993.

⁶ See Scott J. Burnham, *Using Contracts to Teach Practical Skills: Drafting in the Contracts Class*, 44 St. Louis U. L. J. 1535, 1535 (2000) (“When I began teaching, I perceived a dissonance between the materials in contracts casebooks and my practice experience.”); Robert Lloyd, *Making Contracts Relevant: Thirteen Lessons for the First-Year Contracts Course*, 36 Ariz. St. L.J. 257 (2004).

⁷ At the Teaching Contract Drafting conference, presenters Scott J. Burnham, Christina L. Kunz, and Helene S. Shapo described how they incorporated contract drafting into first-year courses at their respective schools—University of Montana School of Law, William Mitchell College of Law, and Northwestern University School of Law.

⁸ My course, Upper Level Writing Seminar, includes drafting litigation documents toward the final weeks of the course.

“A few weeks into the course, when my students feel comfortable with its concepts, I assign projects that require students to invent their own deal.”

Law schools may offer a course as a stand-alone, such as the one I have been teaching, in which the students (and the professor) are not linked to a particular doctrinal basis. Alternatively, upper-level professors may focus their contract-drafting course around a specific topic, such as intellectual property⁹ or have their students perform research regarding an actual corporation.¹⁰ In either case, the number of credits the course is worth affects classroom instruction; the more time in the classroom, the more in-class drafting and negotiations can occur.

A. Selecting a Book and Structuring the Course

A professor who is starting fresh with little practice experience in contracts drafting should become thoroughly familiar with the texts that are on the market.¹¹ The available texts often include teacher's manuals that provide model answers to student exercises and suggested lesson plans. If you have had no transaction experience in practice, my suggestion is to stick closely to the topics and exercises in the textbook that you choose.

Once a book is selected, you can construct a course by closely following the topics identified (such as a chapter on representations and warranties) and by assigning the textbook exercises. Both George Kuney¹² and Tina Stark¹³ have written their books to provide the step-by-step approach for course instruction. A professor cannot go wrong by following either book.

⁹ At the Teaching Contract Drafting conference, Eric Goldman, assistant professor, Marquette University Law School, described how he incorporated intellectual-property licensing into his contract-drafting course.

¹⁰ At the Teaching Contract Drafting conference, Thomas P. Brown, adjunct professor, Northwestern University School of Law, described how he conducted his course, Structuring Financial Transactions, as a “lab course” by incorporating student exercises in structuring drafting and negotiating credit agreements and other documents in a deal involving a single real-life company.

¹¹ See, e.g., Thomas R. Haggard, *Contract Law from a Drafting Perspective—An Introduction to Contract Drafting for Law Students* (2002); Thomas R. Haggard, *Legal Drafting: Process, Techniques, and Exercises* (2003); George Kuney, *The Elements of Contract Drafting with Questions and Clauses for Consideration* (2003); and Tina Stark, *Drafting Contracts* (forthcoming 2006).

¹² Kuney, *supra* note 11.

¹³ Stark, *supra* note 11.

To supplement the written text, I suggest developing visual aids for classroom use. This will reach those students in the class who have visual learning-style strengths. For example, you can create PowerPoint slides to highlight key points made within assigned chapter readings. I created PowerPoint presentations for every topic of my assigned text by integrating concepts that the author used and incorporating tips from my practice experience. For professors who have not had transactional experience, I suggest incorporating good work habit tips that you learned along your career path, such as “develop an eye for detail.” I like to incorporate real-life stories that happened in my practice background, and from a learning-styles perspective¹⁴ some students find the lesson more valuable when it is connected to real life.¹⁵

Professors can also supplement the drafting exercises by creating their own or by encouraging students to invent their own. A few weeks into the course, when my students feel comfortable with its concepts, I assign projects that require students to invent their own deal. For example, I allow them to brainstorm about the kind of business they are buying and selling. Then, I ask them to anticipate the major provisions of the deal and the contentious negotiating points. After this, I set them free to simulate the negotiations and to draft the contracts. Students also buy and sell imaginary houses in my class.

Additional textbooks for a transactional drafting course could include books that focus on clear writing.¹⁶ My approach is to begin the course with the message that contract language needs to be crystal clear; otherwise, litigation can ensue. I start

¹⁴ Learning styles is the way in which individuals “begin[] to concentrate on, process, [internalize,] and [remember] new and difficult [academic] information” or skills. Rita Dunn & Kenneth Dunn, *Teaching Secondary Students Through Their Individual Learning Styles 2* (1993).

¹⁵ See Rita Dunn & Kenneth Dunn, *The Complete Guide to the Learning Styles Inservice System 42* (1999) (describing general goals for giving directions to global processors by beginning with real-life anecdotes) [hereinafter Inservice].

¹⁶ See, e.g., Richard Wydick, *Plain English for Lawyers* (5th ed. 2005).

my course with exercises on writing without excess clutter of words. Even professors without transactional practice in their career backgrounds should feel comfortable introducing the concepts of clear writing.

Professor Stark approaches her course differently. She begins with a mock negotiation of a purchase of a used car. It begins with a student acting in the role of the buyer asking questions about the color, make, mileage, and condition of the car. After the seller answers the questions, the class discusses why representations and warranties are the appropriate contract concept to use to memorialize this information. The class also discusses the risk allocation purpose of representations and warranties. The car hypothetical is then used as a tool for understanding covenants and conditions precedent. Professor Stark begins with the contract building blocks because she believes it is important for students to understand what they are drafting before they focus on how to draft it.

The number of course credits affects the structuring of group assignments and in-class drafting assignments. I prefer three hours of class each week because this provides students with sufficient supervised drafting experience and feedback from me. I find that a three-credit course is ideal for allowing students to hone the skill for the week and work on group projects within class time. Some professors prefer to have the three-hour blocks at one time; others prefer to meet twice each week. Alternatively, a two-hour-credit course can be useful as well to cover the course basics, but not the enrichment aspects of the course.

A stand-alone elective contract-drafting course can be taught in small sections of upper-level students. Registration for the course can be capped at 16 or 20 students for an intensive writing class. Courses that are linked to a particular topic (such as intellectual property) can also be conducted as elective upper-level courses with a cap on enrollment.

B. Incorporating Negotiations

In transactional practice, lawyers negotiate the wording of the contracts, which is unlike litigation practice. In my opinion, a course on contract drafting should include negotiation simulations not only for students to develop better negotiating skills but also for them to see the bigger picture of how contracts come into existence. There are helpful books on the market on negotiating contracts¹⁷ and professors can choose either to assign a book or incorporate some general negotiating principles into lecture or class activities.

I start my first class by providing a fun negotiation exercise to do during class time, with a drafting exercise for homework. In this class, I give students prepared written facts and ask them to negotiate a movie contract by representing either the producers or the stars. It is a fun exercise and students begin to see the tug and pull of a wish list from either side of the negotiating table. From the start of the exercise, all students have some inkling how to proceed (they speak with their team members, compose a list of what they really want and what they are willing to forego, and arrive at their bottom line salary demands) because they have been negotiating throughout their lives (movies or dinner out on Friday night?). As the course progresses, I give more guidance on how to negotiate.

In my course, I assign groups and have students play the role of lawyer or client as the students become more familiar with the core concepts of contract drafting. This gives students a sense of practice. Individual students are later switched to different groups; in this way students are exposed to various roles and personalities around the classroom.

¹⁷ See, e.g., Roger Fisher & William Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (2d ed. 1991). For a useful article on the topic of incorporating client interviews and extracting facts, see Charles C. Lewis, *The Contract Drafting Process: Integrating Contract Drafting in a Simulated Law Practice*, 11 *Clinical L. Rev.* 241, 244 (2005).

“In transactional practice, lawyers negotiate the wording of the contracts, which is unlike litigation practice. In my opinion, a course on contract drafting should include negotiation simulations. . . .”

“To ensure that all students participate in group assignments, I suggest that the professor establish a contribution system by requiring drafts from all students or by assigning drafting roles.”

Within the group context, I ask students to examine their individual strengths. I provide students with a learning-style assessment tool, called the “Building Excellence Survey”¹⁸ (BE). Students take the online assessment at home on their computer and immediately thereafter print out a detailed description of their learning-style strengths. I follow up by talking with the students individually, and as a group, about their learning styles. For example, I ask my students whether they feel more comfortable listening before responding (reflective learners) or whether they feel a need to blurt out answers (impulsive learners). I ask who feels comfortable taking notes (tactile) and who feels comfortable formulating ideas while speaking (verbal kinesthetic). I encourage students to pay attention to their learning styles and how they interact with others within a group negotiation or drafting project.

The company that administers BE can provide the professor with a class profile of the students’ learning styles. I find these class profiles useful because they allow me to have an overall sense of the learning-style strengths of my class, and I can tailor assignments accordingly. In my recent contracts-drafting course, I had a high number of kinesthetic students,¹⁹ which led me to provide plenty of role-playing and negotiation exercises. The students found these learn-by-doing exercises to be enjoyable and educational.

Despite the vast learning that can occur within a group process, some students prefer to learn alone or in pairs.²⁰ Thus, I also incorporate individual drafting assignments in my course, which can be

done at home or in class. I tend to prefer that when I assign group work, it be done during class time because it is convenient for the students to meet.

C. Grading Contract-Drafting Assignments

At the panel discussion on teaching contract drafting to upper-level students, my two co-presenters and I described our different approaches to the number and length of graded assignments. Professor Brown has students work on one deal throughout the course, with several small projects that are ultimately integrated into a single lengthy contract of approximately 50–60 pages. In contrast, Professor Goldman and I vary our assignment topics and assign shorter assignments, but I provide eight graded assignments, whereas Professor Goldman grades fewer.

At the Teaching Contract Drafting conference, professors expressed different preferences for group or individual writing assignments. To ensure that all students participate in group assignments, I suggest that the professor establish a contribution system by requiring drafts from all students or by assigning drafting roles. Alternatively, I suggest that professors provide supervision over group projects, such as requiring that work be performed in class.

In addition to requiring eight graded assignments, I require weekly nongraded assignments. Students enjoy exercising their new drafting skills on a weekly basis and they particularly appreciate getting my feedback in a way that does not impact their final course grades. The nongraded assignments can be started during class time, completed at home on a computer, and submitted to me in hard copy.

D. Comparison to First-Year Legal Writing Courses

Having taught legal research and writing to first-year students for 12 years, I find that the upper-level contract-drafting course is, in contrast, a lot less stressful to handle. By the time students take an upper-level course, their writing skills and understanding of concepts have significantly improved since their first year of law school. Upper-level students have had the benefit of externships, summer associate positions, and

¹⁸ The Building Excellence Survey (BE) can be accessed at <www.pcilearn.com>. BE is based upon the Dunn and Dunn Learning Style Model. See also Susan Rundle et al., *An Educator’s Guide to the Learning Individual* (2004).

¹⁹ By using the Building Excellence Survey to assess my students learning styles, the results for my fall 2004 contracts-drafting seminar showed that for the element of “internal kinesthetic,” 30.80 percent of my class were “moderate” and 61.50 percent were “strong.” The scale included these choices: less preferred, less (slight), no preference, more (slight), moderate/more, and strong/more.

²⁰ See Dunn & Dunn, *Inservice*, *supra* note 15, at 14.

courses based upon the Uniform Commercial Code. They seem less anxious because they are more confident in their skills than they were in their first year. They ask for fewer individual conferences and send me questions via e-mail far less frequently than my first-year students.

Furthermore, one can organize assignments around the topics presented in the contract-drafting textbook and not assign protracted research. I ask my students every year if they want to include research in my upper-level drafting course and they tell me “no.” My school offers an upper-level research course, advanced legal research, and my inclination is to respect that my students signed up to learn drafting skills and that if they wanted to learn more research skills, beyond what they learned first year, they would take the other course. Thus, students need to meet in individual conference less frequently because they are not performing extensive research. I do encourage my students to use the Internet to find samples of contracts, but I do not grade research.

While attending the contract-drafting conference, I spoke with a number of legal writing directors and professors who were considering offering an upper-level course. My suggestion is to give it a try because in all likelihood, it will be a different experience than teaching first-year students legal writing. As with any new course offering, allow for ample preparation time when teaching the course for the first time.

E. Fostering Students’ Self-Confidence and Enthusiasm for Learning

Consider as course goals fostering students’ self-confidence and enthusiasm for learning. Contract drafting will be a new skill even for upper-level students. Chances are they have never carefully examined a full contract either in undergraduate classes or in their required doctrinal contracts class. I am surprised at how law students often get to their mid-20s never having negotiated a lease or read a contract. This course can help them develop self-confidence in understanding the components of a contract (recital, definition, representations,

and warranties, for example) and in writing an improved version or one starting from scratch.

Not all students want to be litigators; therefore, a contract-drafting course will expose students to a different area of practice than litigation. Also, students who intend to be litigators nonetheless enjoy learning a different skill. And, as I tell my students, you never know where you will end up in life! Those who believe they are set for a litigation practice may eventually end up in a transactional practice. Even if they do not, some day they may have to read a contract when they purchase a house, buy a car, and live in a world of documents.

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“Not all students want to be litigators; therefore, a contract-drafting course will expose students to a different area of practice than litigation.”

Another Perspective

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Teaching Contract Drafting: The Two Elephants in the Room

By Kenneth A. Adams

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Teachers of contract drafting, there are two elephants in the room! Their names are Quality and Process.

Quality

Teaching drafting, whether at law schools or at law firms, has for the most part focused on topics such as the building blocks of a contract, turning the deal into a contract, spotting issues, and negotiating. These all ultimately relate to *what* you should say in a contract; hardly any attention has been paid to *how* you should say it. This discrepancy is also manifest more generally in how lawyers go about drafting contracts—witness the slavish following of precedent and the tendency to dismiss as “wordsmithing” any focusing on how to express a given provision.

