

PERSPECTIVES

Teaching Legal Research and Writing

FROM THE ELECTORAL COLLEGE TO LAW SCHOOL: RESEARCH AND WRITING LESSONS FROM THE RECOUNT

BY ALEX GLASHAUSSER

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Last semester, as commentators pondered the effect of the 2000 election on everything from the legitimacy of the presidency to the stability of our democracy, I cut through the haze to focus on the question of surpassing significance: How would the Florida recount and its aftermath affect my research and writing class? In that class, I face two constant hurdles: exciting students about what they think is a dry subject, and convincing students that my academic advice matters in the real world. The election imbroglio helped me on both counts because it inspired passion and showed students what happens when you ignore basic research and writing lessons:

1. Don't analyze a statutory phrase in a vacuum.

When interpreting statutes, students often rush to home in on superficially relevant discrete phrases, ignoring broader context. Likewise, in the first days after the election, when the Palm Beach County "butterfly ballot" dominated the news, many commentators focused on a statutory subsection stating that ballots must instruct voters to mark their choice "at the right of the name of the candidate."¹ That provision was accurately quoted² — but early analysts neglected to note that the beginning of the statute limited its application to "counties in which voting

¹ Fla. Stat. Ann. § 101.151(3)(a) (emphasis added); *see also id.* § 101.191 (using same language in template for general ballot).

² *E.g.*, Thomas C. Tobin, *State of Confusion*, St. Petersburg Times, Nov. 9, 2000, at A1.

machines are not used."³ Palm Beach County used punch