The result is that while the average contract might address adequately, in general terms, who is doing what to whom, it is sufficiently cluttered with deficient usages—redundant synonyms, the traditional recital of consideration, a range of archaisms, use of *shall* to mean anything other than “has a duty to,” incoherent formatting, use of words and numerals to express numbers, and so forth—as to render it an utter chore to read, interpret, or use as a model.

And this reluctance to focus on the microscale of contract drafting encourages a general heedlessness as to meaning, thereby increasing the odds that a given piece of contract prose will contain a drafting flaw that leads to a dispute or deprives a client of an anticipated benefit.

It’s as if you were called on to build an engine:

All looks well on the drawing board, but due to deficiencies in the blueprints and specifications, many of the parts don’t fit together perfectly, and others aren’t of the appropriate grade of metal. You’ve built the engine, and it works, but it leaks oil and makes an odd rattling sound, and for all you know it could blow up when you least expect it.

Practitioners are at liberty to ignore shortcomings in contract prose. A practitioner’s overriding concern will be to get the deal done in a way that protects the client’s interests. If a contract appears to accomplish that, all other considerations, including clarity and efficiency, will generally be set aside. And even if a practitioner were so inclined, reworking model contracts generally takes more time than the exigencies of corporate practice permit, not to mention more time than any client would likely be willing to pay for.

By contrast, teachers of contract drafting presumably aspire to the normative approach of encouraging students to avail themselves of only the most efficient usages. The trick is how to identify those usages. It wouldn’t be enough simply to buy into the conventional wisdom of the corporate bar even if you were to weed out the obvious archaisms and redundancies. Practitioners are partial to “urban legends” of contract drafting—for example, that a party under an obligation to use *best efforts* to accomplish a goal is required to do everything in its power to do so, even if it bankrupts itself in the process.

Instead, establishing what constitute the most efficient drafting usages would require that commentators rigorously assess the alternatives and present their recommendations in an accessible manner. In this regard, writers have long been able to consult manuals of style, such as the *Chicago Manual of Style*. A manual of style could be particularly helpful for contract drafters, given that

the language of contracts is far more limited than that of, say, memoranda or litigation briefs, and given the importance of consistency in contract drafting. That is what prompted me to write my book *A Manual of Style for Contract Drafting* (MSCD).

MSCD is aimed at practitioners, but it would be a straightforward matter to make it part of a course on contract drafting. (I plan to make teaching materials available before too long.) The course I teach doesn't consist of the class working its way through MSCD—a mind-numbing proposition. In those parts of the course dedicated to the how-to-say-it aspect of contract drafting, I discuss with my students key concepts outlined in MSCD, and we work through class exercises, but for the most part I expect them to become familiar with the usages recommended in MSCD by consulting it as they complete their drafting assignments. It is, after all, a reference work rather than a textbook.

Process

The other significant problem with how contracts are currently drafted relates to process.

At the vast majority of law firms, drafting contracts involves reinventing the wheel imperfectly, day after day. Most drafting is done by junior associates, who are usually expected to learn on the job, with little training. At the start of any new drafting project, a junior associate will be given, or will scrounge around for, a model contract; it will usually be of questionable quality and relevance. The junior associate will then, on a wing and a prayer, essentially regurgitate the model contract, unwittingly retaining, as likely as not, provisions that are not suited to the transaction at hand or, worse, reflect the give-and-take of negotiations in a previous deal. The resulting draft then goes through one or more rounds of review by more senior lawyers. All you can hope for is to make the best of a bad (and expensive) job.

What does this have to do with teaching contract drafting? For one thing, you might want to warn your students of the Sisyphean quality of the contract-drafting life. And if you instruct your

students in the finer points of efficient contract language, they should know that they might have a hard time putting that learning into practice, either because they don't have the time to overhaul model contracts or because senior lawyers insist that each new contract perpetuate their pet traditional usages, no matter how dysfunctional.

But you might also want to discuss with your students how change is afoot—that it would be a straightforward matter to create a document-assembly engine that would reduce the bulk of contract drafting to a commodity process. Such a system would allow lawyers to spend less of their time on what amounts to drudgery and more of it on tasks—such as planning strategy and negotiating—that allow them to bring to bear their expertise.

It's not clear when such systems will be widely implemented, because plenty of entrenched interests are hostile or indifferent to such an idea. But this is how the process would likely work: A lawyer looking to draft a new contract would go online, click the kind of contract involved, select among the various alternatives offered, based on basic transaction parameters, then spend a short amount of time—maybe 10 minutes, maybe 30, maybe more, depending on the contract and the lawyer's experience with the system—working through an on-screen “interview.” At every step, expert analysis and links to authorities would be just a click or two away. At the end of the process, out would spit a first draft of vastly higher quality than what would be produced using the traditional process. And it would be generated in a small fraction of the time.

This is not a new idea. But developments in technology make it a much more feasible proposition than previously. For one thing, such a system could use off-the-shelf software rather than a custom-built, document-assembly engine. And the dependability and bandwidth of the Internet would allow such a system to be made available online.

Equally important are the changes that have been taking place in the legal marketplace. Traditionally,

it's been the client who pays for the grossly inefficient way that many contracts are drafted. But with their static legal budgets, growing responsibilities, and increasing outside-counsel costs, companies are starting to grumble, with some calling for basic deal documents to be commoditized. In a competitive legal market, automated document assembly would allow the more nimble firms to offer a compelling advantage—higher quality work at more competitive rates.

You can't have commoditized drafting without a set of rules governing how the contracts are to be drafted. MSCD represents the only such set of rules currently available.

Conclusion

Whereas a course in contract drafting could serve as an uncritical introduction to how law firms draft contracts, students would be better prepared for life as a corporate associate if they were made aware of the fundamental problems of quality and process that bedevil how contracts are currently drafted.

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Another Perspective

"[W]riting that does not meet the profession's accepted standards of competence and public service [is unprofessional.] ... [Such] unprofessionalism ... harms the profession and society by staining the reputation of lawyers and the law, by making the profession a less congenial one for all who are in it, and by clogging the courts unnecessarily."

—Judith D. Fischer, *Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers' Papers*, 31 Suffolk U. L. Rev. 1, 3–4 (1997).

Designing a Contract Drafting Assignment

By **Diana V. Pratt**

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The first year of law school presents students with an unrealistic impression of the legal profession. Each of their courses appears distinct and unrelated to the others. In contrast, law practice requires lawyers to think across legal disciplines. Legal writing seemed an ideal forum for helping our students integrate the analysis, substantive law, skills, and procedure they learn in the first year. The obvious first step was to construct legal writing assignments around topics from other first-year courses. A tort problem, for example, can have procedural wrinkles. As a second step, a pre-litigation tort problem, first used as an office memorandum assignment, can become a complaint and answer drafting exercise. This drafting assignment and many of the memo assignments focus on the litigation side of law practice. The second semester with its argumentative brief and oral argument continues the litigation bias.

In order to continue the integration of first-year courses and present a more realistic view of law practice, the Wayne State legal writing faculty determined to include a second, transactional drafting assignment. Since we teach evening as well as day students and our evening students at Wayne take only legal writing, civil procedure, and contracts in the first year, the best option was for the students to draft a contract. This drafting assignment presented more challenges than the earlier complaint/answer drafting assignment. Our contracts faculty members do not cover the subject matter in the same order. Some begin with remedies, while others begin with offer and acceptance. Consequently, the contract drafting assignment had to be timed sufficiently late in the

second semester so that all first-year students had covered enough of the substance of contracts to make the assignment a meaningful integration. Cooperation with the contracts faculty was essential. The assignment had to be manageable. One of the contracts faculty members had tried requiring his students to draft a contract from scratch. The project overwhelmed both the students and the professor. In addition, some standard but necessary provisions never surface in the usual contracts course. It seemed unreasonable to ask students to include these provisions. Most lawyers include the standard provisions because the provisions are included in the models these lawyers consult. In reality, lawyers do not draft contracts from scratch. They begin with existing contract provisions, incorporate provisions tailored to the client's requirements, and refine the result. The process involves extensive interaction with the client and may involve negotiation with the other party to the contract.

Based on these considerations, the legal writing and contracts faculties created an assignment that simulated reality but that was reasonable in scope and time. The assignment involved a negotiation, some instruction on drafting, an earlier model contract, and a partial contract that required students to draft provisions tied to the substance covered in the contracts course.

The assignment occurs in the second semester after the students have submitted their appellate briefs and during the three weeks devoted to appellate oral arguments. A legal writing faculty member presents the assignment during a contracts class. We believed it was important for the integration to have the discussion in the contracts class. The discussion focuses on drafting techniques including references to the parties, verbs of authority, drafting style, format considerations, and ways to avoid ambiguity.

“A legal writing faculty member presents the assignment during a contracts class. We believed it was important for the integration to have the discussion in the contracts class.”

“The work involved in designing each assignment with its earlier contract, the partial current contract, and the two sets of facts and instructions is considerable.”

The drafting assignment packet includes instructions, an earlier version of a similar contract, a partial current contract, and some materials on negotiation. The earlier contract serves as a model of the kinds of provisions the students could or should include. It is either an actual contract modified to disguise the parties or a contract taken from a form book. The partial contract includes standard terms the students might not include on their own. These include warranties and standards, assignability, divisibility, integration and merger, and choice of law. Six or seven provisions are left blank and marked “to be negotiated.” Although a class on negotiation would be preferable, the materials on negotiation provide an introduction.

The students are divided into two groups, each representing one party to the contract. At the close of the contract drafting discussion, each side receives a memo from the client detailing the client’s requirements for the negotiation and ultimate contract. Each student works with a partner, negotiating with two students who represent the other party. The facts are structured such that the dollar amounts overlap but do not coincide; neither side can achieve all the desired results. The students are instructed not to reveal their client’s instructions and facts except as necessary to the negotiation. The partners first meet to plan their negotiation strategy. Then they meet with opposing counsel to negotiate the deal. Each side then drafts the contract to incorporate the terms as the partners understand them. The two sides then reconvene to reconcile the two contracts into one that incorporates the understanding of all concerned. The students have two to three weeks for the entire process. The contracts are worth points toward the final legal writing grade.¹

¹ At Wayne State, legal writing is graded on an Honors, Pass, Low Pass, Fail system. The students receive quality points for the final assignment(s) each semester—the open memo in the fall and the appellate brief and oral argument in the winter. All other assignments are graded on a good faith effort basis. The theory behind the system is that students should not be graded until they have had an opportunity to try each new kind of writing and receive feedback. Every student who meets the good faith effort standard receives all the points for the assignment. The contracts are worth 50 good faith effort points.

At a minimum, their contracts must include the terms provided and those left open for negotiation. The students are free, however, to revise the terms provided and to negotiate and include additional terms. They are also free to organize the provisions for better understanding and use their discretion on the format. We urge them to be creative.

The legal writing faculty comments on and scores the contracts. Because a competition is involved for the best contract for each contracts section, we do not score the contracts drafted by our own students. At the end of the semester, the students who wrote the best contract for each section receive Best Contract certificates. The awards are presented with great fanfare in the final contracts classes. At the Honors Convocation, the recipients of the best overall contract receive small financial rewards. A former student donated the award money.

The work involved in designing each assignment with its earlier contract, the partial current contract, and the two sets of facts and instructions is considerable. Consequently, the project is limited to three basic scenarios that are used on a revolving basis. Each year the names and a few details are changed from the earlier version.

One project involves a landscaping contract. Counsel for both parties receive a diagram of the property with the detailed landscaping plan. The hypothetical homeowner had a landscaper work on his property some years earlier, the earlier contract, and now wants to go upscale with a gazebo, an underground sprinkling system, numerous shrubs, and some optional details. He has a firm deadline for completion of the work. His counsel receive facts including his absolute requirements, his timing, the things he would like but is willing to forego, and the price he would like to pay as well as the absolute maximum beyond which he is unwilling to go. The landscaper’s counsel receive the price list for each of the items included in the plan and some options. A plastic underground watering system, for example, costs less than a metal system. The gazebo can be topped with a cupola or a weather vane or neither. They receive information on the hourly wage for permanent employees and for seasonal workers.

The landscaper would like to use both types of employees in the project according to their expertise, but seasonal workers will not be available until close to the deadline. The landscaper wants to make a 10 percent profit on the project but is willing to take less in view of the advertising potential of the project. She wants to post a tasteful sign in the front yard for 30 days. All these factual details are up for negotiation.²

The students must include a description of the work to be performed, the timing of performance, what constitutes a breach of the contract, the timing and amount of payment, the remedies available to each party in the event of a breach, and other terms. They must also include a liquidated damage clause should the project not be completed on time.

From the students' perspective, this collaborative effort, first between the partners and then within the foursome, works well. After some scheduling and work allocation issues in the first year of the project, we modified the procedure in three ways. First, we assign the students with partners and opponents within their legal writing section, using a random system. To avoid creating the same pairings and foursomes for the fall and winter drafting assignments, we use a different system of random allocation in the fall and winter semesters; if the chemistry between the students does not work well one semester, they will not be forced to work with the same partner in the second semester. Second, although the students are free to meet with their partner and opponents at any mutually agreeable time, the legal writing slot is the default position. As the class does not meet during those three weeks, every student is available at that time to work on the contract. Third, the students are instructed that they must reach an agreement; impasse is not an option. The collaborative success of the assignment, however, is attributable to the students. Beginning during Orientation, they tend to bond with their colleagues in friendships that endure well after law

school. The group dynamic seems to encourage the cooperative effort. In addition, and probably less importantly, the students have been working collaboratively on legal writing in-class assignments since Orientation. The only frictions that the students report concern timing, when a "let's get started right away" type is paired with a procrastinator. Because the assignment is limited in scope, the schedule is imposed by the faculty, and four people are necessary to the ultimate contract, the students deal with the minor frictions.

How much the students actually learn from the project is difficult to measure. Given a sample contract or two involving similar parties and issues, most of the students could create a credible draft contract. They would anticipate the obvious contingencies, but not necessarily the less obvious ones. Most of them do not yet possess the linguistic awareness and precision necessary to skillful contract drafting. While we, the legal writing and contracts faculty members, would like to see the students engage in a searching debate involving contracts principles and precise language, the reality reflects the students' pragmatic desire to create an acceptable contract.

The contract drafting project has been successful in achieving its rather limited goals. The students enjoy the face-to-face negotiation. The bargains reached are reasonable and reflect a middle position that satisfies the important concerns of both parties. All of the contracts demonstrate basic competence. Some of the contracts include thoughtful additional provisions, careful drafting, and the attention to detail that is the mark of good transactional lawyers. The assignment, however, does not purport to substitute for a serious contract drafting or negotiation course.³

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“The contract drafting project has been successful in achieving its rather limited goals. The students enjoy the face-to-face negotiation. The bargains reached are reasonable. ...”

² The other two projects involve a commercial lease agreement and an at-will employment contract.

³ For more information, feel free to contact me, Diana Pratt, Wayne State University Law School, 471 West Palmer, Detroit, MI 48202, (313) 577-4824 or d.v.pratt@wayne.edu.

The Right Deal in the Right Words: Effective Legal Drafting

By Gregory G. Colomb and Joseph M. Williams

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Neither the execution and delivery by the Borrower or the Sponsor of this Commitment or any of the Collateral Agreements or Basic Agreements to which the Borrower or the Sponsor is a party or the instruments evidencing the Term Loan, nor (subject in the case of clause (i)(B) of this Section 2.4(a) to the Borrower obtaining Permits not yet obtained as of the date hereof) the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of any of the terms hereof and thereof, nor the execution and delivery by the Borrower or the Sponsor of any of the Basic Agreements to which the Borrower contemplates becoming a party (by assignment or otherwise), the consummation of the transactions contemplated thereby or the fulfillment of any of the terms thereof: (i) conflicts with or results or will result in a breach or violation of (A) the Articles or Certificate of Incorporation or the By-laws of the Borrower or the Sponsor, (B) any federal, state or local law or any order, rule or regulation of any federal, state or local government or public authority or agency having jurisdiction over the Borrower or the Sponsor or any of the properties of the Borrower or Sponsor or by which the Borrower or the Sponsor or any of such properties is bound or affected, or (C) any evidence of indebtedness, agreement or instrument to which the Borrower or the

Sponsor is now a party or by which the Borrower or the Sponsor or any of the properties of the Borrower or the Sponsor is now bound or affected; or (ii) results or will result in the creation or imposition of any Lien other than the Liens created by the Deed of Trust, the Debt Protection Fund Agreement, the Pledge Agreement and the Permitted Encumbrances upon any of the properties of the Borrower or the shares of stock of the Borrower.

With contract clauses like this one all too common, it is no wonder that for most people, legal drafting has a bad name. And even among lawyers, few would look to contracts for examples of the best legal writing. What job applicant would submit a contract as a sample of her best writing? Lawyers and clients alike have come to expect contracts, licenses, and other legal instruments to be, if not unreadable, then at least tedious—an expectation that leads only to more unreadable drafting. But even though legal drafting poses special challenges, the quality of its writing is as important to the success of a contract or other instrument as it is to any other legal genre.

Of course, what we prize in a well-written contract differs from what is important in a memo or brief. The first rule for drafting is to get the substance right. A contract will do little good if it commits the parties to unnecessary or harmful provisions or fails to commit them to necessary ones. But it also does little good if the substance is right but expressed in provisions that no one can understand—not the parties, their employees or agents who must carry out the provisions, or worse the courts who must settle the disputes that inevitably follow.

To be effective, a contract, license, or other legal instrument must be drafted so that everyone who needs to understand its provisions can agree on what they mean, which is to say, what each party

“Lawyers and clients alike have come to expect contracts, licenses, and other legal instruments to be, if not unreadable, then at least tedious—an expectation that leads only to more unreadable drafting.”

must *do*. Its sentences must be simple enough for careful readers to process them as easily as their substance allows and precise enough that any two careful readers will arrive at the same interpretation; and the whole document must be organized so that readers can find the information they need quickly and surely. The problem is that these documents are typically produced under conditions that make those goals difficult to achieve.

Good legal drafting is like cutting with a scalpel rather than with a chain saw: you need to approach the task with more care than you need when you knock out a quick memo, because a botched paragraph can have serious, which is to say expensive, consequences. In this column, we show you some ways to manage the special difficulties of legal drafting so that you can produce documents that are substantively correct and yet both unambiguous and as readable as their substance allows.

Create Clear and Precise Sentences

That a written agreement should be clear and unambiguous simply reflects the first principle of contract law: All parties should understand what they are agreeing to. When you draft or review an agreement, your goal should be a document that leads all parties to comply with its provisions confidently, and parties are more likely to comply with provisions that they understood and accepted when they signed the document and understand in the same way months, maybe years later. In the heat of negotiations and deal-making, you or your client may be tempted to get others to agree to provisions that they would not accept if they understood them fully, but you seldom help yourself or your client by enabling a deal that results in a series of disputes over what your document means—or, worse, over violations of its terms. In the long run, you best serve everyone if you create a document whose terms are clear and unambiguous to all parties.

Many drafters try to make the terms of an agreement clear and unambiguous by reaching verbal understandings of the meaning of each provision. But what survives that exercise is not

your explanations, and certainly not the parties' memory of what you said; what survives is an agreement whose provisions were not clear enough to those in the best position to understand them at the time. Not only can the original parties forget or distort those explanations, but they are often not the only ones who need to understand the agreement. Once they are signed, agreements become instruction manuals—for new principals, for lower level employees or other agents responsible for carrying out the provisions, and for accountants, lenders, bankers, and others responsible for evaluating them. And ultimately, they become manuals for the arbitrators, judges, or juries who must settle disputes.

What most counts in contracts and other instruments is not immediate agreement; what most counts is an understanding by possibly unknown parties. So just as you cannot trust your own too-easy understanding of what you intend a provision to mean, neither can you trust the original parties' tutored understanding of it.

In earlier columns, we explained why in all revising you need mechanical ways to bypass your own too-easy understanding of your own prose. Here, we offer four mechanical ways to ensure that your contract provisions will be clear not just to you or your client but to anyone who needs to understand them.

1. Make Subjects Characters and Verbs Actions

As in all documents, sentences in contracts are clearer—and less ambiguous—when subjects are characters and verbs are their key actions. Compare:

- a. The acceptance of any order from or the sale of any Products to Abco after the termination or expiration of this Agreement shall not be construed as a renewal or extension of the Agreement, nor as a waiver of termination.
- b. After this Agreement has expired or been terminated by Defco, Defco shall not be deemed to renew or extend the Agreement nor waive any termination if it accepts any order from or sells any Products to Abco.

“Good legal drafting is like cutting with a scalpel rather than with a chain saw: you need to approach the task with more care ... because a botched paragraph can have serious, which is to say expensive, consequences.”

“The more such an agreement reads like an instruction manual or a recipe, the more familiar and understandable it will seem.”

The task of every agreement is to require specific actions by specific characters. The more you build your sentences around those characters and their actions, the more effective they will be.

2. Use Characters to Assign Specific Responsibility for Specific Actions

In most documents, you can choose to make the subject of a sentence any of its characters, even an object, idea, or action. Often, the most effective character for the subject of a sentence might not be the person who performed its action. For example,

On cross-examination, Dr. Smith had to acknowledge that his opinion was based on a cursory review of the record rather than a close study of the defendant.

Here the main character/subject (Dr. Smith) is the subject and even seeming agent of *acknowledge*. But Dr. Smith is implicitly the *receiver* of an action: under cross-examination, someone *forced* him to acknowledge something. But the role of that hidden character (another lawyer? a prosecutor?) has such a small part in this story that he is absent from the sentence entirely.

In contracts you have less choice about whom to make the subject/agent of an action, because your goal is to document not just what the parties will do but which specific party is responsible for each specific action. So in contracts, your subjects should be not any character associated with the action but its agent, the specific character who performs it. Compare:

- a. Work will not be deemed ready for Abco's written acceptance until completion of all items indicated on the completion list. Upon said completion and satisfactory reinspection, Abco will issue Contractor a written certificate indicating acceptance of the Work. Before issuance of the final payment, satisfactory evidence must be submitted showing that all payrolls, material bills, and other indebtedness connected with the Work for which Abco has paid have been paid by Contractor or its subcontractors. Thereupon, Contractor

will be paid the balance of any amount owing to Contractor including the retained amount, if any, referred to in Paragraph 6.02(c), but such payment will not alter or amend the terms of any warranty provided herein.

- b. Work will not be deemed ready for Abco's written acceptance until Contractor has completed all items indicated on the completion list. When the Contractor has completed the Work, Abco will again inspect it. If Abco is satisfied with the Work, it will issue Contractor a written certificate indicating that it has accepted the Work. Before Abco issues the final payment to Contractor, Contractor must submit evidence satisfactory to Abco that Contractor or its subcontractors have paid all payrolls, material bills, and other indebtedness connected with the Work for which Abco will pay. Thereupon, Abco will pay Contractor the balance of any amount owing to Contractor including the retained amount, if any, referred to in Paragraph 6.02(c). However such payment will not alter or amend the terms of any warranty provided herein.

Version (a) sets forth the substance of the agreement in relatively unambiguous terms. But we have to read closely to determine exactly who must perform each of the actions specified. In contrast, (b) is more explicit about who must do what, so that it is not only a more precise agreement but a more useful instruction manual.

Characters are especially important in consumer contracts or any document that addresses inexperienced readers. The more such an agreement reads like an instruction manual or a recipe, the more familiar and understandable it will seem. In this clause, for example, the customer or the company is the subject and main character of almost every sentence. Note that the main character is called *you* and not the *buyer*:

§9.1 If you have a Dispute with Abco (as defined in §4.1), you must first try to resolve it through the informal dispute resolution

process defined in §4.3. If you and Abco cannot resolve the Dispute informally, you or Abco may choose to arbitrate that Dispute in accordance with the terms of this Section 9. In that case you will receive a hearing before a neutral arbitrator instead of in a court by a judge or jury. You and Abco agree that if one party chooses arbitration, neither party will litigate the Dispute in court, except to appeal the arbitrator's decision (as described in 9.7). The party that chooses arbitration will also choose which of the following three organizations will conduct the arbitration: [LIST]. The selected arbitrator will apply the appropriate rules for consumer arbitration claims, including applicable statutes of limitation and discovery rules. (This means that you may be required to provide relevant information and documents to Abco and vice versa.) The arbitrator will honor either party's claims of privilege recognized by law and will take reasonable steps to protect your account information and other confidential or proprietary information.

When you draft agreements like this one, not only do you reduce disputes and encourage compliance, but you also help your client inspire confidence in its customers that it will deal with them fairly and forthrightly.

3. When They Matter, Specify When, Where, and How

In many cases, users of an agreement need to know not just who must do what, but when, where, and how to perform the action. For every major provision, ask yourself whether you need to specify those qualifications. For example, the first version of this inspection provision leaves open opportunities for misunderstanding and disputes; the second improves the chances that the parties will know whether and when the goods have been accepted in accord with the agreement.

a. Upon delivery of the machinery, Abco will inspect each device individually. If Abco discovers any defect or damage beyond normal wear and tear, Defco will either

repair the device at its own expense or have it shipped back to the Houston facility.

b. Abco will inspect each device individually within two weeks of the delivery date (as defined above). If Abco discovers any defect or damage beyond normal wear and tear, it must notify Defco in writing within three weeks of the delivery date. Otherwise, Abco will be deemed to have accepted delivery. Once Defco receives notice of any defect or damage, it will have 30 days to repair the device at its own expense or have it shipped back to the Houston facility.

When you add these additional specifications, do not clutter your sentences by cramming them all into one. You will be clearer if you turn one sentence into several (as the second sentence of (a) becomes three in (b)).

4. Use Words Precisely

In contracts and other instruments, not only must your sentences be clearer and more explicit than in other kinds of legal writing, so must your words. Here are four ways to reduce ambiguity through your choice of words.

- **Don't vary words.** If you use different words to refer to the same objects, actions, or ideas, readers may think that you are using those different words to communicate different meanings. Judges are especially prone to think that when drafters use different words, they may have in mind different meanings. The terms *SUV*, *automobile*, *car*, and *vehicle* may all refer to the same object in the minds of the drafter, but might not for someone who has to adjudicate a dispute.
- **Use words familiar to readers.** Unless you need to invoke a specific legal concept, use the names for things used by the users of the agreement. If an agreement refers to a client's financial statements, give them the specific names that the client uses, not the generic names that a lawyer or accountant would use.

“In contracts and other instruments, not only must your sentences be clearer and more explicit than in other kinds of legal writing, so must your words.”

“Shorter, simpler sentences are clearer, but some contract sentences have to be longer and more complex, usually because you have to be exhaustively precise.”

- Use singulars and plurals precisely. Don't use indefinite plurals that might actually be singular. Use plurals only when an action must be undertaken by more than one party (and then specify which parties must act—*both, all, some, any*, etc.). Otherwise, use singulars: *not*, “Tenants will report problems ...” *but*, “Each tenant will report any problem ...”
- Use *and* and *or* precisely. Don't leave readers to guess whether a provision that someone may do “X or Y” means that they can do only one but not the other. Choose among the following more precise patterns:
 - either X or Y
 - X or Y, or both X and Y
 - both X and Y

Manage Unavoidable Complexity

Shorter, simpler sentences are clearer, but some contract sentences have to be longer and more complex, usually because you have to be exhaustively precise. Sometimes, you cannot precisely name the characters or actions in a provision in a word or two; sometimes there are several of each. In that case, the character-action structure won't be enough to make a sentence easy to read. For example, the following provision is expressed in a sentence whose subject names several characters (underlined), whose indirect object names several more (**bold**), and whose object (*italicized*) names more entities yet.

Unless specifically authorized by the Company in writing, Consultant, its direct employees, and any additional persons or entities employed by Consultant (including independent science experts, data collection agents, and data storage or manipulation technicians who have executed separate Confidentiality Agreements) shall not intentionally or unintentionally disclose to any persons associated with or employed by **independent science experts, data collection agents, and data storage or manipulation**

technicians who have not personally signed Confidentiality Agreements or to any other third party any science, business, or marketing data, any devices or processes for data analysis, any production or disposal processes observed on Company premises, or any other Proprietary Information.

Suppose the main units in that sentence had short names: *Joe's associates*, *outsiders*, and *secrets*. Now the provision couldn't be clearer:

Unless specifically authorized by the Company in writing, *Joe's associates* shall not intentionally or unintentionally disclose to any *outsiders* any of the Company's *secrets*.

Your problems with complex sentences get even worse when a provision involves not just multiple characters but multiple conditions, consequences, and provisos.

What follows are some ways to help readers move through unavoidably complex sentences, if not easily, then at least without being defeated by them.

5. If Possible, Get to the Subject and Verb Quickly

If you express required actions as verbs and the agent of those actions as subjects, arrange your sentences so that readers get to those subjects as verbs as quickly as possible.

- In the case of all specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information, and data, written, oral or otherwise (herein designated “information”), you acknowledge that Abco retains ownership of all such materials furnished to you hereunder or in contemplation hereof.
- You acknowledge that Abco retains ownership of all materials furnished to you hereunder or in contemplation hereof, including all specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information, and data, written, oral or otherwise (herein designated “information”).

6. Break up Long Sentences into Shorter Ones

Although drafters often assume that they have to cram all related ideas into a single sentence, you can often make sentences simpler by revising one into several:

a. **2.3 Use of name.** Except for disclosure by Abco of the Company's support for the Research Activities in research publications and except for disclosure by the Company to potential partners, investors, or other parties with a legitimate business or regulatory interest in the Research Activities, including but not limited to New Genetics, that the Research Activities are being conducted at Abco or under the direction of the Research Specialist, no party to this Agreement shall use the name of any other party or of any staff member, employee, or student of any other party or any adaptation, acronym, or name by which any party is commonly known, in any advertising, promotional, or sales literature or in any publication without the prior written approval of the party or individual whose name is to be used.

b. **2.3 Use of name.** Abco may acknowledge in research publications the Company's funding support for the Research Activities. The Company may disclose that the Research Activities are being conducted at Abco or under the direction of the Research Specialist to potential partners, investors, or other parties with a legitimate business or regulatory interest in the Research Activities, including but not limited to New Genetics. Otherwise, all parties to this Agreement may not use in any publication or advertising, promotional, or sales literature (i) the name of any other party or of any staff member, employee, or student of any other party or (ii) any adaptation, acronym, or name by which any party is commonly known, without the prior written approval of the party or individual whose name is to be used.

7. Move Complexity to the End of a Sentence

When you cannot reduce complexity by breaking up sentences, move the complexity (especially lists) to the end of the sentence. Then if you can, make the parallel elements in the complexity visually parallel with tabular white space:

- a. Neither the execution and delivery by the Borrower or the Sponsor of this Commitment or any of the Collateral Agreements or Basic Agreements to which the Borrower or the Sponsor is a party or the instruments evidencing the Term Loan, nor (subject in the case of clause (i)(B) of this Section 2.4(a) to the Borrower obtaining Permits not yet obtained as of the date hereof) the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of any of the terms hereof and thereof, nor the execution and delivery by the Borrower or the Sponsor of any of the Basic Agreements to which the Borrower contemplates becoming a party (by assignment or otherwise), the consummation of the transactions contemplated thereby or the fulfillment of any of the terms thereof results or will result in a breach or violation of the Articles or Certificate of Incorporation or the Bylaws of the Borrower or the Sponsor.
- a. The Borrower or the Sponsor does or will not breach the Articles, Certificate of Incorporation, or Bylaws of the Borrower or Sponsor if it
- (i) executes and delivers this Commitment, any Collateral Agreements or Basic Agreements to which the Borrower or Sponsor is a party, or the instruments evidencing the Term Loan,
 - (ii) consummates the transactions contemplated hereby, subject in the case of clause (i)(B) of this Section 2.4(a) to the Borrower obtaining Permits not yet obtained as of the date hereof,

“Although drafters often assume that they have to cram all related ideas into a single sentence, you can often make sentences simpler by revising one into several.”

“No one expects a contract to carry them from clause to clause as a good story carries us from episode to episode.”

- (iii) executes and delivers any additional Basic Agreements into which the Borrower contemplates entering (by assignment or otherwise),
- (iv) fulfills the terms of any additional Basic Agreements, or
- (v) consummates the transactions contemplated in any Basic Agreement.

8. If You Can't Simplify, Add a Précis

Sometimes you cannot avoid or simplify a complex sentence, especially those with multiple interrelated characters or actions that you cannot name in a word or two. If you have structured the sentence in character-action form, then the only challenge for readers is to recognize the basic story behind the complex names for the characters and their actions.

You can help readers do that in two ways. First, help readers more easily see the multiple characters as a group that plays the same role in the sentence by summarizing the list in one or more category terms. For example, the confidentiality clause at the beginning of this section would have been easier to read if the long list of confidential information began with a category term (italicized):

Not: Consultants may not disclose any science, business, or marketing data, any devices or processes for data analysis, any production or disposal processes observed on Company premises, or any other Proprietary Information.

But: Consultants may not disclose any *Proprietary Information*, including any science, business, or marketing data, any devices or processes for data analysis, or any production or disposal processes observed on Company premises.

Second, help readers recognize the underlying story by introducing a complex clause with a sentence that summarizes the story. This next précis (italicized) would be imprecise standing alone, but it helps readers get through the following, more complex sentence without diminishing its precision.

Unless specifically authorized by the Company in writing, Consultant must keep confidential all of the Company's Proprietary Information.

In particular, Consultant and its direct and indirect employees (including any additional persons or entities such as independent science experts, data collection agents, and data storage or manipulation technicians who have executed separate Confidentiality Agreements) shall not intentionally or unintentionally disclose to any third party (including persons associated with or employed by independent science experts, data collection agents, and data storage or manipulation technicians who have not personally signed Confidentiality Agreements) any Proprietary Information (including science, business, or marketing data, any devices or processes for data analysis, or any production or disposal processes observed on Company premises).

If the complex sentence is the only one in a clause, you can also use a shortened version of the summary sentence as a heading for the clause.

Organize by Topics and Episodes

No one expects a contract to carry them from clause to clause as a good story carries us from episode to episode. But an effective instrument does need a clear and useful organization, one that not only helps a reader find the specific provision she is looking for but that also helps her know what to look for in the first place. So don't simply list clauses like beads on a string. But don't bother to make them a good read from beginning to end. Instead, group provisions and use headings so that they help a reader use the agreement as a reference document: What order will most help someone know what to do or how to solve a problem?

9. Organize for Future Reference

You generally have two choices for organizing a contract or other instrument: by topic (*Record-keeping, Confidentiality, Scope of License*) or by situation or action (*Termination, Delivery of Goods, How to Report Equipment Failures*). Although most contracts use some of both, the two schemes have different effects and are suited for different users.

- Choose a topical organization if the contract will be used primarily by lawyers, accountants, or other professionals who consult it to avoid or settle disputes, as for example in a large acquisition or joint venture. Experienced professionals think in terms of legal and business topics when they work on familiar deals.
- Choose a situational organization if the contract will be used by parties who consult it to know what they should do or have done, as in a consumer contract or a consulting agreement. These users approach a contract in terms of what it requires of them in a particular situation.

If you expect a contract to have both kinds of users, choose a situational organization because a topical one may defeat ordinary users.

10. Group Actions That Occur Together or Depend on One Another

Organize each unit so that it tells a piece of the story. Think of an individual clause as one step in the overall deal, and think of groups of clauses as episodes. If you organize sections by topic, the subsections are likely to be related conceptually rather than narratively. But you usually can design subsections so that each is one piece of the story.

Always group actions or requirements that depend on one another, especially if one triggers the next. For example, suppose an agreement requires a Licensee to (1) investigate local trademark violations, (2) collect samples, (3) report violations, (4) not take any formal legal action, and (5) cooperate in and if requested join any suit. Group these related provisions in one unit rather than, for instance, separating 1–3 into a general trademark section and 4–5 into a remedies section.

11. Use Headings to Identify the Point or Purpose of a Clause

Almost all well-conceived units in a contract have an underlying point or purpose, and readers understand a provision more easily and accurately when they know that purpose before they work through the details—especially readers inexperienced with contracts or with a particular kind of deal. So whenever possible, make that point

or purpose evident in a heading (which, of course, you will later specify is only for clarity and not part of the agreement itself).

When you organize by situations, the purpose of a unit should be obvious: *Delivery of Goods* or *How to Report Equipment Failures*. But even topically organized units usually have a point—what you would answer if a client asked, *So why are you including that part? So that you can protect your confidential information. So that you are protected if by signing this agreement the other party violates some other agreement we don't know about.* It may seem when you are drafting that there is no real difference between these headings:

Confidentiality

Consultant's Duty to Protect Company's Confidential Information

The first may clearly imply everything in the second for anyone who has participated in the deal, but the conceptual framework of the second eases the understanding of anyone not used to such agreements or even of an experienced reader reviewing this document for the first time.

Some Useful Drafting Processes

Rarely will you have to draft a document without a model. And when a deadline looms, you may find it hard to resist the temptation to draft by filling in blanks from some previous contract. Models are essential tools in effective and *cost-efficient* drafting, but only if you use them at the right time in the right way. If you start with a model or with the other party's draft, then your document is less likely to represent the best current deal for your client. So try always to start by sketching out the keys to success for your client in this particular deal. (If the current deal is a new kind for you, you can review models first, but only to get a sense of the general shape such deals take.) Then go to the models to make sure you haven't missed anything and then to borrow ideas, usable clauses, and boilerplate—remembering, of course, that any other document is right for some *other* deal.

“Models are essential tools in effective and cost-efficient drafting, but only if you use them at the right time in the right way.”

“When you draft, you gain some control over the process. You set the framework for subsequent discussions, and any negotiations start from your best deal.”

Here are four steps to take before you turn to models.

12. Write the First Draft if You Can

Try to be the first drafter for anything but a routine agreement. You may add to your client's cost and your work, but being the first drafter has several advantages over responding to someone else's—advantages that may save more than the drafting costs. When you draft, you gain some control over the process. You set the framework for subsequent discussions, and any negotiations start from your best deal. You can't, of course, be so aggressive that your draft doesn't pass the laugh test. But you will not gain what you do not ask for, and it is always easier to retain a favorable position already in a document than to add one later. Drafting also helps you be better prepared. You will know the intricacies of a document you prepared far better than one you simply reviewed. Moreover, drafting gives you more time and better focus for thinking through the implications of and interactions among a document's provisions.

13. Start by Summarizing the Deal

Unless the deal is routine, don't start by listing or drafting provisions. Start with a narrative summary of the deal, focusing on what your client hopes to achieve and the predictable problems she hopes to avoid. Fill out your narrative with those steps and problems that you can anticipate but the client has not. Don't sweat the details; you need only a rough sketch or outline. But do make sure that the narrative make sense. Imagine what the parties have to do to play out your narrative. Then imagine all the ways it can go wrong.

14. Draft Key Provisions Before You Consult Models

Any effective agreement has to cover a range of contingencies that are not, strictly speaking, part of the deal. Your role in the process includes anticipating all of those unlikely and unforeseen contingencies—something inexperienced lawyers do best by consulting models. But the heart of an agreement has to be not those lawyerly contingencies but the key elements of the particular deal at hand. So before you consult any models for things you may otherwise miss, draft those provisions that set out the main story line of the deal. Use them to organize the document, and then start adding in provisions you find in models. Save boilerplate for last.

15. Talk as You Draft

Lawyers always risk writing in a way that no ordinary person would ever talk, but never more so than in legal drafting. If as you draft you converse only with the other contracts you use as models, you're likely to produce prose that will mystify the parties and even challenge other lawyers. So as you draft, take every opportunity to explain the key provisions to anyone involved in the deal who will listen. You can't simply transcribe those explanations in your draft. But if you model your clauses on those explanations rather than on what you find in other contracts, your client and anyone else who has to use your draft will thank you.

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Fixing the “Awk”

Writers' Toolbox ... is a regular feature of Perspectives. In each issue, Professor Anne Enquist offers suggestions on how to teach specific writing skills, either in writing conferences or in class. Her articles share tools and techniques used by writing specialists working with diverse audiences, such as J.D. students, ESL students, and practitioners. Readers are invited to contact Professor Enquist at ame@seattleu.edu.

By Anne Enquist

Anne Enquist is the Associate Director of the Legal Writing Program at Seattle University School of Law in Seattle, Wash. She also serves as the Co-Director of Faculty Development and the Writing Advisor at the law school. She is a member of the national Board of Directors for the Legal Writing Institute and has served on the editorial board for the journal Legal Writing: The Journal of the Legal Writing Institute. Professor Enquist is co-author of The Legal Writing Handbook, 3d edition, and four books: Just Writing, Just Briefs, Just Memos, and Just Research.

In the good old days, when life was simple and, more to the point, when critiquing student writing was simple, professors would read their students' writing and, upon coming across a clunker sentence, write “awk” (short for “awkward”) in the margin and keep on reading. The lazy, figure-it-out-for-yourself part of me kind of misses those days. But even back then, I and many others suspected that if students had known how to fix these clunkers, they would have done so. Labeling a sentence as “awkward” simply put them on notice; it was shorthand for “there’s a problem here—do something about it.”

Since those days, we have moved beyond merely labeling student writing problems, and now many of us believe we also have a responsibility to help our students fix their clunkers. Unfortunately that is a lot harder to do than rubber-stamping “awkward sentence—needs revision” in the margins or adding it to one’s autotext. Going beyond “awk” requires taking the time to diagnose what made the sentence

a clunker and suggesting how the writer should approach revising it. Fortunately, there are a few predictable categories of clunkers, each with a couple of standard fixes.

Clunker Category 1—I’m Still Not Sure What I’m Trying to Say

The classic awkward sentence is the result of unfinished thinking. The writer is still groping toward an idea he or she intends to convey and the groping shows. This is not a huge problem at the draft stage; we’ve all had the experience of writing ourselves into understanding. It is a problem at the final product stage.

One way to help students fix this type of clunker sentence is to point out the hazy thinking (tactfully) and then nudge the writer toward clarifying his or her thoughts. A margin comment such as “I’ve read this sentence twice and I’m still not sure what you are trying to say; do you mean X or Y?” makes the point that readers will stumble over the sentence and that the writer has to turn his or her thought processes up a notch.

Another technique that I love to teach students who write the occasional garbled sentence is one that I chanced upon when fighting a mangled sentence in my own writing. After revising the same sentence over and over again, only to find that the sentence was getting worse, not better, I pushed back from the computer in frustration and said aloud in my office, “All I’m trying to say is _____.” And there it was. What came out of my mouth and filled in that blank was my point—nice, clean, simply stated. Somehow leaving the computer, tapping into oral rather than written language, and reminding myself that this was not a big deal (“All I’m trying to say”) freed my brain from whatever entanglements were hindering my prose.

Since then, I have taught the “All I’m trying to say” technique to dozens of students with good results.

“The classic awkward sentence is the result of unfinished thinking. The writer is still groping toward an idea he or she intends to convey and the groping shows.”

“ [Some] writers seem to be tone deaf when it comes to rhythm and natural emphasis in their prose. They don’t seem to ‘hear’ the problems when they read silently to themselves. ”

Invariably, what comes out to fill in that blank is a reasonably clear expression of the point they have been laboring to express. I’ve noticed that the technique allows them to unpack their ideas, toss out what is extraneous, zero in on their point, and state it simply, much as they would to another person in a conversation. Watching this process in office conferences has led me to add a few small refinements to the technique.

First, once a writer has captured a point in oral language, he or she might find it helpful to jot it down before returning to the computer. Doing so prevents the writer from being sucked back into the swamp of the old problem sentence. Second, the oral language that the writer used to fill in the blank may be a bit informal for the document at hand. The writer may need to take it up a smidge, but just a smidge; too much and some writers are right back where they started with an overwritten cumbersome sentence. Third, once the new clear sentence is inserted into the document, the writer should read it together with the preceding and subsequent sentences and, if necessary, revise all three sentences so that they flow.

Clunker Category 2—I’m Tone Deaf When It Comes to Writing

I wish I were a musical person, but I’m not. I would love to be able to sing on key, but when the Creator was passing around that particular talent I must have been out of the room. Some students also seem to have been absent when the knack for hearing how writing sounds was distributed. They may write sentences that are technically correct, but these writers seem to be tone deaf when it comes to rhythm and natural emphasis in their prose. They don’t seem to “hear” the problems when they read silently to themselves.

The embarrassingly easy way to help some of these students improve how their writing sounds is to either (a) read their writing aloud to them or (b) have them read their own writing aloud. Nineteen students out of 20 will hear the problem areas once they are read aloud. When I read their writing aloud to them, I emphasize the clunkers and speed bumps along the way so that they hear them. I then

encourage them to read their own writing aloud and with exaggerated emphasis. Otherwise, most of them will start off reading their own writing out loud but then get faster and softer until sotto voce has become silent reading. This tendency can undermine the whole technique. To counteract the temptation to slip into silent reading, I encourage them to stand up and read like they are making a proclamation. Yes, this makes for some rather humorous office conferences. The point is to hear where the writing is not working.

Once students have identified problem sentences and the specific bumps and thuds in those sentences, they can use a trial and error method toward revising—try this, read aloud, try that, read aloud, which is better?—which works just fine for many students. My preference, however, is that they take the time to learn two closely related principles about good sentence construction.

The two sentence construction principles I would add to their writing repertoire are the old → new pattern within a sentence and dovetailing between sentences. The old → new pattern in sentences is news to most law students. Somehow most of them have never heard or noticed the point that George Gopen dramatized for us at the last Legal Writing Institute conference in Seattle:¹ most sentences tend to begin with something that is already known to the reader (old information), and they end with the new point that the sentence contributes to the building line of thought (new information). The old → new pattern is not a rigid rule, but it conforms nicely to the linear progression characteristic of good prose.²

Sentence	
Old information	New information

¹ A videotape of George Gopen’s presentation is available through the Legal Writing Institute.

² George D. Gopen, *The Sense of Structure* 70–75 (2004) (discussing the “herald stress position” that produces a “forward lean” in sentences, as well as the limits of “topic changing”).

“They always look surprised and then a bit relieved when I describe my own writing struggles and the bliss of the breakthrough when it happens.”

Dr. Davis’s occupation as an obstetrician has shown
subject verb

a diminished ability to provide consistent care and
complement

guidance for her children.

If we pull out the subject/verb/complement unit, we can see that the basic structure of the sentence does not work.

Occupation has shown diminished ability

An occupation cannot show diminished ability.

Using the earlier approach, the writer should ask, “What’s the real action in this sentence?” The vague, mushy “has shown” is obviously not it. No one seems to be showing anything here. The closest thing we have here to a real action seems to be trapped in the noun phrase “diminished ability.”

Dr. Davis may be unable or less able to provide consistent care and guidance for her children because she is an obstetrician.

One possible revision, then, is “As an obstetrician, Dr. Davis may be less able to provide consistent care and guidance for her children.” That version would also put a real actor, Dr. Davis, in the subject slot.

Another possible revision would keep her occupation as the actor: “Dr. Davis’s occupation, obstetrician, may impair her ability to provide consistent care and guidance for her children.”

Another writer using the “all I’m trying to say” approach might revise the sentence this way:

“Because Dr. Davis is an obstetrician and her profession is so demanding, she will not be able to give her children consistent care and guidance.”

There’s more than one way to skin a clunker.

Obviously, not all clunker sentences fall neatly into these three categories, nor are the techniques for fixing clunkers limited to the few I’ve described. Students do find it helpful, though, when their professors share a few ideas about how to deal with some of the ordinary problems every writer faces, and they find it reassuring to know that they are not the only ones who struggle to express themselves clearly and effectively. They always look surprised and then a bit relieved when I describe my own writing struggles and the bliss of the breakthrough when it happens. Such conversations help to change the “isn’t this lonely and painful” atmosphere that clouds some people’s experience with writing and suggest that writing and revising can be a rewarding experience. Who knows, it might even be fun to fix the awkward.

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Choosing the Right Tool for Internet Searching: Search Engines vs. Directories

Teachable Moments for Students ... is designed to provide information that can be used for quick and accessible answers to the basic questions that are frequently asked of librarians and those involved in teaching legal research and writing. These questions present a “teachable moment,” a brief window of opportunity when—because he or she has a specific need to know right now—the student or lawyer asking the question may actually remember the answer you provide. The material presented in this column is not meant to be an in-depth review of the topic, but rather a summary of the main points that everyone should know. It is a companion to the Teachable Moments for Teachers column that gives teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. Readers are invited to submit their own “teachable moments for students” to the editor of the column: Barbara Bintliff, University of Colorado Law Library, Campus Box 402, Boulder, CO 80309, phone: (303) 492-1233, fax: (303) 492-2707.

By Joanne Dugan

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The conventional wisdom about today’s law students is that they are technologically savvy and sophisticated consumers of Web-based information. Well, yes and no. It certainly is true that they have access to much more sophisticated research tools than students did a decade ago, and that the Web has much more content to search than it did 10 years ago. As a result, it has become unusual for a student to say that she or he “can’t find anything” on a topic. That doesn’t mean that today’s student is necessarily a better researcher or that the information located is of better quality. In fact, one of the ironies of more sophisticated search tools is that it allows researchers to

become less sophisticated in their use of the tools.¹

Even within the limited scope of Internet searching, there seems to be a divide among the research savvy and research novices. Many of our law students have learned their Internet research skills in an atmosphere where “good enough” was acceptable. One of the first lessons we must teach them is the difference between “good enough” and “best quality”; between information and research. While the former is perfectly acceptable for much of their everyday lives, the rigors of legal scholarship and legal advocacy require the latter.²

Search Engines vs. Directories: Brawn vs. Brain

The recent spate of news reports about the relative size of Yahoo!’s database and Google’s database³ got me thinking: Does anyone use directories to find information on the Internet anymore? More specifically, do law students use directories? Do they know the difference between a search engine and a directory? I suspect that many of them don’t, and yet it’s an important distinction to make when planning an effective Internet search.

¹ “Today’s undergraduates are generally far less prepared to do research than were students of earlier generations, despite their familiarity with powerful information-gathering tools.” Patricia Senn Breivik, *21st Century Learning and Information Literacy*, Change, March/April 2005, at 22.

² Several recent articles discuss the tension between these two standards. See, e.g., Steven Bell, *Don’t Surrender Library Values*, *Library Journal*, May 15, 2005, at 79; Todd Miller, *In Defense of Stupid Users*, *Library Journal*, March 15, 2005, at 58; Brian Kenney, *Googlizers vs. Resisters: Library Leaders Debate Our Relationship with Search Engines*, *Library Journal*, December 15, 2004, at 44.

³ John Battelle, *Search Engines Trade Competing Claims*, NPR Morning Edition, August 15, 2005.

“One of the first lessons we must teach them is the difference between ‘good enough’ and ‘best quality’; between information and research.”

“Online searchers rely on two concepts to evaluate the results of a search: precision and recall. Unfortunately, high precision usually comes at the cost of low recall, and vice versa.”

Boiled down to the essentials, Internet search tools are either full-text search engines, topical directories, or some hybrid or combination of the two. Full-text search engines, such as Google, use sheer computing power to import huge volumes of information from the Web, create a database that indexes every word imported, and find matches to user queries.⁴ Topical directories, such as the Yahoo! Directory,⁵ are more selective in importing information into their databases. The databases are organized into hierarchical subject categories, and Web sites that are selected for inclusion are then indexed and categorized by human editors.⁶

The dichotomy of full-text vs. topical organization is a familiar one to legal researchers. We have been grappling with it ever since the electronic legal research services introduced full-text databases back in the 1970s,⁷ giving us a choice between digests and indexes and full-text searching. Many researchers were tempted by the freedom that full-text searching gave them to customize their own research but found that, in many cases, the results were either overwhelming or not well tailored to their needs. Even with the power that full-text searching provided, there was still value in the analysis and categorization provided by human editors. Even the most skilled legal researcher received different, if overlapping, results when using both online and print resources to research an issue. Similar considerations come into play when deciding what tools to use to search the Internet.

⁴ Alan M. Schlein, *Find It Online: The Complete Guide to Online Research*, 79–83 (3d ed. 2003).

⁵ When Yahoo! first arrived on the scene in 1994, it was a pure directory, and it remains the quintessential subject directory on the Web <www.yahoo.com/info/misc/history.html>. In 2004, Yahoo! introduced Yahoo! Search, its own proprietary search engine that competes directly with Google. Press Release, Yahoo! Media Relations, *Yahoo! Introduces More Comprehensive and Relevant Search Experience with New Yahoo! Search Technology* (February 18, 2004) <docs.yahoo.com/docs/pr/release1142.html>. Yahoo!'s home page now emphasizes the search engine, but the directory is still active and available through a link on the home page.

⁶ Schlein, *supra* note 4, at 89–90.

⁷ Roy M. Mersky & Donald J. Dunn, *Fundamentals of Legal Research*, 538–539 (8th ed. 2002).

Precision vs. Recall

The choice of search engines or directories as Internet search tools depends on the type of results that are desired. Online searchers rely on two concepts to evaluate the results of a search: precision and recall. Unfortunately, high precision usually comes at the cost of low recall, and vice versa. Precision measures the proportion of relevant materials in a search result. Let's say you were doing research on the *Miranda* warning for a criminal procedure memo. A measure of the precision of your search would be the proportion of search results that talk about the right to remain silent compared to the proportion of search results that feature 1940s entertainer Carmen Miranda. Recall, on the other hand, measures how complete your search results are compared to the total amount of relevant information available. Let's say you were researching the statute of limitations for medical malpractice in all 50 states. If your search results only included 30 states (because the other states use the term “statute of repose” or “limitation of actions” instead of “statute of limitations”) your recall would be lower than if you had found all 50 states.

Just as with full-text databases on computer-assisted legal research (CALR) services, full-text search engines such as Google excel in quantity of search results, or recall. Unless you are searching for a really esoteric term, you will probably end up with a big results list, and there's likely to be some useful information in the list. Unfortunately, the precision of the results is probably not optimal, so you may end up wading through a lot of irrelevant or low-quality information in order to find the high-value information.⁸ Directories such as Yahoo! are more like the West Key Number System*: a human editor serves as intermediary between the searcher and the information, selecting and categorizing material under a specific subject heading. The result is a

⁸ Most search engines try to minimize the amount of winnowing the searcher needs to do by using some sort of relevancy ranking. This is a good thing, since studies show that the average searcher scrolls through only 1.8 results pages per search. Pew Internet & American Life Project, *Data Memo on Search Engines*, August 2004 <www.pewInternet.org/PPF/r/132/report_display.asp>.

smaller set of results than you would get from a search engine, but the search results are likely to be highly relevant.⁹

How Do You Decide?

Now that we know the basics of how search engines and directories handle Internet searching, the next logical step is to figure out which tool works best in what situation. That answer is going to depend on the purpose of the search, the subject matter being researched, the searcher's familiarity with the subject, and the searcher's skill at online searching.

If the searcher is just beginning to research in an area that is unfamiliar to her, her best bet will probably be to use a subject directory rather than a search engine. There are a couple of reasons for this: first, the searcher needs some background information on the topic and may not know enough about the subject to choose effective keywords. The structural hierarchy of a subject directory allows her to drill down from broader to more specific topics, suggesting vocabulary as she proceeds. Second, while she's in the process of gaining background knowledge, it's more time-effective to rely on the judgment of the directory's editors about the most authoritative and complete Web sites on a particular topic. Because of the selective nature of directories, there's some level of quality control built in.

Once our hypothetical researcher has some background on her topic, she's better equipped to harness the brawn of a full-text search engine. Search engines work best when the searcher has sufficiently defined the limits of her research needs and identified specific keywords to capture the information. Because the brute strength of search engines leads to poor precision, searchers tend to get better results when they use unusual or technical terms. This can pose a problem in law,

since legal concepts are often expressed in ordinary English rather than the technical jargon more commonly found in science or medicine. A savvy researcher can leverage the advanced features of the search engine to combine phrases, search fields, and use Boolean operators to increase the precision of the search results.

A search engine is also the best tool if the researcher is concerned about the completeness of her search results. Directories are selective, which is both their strength and their weakness. Because judgments about what to include are being made by human editors, directories are subject to bias in the selection process. Search engines are also generally more current than directories, since the selection process of directories is more time-intensive than the automated harvesting of information done by the search engines.

Just as with searching on the CALR systems, the best results are returned if the searcher takes advantage of the strengths of both search engines and directories over the course of her research project.

A Final Warning

Most legal research instructors are deeply skeptical of research conducted solely on the Internet, and for good reason. We know that many of the best gems of information are still only available in print. By the same token, we ought to be very skeptical of Internet research that relies solely on Google or Yahoo!, or even a combination of the two. Many Internet users believe that they are searching the entire Web when they use these services. In fact, they are searching only the portion of the Web that has been captured and indexed by these services. Each service maintains its own database, and each has its own closely guarded techniques for processing queries and ranking results. A wise Internet searcher will never rely exclusively on just one search tool. And a brilliant Internet searcher will search for information outside the world of search engines and directories by learning about the invisible Web and the deep Web. But that's a story for another day ...

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“ [T]he best results are returned if the searcher takes advantage of the strengths of both search engines and directories over the course of her research project. ”

⁹ Just as a search engine uses relevance ranking to compensate for the lack of precision inherent in a full-text search, directories compensate for the lack of recall inherent in their smaller search results because the human editors can recognize and include relevant sites even if they use different vocabulary to discuss the same concepts.

Tripped Up by Electronic Plagiarism

Teachable Moments for Teachers ... is a regular feature of Perspectives designed to give teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. It is a companion to the Teachable Moments for Students column that provides quick and accessible answers to questions frequently asked by students and other researchers. Readers are invited to submit their own “teachable moments for teachers” to the editor of the column: Louis J. Sirico Jr., Villanova University School of Law, 299 N. Spring Mill Road, Villanova, PA 19085-1682, phone: (610) 519-7071, fax: (610) 519-6282, e-mail: sirico@law.vill.edu.

By Hollee S. Temple

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Like most new legal writing professors, I had been cautioned to look out for cheating and plagiarism in my students' work product. But after coasting through three uneventful semesters, I was truly surprised when I discovered two remarkably similar submissions in my stack of 43 office memos.

It was February, and I hadn't slept much in the four months since my youngest child, Henry, was born, so I was amazed that I had even spotted the look-alikes.¹ But there they were—two memos with nearly identical discussion sections. I started tracking the language, paragraph by paragraph. The memos kicked off with different issues and short answers, and the headings weren't identical, but once I entered the discussion sections, I encountered word-for-word replicas. In particular, the rule blocks were identical: same cases, same citations, and even the same explanatory

parenthetical case explanations. The explanatory parentheticals closed the deal for me. Barring impermissible collaboration of some sort, two students couldn't have described the same cases with the same exact words. Or could they have?

We grade blindly, so my first step was to ask my secretary to disclose the students' identities. Surely this would be a boyfriend-girlfriend team, I thought, with one succumbing to the pressure to help the other succeed. I was shocked when I learned that the “culprits” were not a couple, but two of my best female students. (For this article, I'll call them Rachel and Beth.) They had always seemed to be hardworking and honest, and I knew they were close friends.

Then it made sense. Rachel had recently confided in me about a serious health problem that she had been facing, and I knew that she had also been grieving the unexpected death of her father. I connected the dots. Beth must have decided that friendship came first, and when Rachel couldn't get her memo done because of the health problems that had been sidetracking her, Beth let her copy.

I asked my experienced director for advice, and she said that under the circumstances, I should ask the students to come in together to meet with me. I felt mildly uncomfortable as I sent the e-mail, but I knew this was an unpleasant part of the job, and that ultimately the students would learn from the experience.

I had been advised that students often confess right away, but I felt something wasn't right as soon as the students responded to my e-mail. Beth, who had always seemed a little nervous around me, was stressed and upset—she wanted to know why I wanted to meet with her. Rachel also expressed surprise, but said she would be happy to meet with me.

This wasn't going as I'd expected. A few minutes later, Beth called me (at home), and I decided to just tell her what I had discovered.

¹ Between teaching and caring for a newborn, I could only squeeze in about three memos a day, so it was pure serendipity (or from the students' perspective, bad luck) that I happened to read these two submissions in the same sitting.

To make a long story short, it was a terrible conversation. Beth cried and pleaded with me that she hadn't cheated, and assured me that there was no way that Rachel would have cheated either. I tried all of the tactics I knew of to get her to "come clean." Was there any way that Rachel could have "borrowed" some of the text from Beth's computer when Beth wasn't around? No. Was she absolutely sure there wasn't something she needed to tell me? No. I even threatened a little. We could handle this privately, or we could take it to the ethics board, I said. Still no movement.

After having a similar conversation with Rachel, I felt horrible, and I still didn't have a reasonable explanation for how the two submissions ended up looking so much alike. I took them out again, and then a lightbulb went off. I rushed up to my office, logged on to LexisNexis®, and printed out the key Supreme Court case that all of my students had been citing.²

Bingo. These memos looked alike because the students had "lifted" the text for their rule sections directly from the leading case, but hadn't given the reader any hint that they were borrowing so extensively from the Court's opinion. Those explanatory parentheticals that had seemed so suspicious at first blush now made sense; the students hadn't copied from each other, they had copied from the Court! The string citations were identical because they were cut and pasted directly from the case.³

Later, the students told me that Westlaw® and Lexis representatives had actually demonstrated this technique in their training sessions.⁴ Beth and

Rachel said they did not understand that they had committed a form of "digital" or "electronic" plagiarism.⁵ As I graded the remainder of my stack, I noticed that several other students had also lifted text directly from the electronic databases without any attribution.

In class the next week, I raised this issue, and explicitly explained what I would consider to constitute electronic plagiarism (e.g., you need to use quotations if you're actually quoting from a case, especially with the explanatory cites). We've added a section to our syllabus clarifying that this sort of "lifting" is unacceptable, and I will add a portion to my plagiarism lecture based on this experience.⁶ I've also told our reference librarian that we need to make sure that our electronic database trainers don't mislead the students in an effort to tout their products.

I hope my experience will be a cautionary tale for other legal writing professors.⁷ Plagiarism is nothing new, but because it has become so easy to "cut and paste" from electronic sources, we need to be alert for this new strain of the problem. I'm glad I raised the issue with my students, but I wish I had thought of this explanation before the uncomfortable interrogation. Next semester, I'm going to deal with the problem *before* it arises.

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² I concede that I should have been more familiar with the precedent.

³ There were other similarities, too. I think some of them can be attributed to a classroom exercise in which I allowed the students to discuss which facts best satisfied the rules at issue. Rachel and Beth worked together on that in-class assignment.

⁴ Ironically, some professors have been using Lexis and Westlaw to ferret out student plagiarism for years. They run suspicious phrases from their students' submissions through the electronic databases in search of common language. Anna M. Cherry, *Using Electronic Research to Detect Sources of Plagiarized Materials*, 9 *Perspectives: Teaching Legal Res. & Writing* 133 (2001).

⁵ For an excellent discussion of "inadvertent" plagiarism and some suggestions for combating it, see M.C. Mirow, *Confronting Inadvertent Plagiarism*, 6 *Perspectives: Teaching Legal Res. & Writing* 61 (1998).

⁶ If you really want to check on your students, a number of plagiarism-detection programs are now available. For example, Plagiarism-Finder is a Windows application that compares any document to billions of Web pages. The Web address is <www.m4-software.com>. Another popular program is marketed by Turnitin.com, available at <www.turnitin.com>.

⁷ I take heart in the stories of my fellow legal writing professors; they have weathered similar storms. Alison Craig, *Failing My ESL Students: My Plagiarism Epiphany*, 12 *Perspectives: Teaching Legal Res. & Writing* 102 (2004).

Minds and Levers: Reflections on Howard Gardner's *Changing Minds*

By Craig T. Smith¹

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Teaching means changing minds—that is, promoting significant, conscious shifts in thinking accompanied by corresponding shifts in behavior.² This is how cognitive psychologist and educator Howard Gardner, of Harvard University, defines the teacher's task in his book *Changing Minds: The Art and Science of Changing Our Own and Other People's Minds*.³

The book builds on Gardner's influential theory of multiple intelligences.⁴ This theory rejects the monolithic concept of a single-entity intelligence, measurable for example in "IQ" gradients.⁵ Gardner defines intelligence more broadly as "the ability to solve problems or fashion products that are of consequence in a particular cultural setting or community."⁶ This redefinition permits recognition

of "noncanonical" intelligences such as musical, spatial, interpersonal, and bodily-kinesthetic intelligences.⁷

In *Changing Minds*, Gardner shows how great teachers and leaders have engaged multiple intelligences and produced mind changes in individuals, schools, corporations, and even nations. Schools, Gardner writes, are "explicitly charged with the changing of minds."⁸ Legal educators tend not to use the phrase *mind change*. It is, however, simply a brasher formulation of a concept that is central to legal education. Law schools claim to teach students to "think like a lawyer" and to perform accordingly.⁹ A legal writing course, for example, challenges the student to understand legal reasoning and advocacy and to craft legal documents accordingly. In Gardner's terms, therefore, a legal writing professor strives to change minds: to alter how a student conceives of law and writing and how, correspondingly, the student produces written documents.

This essay will describe what Gardner calls "levers" of mind change. It then will briefly examine the workings of those levers in legal writing pedagogy. Finally it will address the ethics of mind change and respond to a challenge Gardner poses in *Changing Minds*: that we face ourselves in the mirror and ask hard questions about the value of teaching legal writing.¹⁰

¹ I thank Helene Shapo and Ann Harrison for helpful comments on drafts of this review.

² Howard Gardner, *Changing Minds: The Art and Science of Changing Our Own and Other People's Minds* 243 (2004) (hereinafter *Changing Minds*).

³ *Id.*

⁴ See, e.g., Howard Gardner, *Multiple Intelligences: The Theory in Practice* (1993); Kirsten A. Dauphinais, *Valuing and Nurturing Multiple Intelligences in Legal Education: A Paradigm Shift*, 11 Wash. & Lee Race & Ethnic Anc. L.J. 1, 2 (2005) (arguing in favor of a "more expansive approach to recognizing and evaluating student capabilities"); M.H. Sam Jacobson, *Learning Styles and Lawyering: Using Learning Theory to Organize Thinking and Writing*, 2 J. Ass'n Legal Writing Directors 27, 32–33 (2004).

⁵ See Howard Gardner, *Intelligence Reframed* 3 (1999) (explaining the theory and asserting that "intelligence is too important to be left to the intelligence testers").

⁶ *Id.* at 15.

⁷ *Changing Minds* at 29–36.

⁸ *Id.* at 135.

⁹ Cf. Nancy B. Rapoport, *Is "Thinking Like a Lawyer" Really What We Want to Teach?*, 1 J. Ass'n Legal Writing Directors 91, 102, 108 (2001) (arguing that "[t]he mantra of legal education—that we teach our students to think like lawyers—is no longer sufficient" because "[n]o practicing lawyer would consider the skill of thinking ... enough").

¹⁰ See *id.* at 207; note 26 and accompanying text.

A. The Seven Levers of Mind Change

Gardner describes mind changes in terms of both thinking and behavior.¹¹ First, we significantly alter our “mental representations.”¹² These are “the particular way[s] in which a person perceives, codes, retains, and accesses information”¹³—such as “ideas, concepts, skills, [or] stories” that are expressed in forms such as language, symbols, and various media.¹⁴ Mental representations thus might include an artist’s vision of a forthcoming creation, Darwin’s theory of evolution, and an individual’s religious beliefs. Second, we significantly alter conduct. The shift in our mental representations prompts us “to act on the basis of this shift.”¹⁵ For example, a religious conversion yields different behavior, and a scholar who has revised her fundamental conception of a subject teaches the subject differently.¹⁶

Mind changes, Gardner argues, depend largely on seven “factors” or “levers.” He identifies each using a word that start with “re.” Six levers that facilitate mind change are: *reason*; *research*; *resonance*; *redescription*; *resources*; and *real world events*.¹⁷ By contrast, the seventh lever, *resistances*, typically impedes mind change.

Gardner’s first three facilitating levers are familiar components of effective rhetoric:

1. *Reason*, Gardner writes, is the identifying and weighing of relevant factors followed by assessment of the overall whole.¹⁸
2. *Research* is “the collection of relevant data.”¹⁹

3. *Resonance* concerns feelings.²⁰ “A view, idea, or perspective resonates to the extent that it feels right to an individual, seems to fit the current situation, and convinces the person that further considerations are superfluous.”²¹ A leader seeking to change a colleague’s mind might establish resonance, for example, by emphasizing common bonds between the two, engaging the colleague in a common enterprise, and connecting intellectually and emotionally by asking questions, listening, “and following up appropriately.”²²

The fourth lever, *redescription*, or more formally *representational redescription*, means representation of an idea “in a number of different forms, with these forms reinforcing one another.”²³ These “different mental versions” may be, for example, “linguistic, numerical, and graphic”—as when a principle is described in words, sets of numbers, and charts or graphs.²⁴ Redescription, Gardner emphasizes, is a teacher’s vital lever. “Particularly when it comes to matters of instruction . . . [,] the potential for expressing the desired lesson in many compatible formats is crucial.”²⁵ As recognition of multiple intelligences would lead us to expect, “multiple versions of the same point constitute an extremely powerful way in which to change minds.”²⁶ Moreover, “[t]here is no royal road” to learning.²⁷ Rather “there are several royal roads” to it, “with the most versatile teachers serving as the most reliable guides.”²⁸ Hence

¹¹ *Changing Minds* at 1.

¹² *Id.* at 209.

¹³ *Id.* at 5.

¹⁴ *Id.* at 209.

¹⁵ *Id.* at 1.

¹⁶ *Id.* at 186–93.

¹⁷ *Id.* at 15–18 (Gardner calls the fifth lever *resources and rewards*, but rewards seem to be one set of resources, and omitting the term avoids a confusingly plural title for a singular lever).

¹⁸ *Id.* at 15.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 160.

²³ *Id.* at 16.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 14.

²⁷ *Id.* at 141.

²⁸ *Id.*

redescription “is probably the most important way of changing the minds of students.”²⁹

These four facilitating levers—*reason*, *research*, *resonance*, and *redescription*—function best on minds open to change. Whether a mind is open, however, may depend on the remaining three levers, which can be exceptionally difficult for a teacher to manipulate.

The fifth lever is *resources*, including in particular *rewards*. These sometimes lie beyond a teacher’s control. But if a teacher can manage to align costs and benefits well, Gardner writes, “the balance might tip” in favor of a change of mind.³⁰

Gardner describes for example the resources of time and energy invested in dream analysis by psychotherapist Erik Erikson and a patient. The investment yielded an interpretation around which Erikson could structure a successful treatment.³¹

Gardner also describes influential long-term political and economic *rewards* that former Prime Minister Margaret Thatcher offered Britons to help them accept the wrenching reforms she implemented.³²

The sixth lever is *real world events*. These include traumas—“wars, hurricanes, terrorist attacks, [and] economic depressions”—and boons—“eras of peace and plenty” or “the availability of medical treatments.”³³ Those who would change minds, Gardner writes, cannot control but must exploit such events. One of Gardner’s examples comes from the streamlining and reshaping of the British oil company BP in the 1990s. The company’s leaders, Gardner writes, effectively responded to and used as motivation “the threat that oil supplies will be seized or that [the] company will collapse altogether.”³⁴

Finally, the seventh lever, *resistances*, may reduce open-mindedness. Do not underestimate their power, Gardner warns. Individuals tend to have many “strong views and perspectives that are resistant to change.”³⁵ Sometimes, however, resistances indirectly facilitate mind change because a struggle against them may stimulate a change of one’s own mind.³⁶

The stage is best set for mind change, Gardner writes, when (1) the six facilitating levers “operate in consort” or “push in one direction” and (2) “*resistances* can be identified and successfully countered.”³⁷ Gardner exhorts teachers in scholarly disciplines to focus mainly on three tasks:

1. **Identify and confront the *resistances*.**

The resistances may stem from students’ misconceptions about content (for example failure to distinguish holding from dictum) or method (for example failure to explain sufficiently one’s analytical conclusions).³⁸ Effective teachers give students “regular and systematic” demonstration of “their ‘natural’ but typically inadequate modes and conclusions of thought.”³⁹

2. **Help students study a “set of rich examples.”**⁴⁰ Examples are results of *research*, and they should engage the students’ *reason* and aim for *resonance*. Effective teachers present positive examples that help students “to appreciate the ways in which [experts in the discipline] conceive of and interpret such seminal cases.”⁴¹

3. **Use many *representational redescriptions*.**

Redescription, the vitally important fourth

²⁹ *Id.* at 140.

³⁰ *Id.* at 16.

³¹ *Id.* at 149–55.

³² *Id.* at 100.

³³ *Id.* at 17.

³⁴ *Id.* at 145.

³⁵ *Id.* at 17–18.

³⁶ *Id.* at 125.

³⁷ *Id.* at 18, 211.

³⁸ *Id.* at 139.

³⁹ *Id.*

⁴⁰ *Id.* at 140.

⁴¹ *Id.*

lever of mind change, gives students multiple ways to grasp concepts and methods.⁴²

In short, Gardner writes, we must “stamp out the resistance, “search for the resonance,” and use a variety of redescription.”⁴³

B. The Levers of Mind Change in Legal Writing Pedagogy

Gardner’s *Changing Minds* can help us comprehend the daunting nature of our task. That alone makes the book worth reading. Gardner also, however, offers a useful framework for evaluating our students’ learning environment. It can in particular help inspire us to generate teaching techniques, identify obstacles to learning, and develop strategies for minimizing those obstacles.

Legal writing professors typically use Gardner’s first three, rhetorical levers. First, we appeal to *reason*. For example, we explain that many lawyers are in essence professional writers.⁴⁴ Second, we employ *research*. For example, we share information about how judges respond to poorly edited briefs, unethical statements, and the like.⁴⁵ Our use of research is increasing, too, as the amount and quality of legal writing scholarship increases.⁴⁶ Third, we strive to make our lessons *resonate* emotionally with our students. We may, for example, assign reading or writing about issues selected for their ability to engage students’ hearts as well as minds. In addition, we cultivate ethos—the credible, experienced, caring character that helps students open their minds and view us as trustworthy mentors. So, for example, we share our own stories of learning, treat students respectfully

as young attorneys, and perhaps even reach out to them using art, architecture, and music.⁴⁷

Gardner’s fourth lever of mind change, *redescriptions*, presents the most challenge and opportunity for legal writing teachers. How can we convey key ideas to students in a variety of reinforcing forms? This question seems to help energize every meeting devoted to the quest for excellence in legal writing pedagogy. Legal writing professors do not rely solely on “how-to” essays and lectures. We instead add many useful *redescriptions*, for example:

- diagrams that make visible the logical steps required by a rule;⁴⁸
- charts that help students to organize holdings, explanations, policy statements, and the like, as well as to “annotate” a legal rule’s distinct elements or factors;⁴⁹
- “organizational paradigms” often expressed in the shorthand of acronyms (IRAC, CRuPAC, etc.) and color-coded by students who complete “self-graded drafts”;⁵⁰ and
- interactive role-playing stories that simulate legal decision making.⁵¹

⁴⁷ E.g., Michael R. Smith, *Advanced Legal Writing* (2002) (addressing use of literary references in persuasive writing); Jill J. Ramsfield, *The Law as Architecture: Building Legal Documents* (2000); Charles R. Calleros, *Reading, Writing, and Rhythm: A Whimsical, Musical Way of Thinking about Teaching Legal Method and Writing*, 5 *Legal Writing* 1 (1999).

⁴⁸ E.g., Anne Enquist, *That Old Friend, the Tree-Branching Diagram*, 13 *Perspectives: Teaching Legal Res. & Writing* 24 (2004).

⁴⁹ E.g., Craig T. Smith, *Synergy and Synthesis: Teaming “Socratic Method” with Computers and Data Projectors to Teach Synthesis to Beginning Law Students*, 7 *Legal Writing* 113 (2001); M.H. Sam Jacobson, *How Law Students Absorb Information: Determining Modality in Learning Style*, 8 *Legal Writing* 175 (2002).

⁵⁰ Neumann Jr., *supra* note 44 at 101; Mary Beth Beazley, *A Practical Guide to Appellate Advocacy* (2002). See also, e.g., articles on IRAC in Volume 10, No. 1, of *Second Draft* (available at <www.lwionline.org/publications/seconddraft.asp>, visited May 11, 2005).

⁵¹ E.g., Charles R. Calleros, *Using Classroom Demonstrations in Familiar Nonlegal Contexts to Introduce New Students to Unfamiliar Concepts of Legal Method and Analysis*, 7 *Legal Writing* 37 (2001) (describing various exercises, including one in which a grocer’s employee must determine where to place various fruits and vegetables); Jane Kent Gionfriddo, *Using Fruit to Teach Analogy*, *Second Draft*, Nov. 1997, at 4.

⁴² *Id.*

⁴³ *Id.* at 145.

⁴⁴ Richard K. Neumann Jr., *Legal Reasoning and Legal Writing* 53–56 (5th ed. 2005).

⁴⁵ E.g., Judith D. Fischer, *Pleasing the Court: Writing Ethical and Effective Briefs* (2005).

⁴⁶ See Linda H. Edwards & Terrill Pollman, *Scholarship by Legal Writing Professors: New Voices In the Legal Academy*, *Legal Writing* _ (forthcoming 2006).

Gardner's fifth and sixth levers of mind change, *resources* (including *rewards*) and *real world events*, often are intimately related. Events affect whether, how, and from whom students learn legal writing. They also affect how motivated students are to learn, and what rewards await them if they learn well. Such events include:

- the edicts of one's own faculty and deans;
- the exemplary work of pioneering legal writing professors;
- changes in law school accreditation standards and bar admission criteria; and
- descriptions by judges and lawyers of the characteristics they value most in law school graduates.

Surveying such events, and the resources and rewards that you and your law school invest in students' learning, is instructive—and perhaps sobering. What messages, for example, does your law school give students about the relative importance of legal writing in the curriculum? What credits, evaluations, and awards can they gain? What weight do those factors, and your status and title, have when you write recommendations to help students gain employment? Who invests in your program, and who champions it publicly? The more favorably we can answer such questions, the more likely we will succeed, if Gardner is correct, in changing our students' minds.

Consequently, the work of teaching includes exploiting real-world events, in particular to improve the resources and rewards available to students: increasing credits for legal writing courses, for example, or improving the stature of legal writing courses, faculty, published scholars, and top students. The most successful writing professors, and organizations such as the Legal Writing Institute and the Association of Legal Writing Directors, engage continuously in such work.

Finally, Gardner's seventh lever, *resistances*, is familiar to every legal writing professor. No one is spared the task of pushing, without cease, against resistances. Many resistances reside obstinately

within the students. They tend to remind us, for example, that they already “know how to write.” What they “know,” however, may disserve their readers. A novice may, for example, arrive at law school with an ideal conception of an effective written document. This ideal will almost certainly be tailored to readers who lack law training. A novice may imagine that an analytical legal memorandum is closely akin to a journalistic feature story, a report on a chemistry experiment, or an introspective essay written for an undergraduate English course. The student may “know” also that a writer sounds intelligent if most of her sentences are complex, in passive voice, and peppered with polysyllabic words. Such knowledge tempts students to believe that they need not *unlearn* prior understandings. We nonetheless challenge them to abandon aspects of their ideal conception. We insist that they substitute for these a set of conceptions suited to law-trained readers. We also demand that they change their writing correspondingly. No wonder they struggle.

Resistances *within* students may be the most mysterious obstacles we face. But they are not always the most frustrating. Others are structural. Consider again the questions above regarding real world events and resources. For every favorable response, one can easily find gloomier responses among U.S. law schools. The profession values legal writing instruction highly. Not all law faculties, however, have created environments that optimize student learning of legal writing. Indeed, some law schools unwittingly foster resistance to such learning. They may, for example, indirectly communicate to students, through course credits, instructor status, and the like, that learning legal writing is less important than other types of learning.

Nonetheless, optimism deserves to prevail. Legal writing professors can find encouraging developments with respect to each of Gardner's seven levers of mind change. We continue to witness improvements in accreditation standards, legal writing curricula, and legal writing scholarship. The fourth lever in particular—the *redescriptions* that “convey the desired shift [in thinking] in a multiplicity of formats” and are hallmarks of

effective teaching⁵²—is the focus of much creative work in our field. When we attend conferences, discuss pedagogical best practices with our peers, and read scholarship in the legal writing field, we can sense that many inventive redescriptions lie within promising chrysalises, soon to emerge.

C. The Ethics of Mind Change and the “GoodWork” of Teaching Legal Writing

The epilogue to *Changing Minds* briefly but insightfully addresses the ethics of mind change.⁵³ Mind changing can serve destructive ends, Gardner concedes. He challenges leaders and teachers to ask how we can “change minds so that excellence and ethics are more closely allied” than they seem today.⁵⁴ No pat formula can determine the morality of particular attempts to change minds, Gardner argues. We nonetheless can gauge the morality of our efforts using the following “practical monitors,” three questions focused on the “three Ms” of *mission, models, and mirror*:⁵⁵

1. Do I believe in, and am I striving to fulfill, the *mission* of my profession? This question should prompt us to ask, recurrently, why we entered our profession and how it contributes to society. Gardner, for example, “monitor[s] critically” whether he is fulfilling his threefold teaching mission: “(1) to introduce students to the best thinking of the past; (2) to prepare their minds for an uncertain future ... ; and (3) to model aspects of civility in the treatment of individuals and the materials of work.”⁵⁶

2. Is my conduct favorable in relation to *models*? Positive models are “individuals whom one respects and to whom one looks for guidance in one’s work,” whereas “antimentors or tormentors”—negative role models—“serve as cautionary tales.”⁵⁷

3. Do I pass “the *mirror test*”? Passing the mirror test means looking in the mirror and favorably answering hard questions concerning feelings about one’s work.⁵⁸ In particular, we must ask whether we feel engaged in “GoodWork,” meaning “work that is at once technically excellent and that seeks outcomes that are ethical, moral, and responsible.”⁵⁹

If we engage consistently in this “threefold process” of questioning, Gardner writes, we increase our chances of being a “GoodWorker.”

Are legal research and writing professors engaged in “GoodWork”? If we teach respectfully and diligently, we must be. We can answer Gardner’s three ethical monitoring questions encouragingly: Our *mission* is admirable; we have many inspiring *models*; and collectively our *mirrors* reflect faces that have reasons to answer yes when asked, “Am I proud of the way in which [I and] my fellow professionals are carrying out our work?”⁶⁰

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⁵² *Changing Minds* at 125.

⁵³ The ethics are more fully described in Howard Gardner, Mihaly Csikszentmihalyi & William Damon, *Good Work: When Excellence and Ethics Meet* (2001) (hereinafter *Good Work*).

⁵⁴ *Changing Minds* at 205.

⁵⁵ *Id.* at 208.

⁵⁶ *Id.* at 206–07.

⁵⁷ *Id.* at 207.

⁵⁸ *Id.* at 207.

⁵⁹ *Id.* at 205–07. See also *Good Work* at xi (spelling the phrase as two words but defining the same concept as “work of expert quality that benefits the broader society”).

⁶⁰ *Id.* at 207 (listing this profession-centered question as a broader, complementary part of the “mirror test”).

Compiled by Donald J. Dunn

Donald J. Dunn is Dean and Professor of Law at the University of La Verne College of Law in Ontario, Calif. He is a member of the Perspectives Editorial Board. This bibliography includes references to books, articles, bibliographies, and research guides that could potentially prove useful to both instructors and students and includes sources noted since the previous issue of Perspectives.

Annotated Legal Bibliography on Gender, 11 *Cardozo Women's L.J.* 203 (2004); *Annotated Legal Bibliography on Gender*, 11 *Cardozo Women's L.J.* 463 (2005).

Two annual compilations published close together that provide extensive annotations of articles on gender arranged by topic.

Rachel Arnow-Richman, *Contracts Teaching: A Bibliography*, 26 *U. Hawai'i L. Rev.* 489 (2004).

"[C]onsists of sources that ... members [of the American Association of Law Schools Section on Contracts] found helpful when they began teaching, including resources on contract doctrine, reviews of casebooks, articles on contracts theory, and other materials, which will hopefully assist those new to the course in tackling the subject matter." *Id.*

Raymond O. Arsenault et al., *Special 50th Anniversary Symposium: Brown v. Board of Education and the Principle of Equality in Higher Education*, 34 *Stetson L. Rev.* 543 (2005).

An annotated, alphabetically arranged bibliography of books that focus on *Brown v. Board of Education* and its aftermath.

Miriam Baer, *A Guide to Legal Research in North Carolina*, 2005 [Durham, NC: Carolina Academic Press, forthcoming]

Topics include North Carolina and federal case law, legal digests, legislative history, preparation of memos and briefs, and computer-aided research.

Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the "Casebook" Classroom (Without Grading Papers)*, 10 *Legal Writing* 23 (2004).

Discusses "ways that the law school culture that segregates Legal Writing faculty has both promoted their opportunities to develop innovative pedagogies and inhibited their ability to share those pedagogies with other faculty." *Id.* at 27. Also discusses cognitive theories relating to the casebook classroom, describes teaching methods that help legal writing faculty teach students how to think like lawyers, and illustrates how the writing process methodology can be used in the casebook classroom.

Robert C. Berring, *Deconstructing the Law Library: The Wisdom of Meredith Willson*, 89 *Minn. L. Rev.* 1381 (2005).

A wide-ranging look at what a law library is in 2005. Addresses the library as structure and as substance and describes law librarians as the "soul of law libraries." *Id.* at 1402.

Robert C. Berring & Elizabeth Edinger, *Finding the Law*, 12th ed., 2005 [St. Paul, MN: Thomson-West, 400 p.]

A standard text since 1931. Discusses the context of legal research and then covers court reports, cases, statutes, legislative history, constitutional law, administrative and executive publications, court rules and practice, secondary authority, and research strategies.

Bibliography Issue, 20 *Ohio St. J. Dispute Res.* 1051 (2005).

The annual issue of this journal, which is devoted exclusively to identifying and describing the recent literature on the various aspects of dispute resolution.

William Bradford, *International Legal Compliance: Surveying the Field*, 36 *Geo. J. Int'l L.* 495 (2005).

An annotated listing of the major entries pertaining to international legal compliance, a rapidly developing sub-field in international law. Provides one or more numbers in the bibliography that correspond to a list of major international legal compliance themes.

Julie Cheslik, *The Battle Over Citation Form Brings Notice to LRW Faculty: Will Power Follow?*, 73 UMKC L. Rev. 237 (2004).

“[I]nvestigates the allocation and misallocation of power and status between two groups of faculty in the legal academy and a recent, unlikely development that has challenged the status quo—the emergence of *The ALWD Citation Manual* as real competition for *The Bluebook*.” *Id.*

Susan R. Dailey, *Linking Technology to Pedagogy in an Online Writing Center*, 10 Legal Writing 181 (2004).

Describes online writing labs (OWLs) and their use, discusses the experienced writer, the first-generation college student, and the second-year law student, and shows that these OWLs can be used to address a variety of student needs.

Jo Anne Durako, *Dismantling Hierarchies: Occupational Segregation of Legal Writing Faculty in Law Schools: Separate and Unequal*, 73 UMKC L. Rev. 253 (2004).

Discusses the separate and unequal treatment of legal writing faculty at some law schools, including academic titles, exclusion from faculty governance, limited academic freedom, pay scales, and other indicators of second-class status, such as lack of job security, separate hiring tracks, restricted teaching areas, less institutional support, and heavier work loads. Ties the issues into a discussion of the segregation aspects of *Brown v. Board of Education*.

Elizabeth Fajans et al., *Writing for Law Practice: Advanced Legal Writing*, 2004 [New York, NY: Foundation Press, 593 p.]

Organizes documents into three sections that correspond to the three major modes of written communication in the law—litigating, informing and persuading, and rule-making. Covers pleadings and motions, letters, briefs, opinions, contracts, legislation, and wills. Includes a Teacher’s Manual.

Michele G. Falkow, *Visual Literacy and the Design of Legal Web Sites*, 97 Law Libr. J. 435 (2005).

Explains “visual literacy principles and their relationship to Web design ... [and] uses them to evaluate the construction of several popular legal Web sites.” Abstract at 435.

Judith D. Fischer, *The Use and Effects of Student Ratings in Legal Writing Courses: A Plea for Holistic Evaluation of Teaching*, 10 Legal Writing 111 (2004).

Surveys the literature on student ratings (evaluations), reports on a survey of members of the Association of Legal Writing Directors about how ratings are used in their courses, and concludes with specific proposals as to how these evaluation tools can be improved.

Ian Gallacher, *A Form and Style Manual for Lawyers*, 2005 [Durham, NC: Carolina Academic Press, 216 p.]

Designed to guide lawyers, law students, and paralegals through all phases of the writing process, from preparing to write to polishing a finished draft. Offers suggestions on outlining and establishing deadlines as well as advice on grammar, punctuation, usage, document formatting, editing, and proofreading.

Anne Ruggles Gere & Lindsay Ellis, *Composition, Law, and ADR*, 10 Legal Writing 91 (2004).

Explains how conflict figures in composition classes, discusses how a syllabus can be created through mediation, and examines how alternative dispute resolution (ADR) practices can be used for teaching writing.

C. Edward Good, *Plain English Pays*, *Executive Counsel*, May/June 2005, at 45.

Briefly describes the plain-English movement, including its development in England and the United States. Provides examples of how complex legalese can be converted to plain English.

Debbie Grey, *Legal Reference Services: An Annotated Bibliography*, 97 *Law Libr. J.* 537 (2005).

Describes articles covering historical perspectives, the professional roles of the legal reference librarian and the legal research instructor, and teaching methodologies (including curriculum design and models for teaching law students and students in library and information science). Includes an outline for a proposed course in legal reference services in library and information schools.

Todd B. Hilsee et al., *Do You Really Want Me to Know My Rights? The Ethics Behind Due Process in Class Action Notice Is More Than Just Plain Language: A Desire to Actually Inform*, 18 *Geo. J. Legal Ethics* 1359 (2005).

Illustrates the complexities found in class action notices and shows how use of basic concepts can help resolve content issues. Concludes by pointing out that courts understand that the correct path for notice is doing the right thing in a clearly understandable way.

Pamela Lysaght & Danielle Istl, *Integrating Technology: Teaching Students to Communicate in Another Medium*, 10 *Legal Writing* 163 (2004).

Discusses the choices and considerations that go into designing and implementing a technology unit into a legal writing program, describes how to build a skills agenda for a technology unit, shows how to implement the technology unit, and details how students reacted to this particular unit of the program.

Joseph Scott Miller & James A. Hilsenteger, *The Proven Key: Roles and Rules for Dictionaries at the Patent Office and the Courts*, 54 *Am. U. L. Rev.* 829 (2005).

Provides “the first systematic empirical study of the Federal Circuit’s use of dictionaries to help construe the scope of disputed patent rights. [P]resent[s] both (a) top-level counts of yearly total dictionary citations in Federal Circuit and district court patent cases for the last decade, and (b) detailed data from a review of all Federal Circuit opinions, precedential and

nonprecedential, from April 5, 1995 ... to June 30, 2004. ...” *Id.* at 835–36.

Michael D. Murray & Christy Hallam DeSanctis, *Legal Research and Writing*, 2005 [New York, NY: Foundation Press, 682 p.]

Covers first-semester legal research and analysis topics, objective legal writing, and citation form. Includes second-semester topics involving adversarial legal writing in trial and appellate courts.

J. P. Ogilvy with Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography* (third edition), 12 *Clinical L. Rev.* 1 (Special Issue No. 2, Fall 2005).

A listing of essays, books, and book chapters (arranged by topic), followed by a synopses of articles, essays, books, and book chapters (arranged alphabetically by author’s surname).

H. Kumar Percy, *Admiralty and Maritime Law Articles Published in Non-Maritime Law Journals 2004*, 36 *J. Mar. L. & Com.* 405 (2005).

An annual subject-matter, annotated bibliography of admiralty and maritime law articles published in U.S.-based legal journals, exclusive of the four journals devoted specifically to these topics.

Beth Zeitlin Shaw, Note, *Please Ignore This Case: An Empirical Study of Nonprecedential Opinions in the Federal Circuit*, 12 *Geo. Mason L. Rev.* 1013 (2004).

Reviews the rules for nonprecedential opinions in the Federal Circuit, reports on empirical data collected and then grouped by subject matter, and provides a suggested solution for federal court standards.

Eric Shimamoto, Comment, *To Take Arms Against a Sea of Trouble: Legal Citation and the Reassertion of Hierarchy*, 73 *UMKC L. Rev.* 443 (2004).

Traces the history of the evolution of *The Bluebook*, provides a brief history of the development of legal research and writing in the academy, describes the advent of the *ALWD Citation Manual*, and proposes a collaborative effort that would produce a single and improved legal citation guide.

Stephen W. Still Jr., *Recent Law Review Articles Concerning the Legal Profession*, 29 J. Legal Prof. 325 (2004–2005).

Brief summaries of law review and journal articles centered on the subject of the legal profession that were published in the last year.

Charles A. Sullivan, *The Under-Theorized Asterisk Footnote*, 93 Geo. L.J. 1093 (2005).

The universally used asterisk footnote now has a scholarly focus with an article describing how it emerged and how its use has expanded (including minimalist and postmodern analysis). One of those few law review articles that is actually enjoyable to read.

Judith Wegner, *Better Writing, Better Thinking: Thinking Like a Lawyer*, 10 Legal Writing 9 (2004).

Discusses the differences between the first-year stand-up classes that use the “case dialog” method and legal writing instruction that requires more individualized teaching techniques. Both require different types of thinking skills.

Mary Whisner, *Learning a Little About the World: Foreign and International Research and the Nonspecialist*, 97 Law Libr. J. 595 (2005).

Provides tips on developing some expertise in researching foreign and international law.

Michael Whiteman, *Appellate Court Briefs on the Web: Electronic Dynamos or Legal Quagmire?*, 97 Law Libr. J. 467 (2005).

“[R]eviews the history and benefits of electronic briefs and then explores four issues raised by Internet distribution: accessibility, privacy, preservation, and copyright.” Abstract at 467.

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Perspectives

Teaching Legal Research and Writing

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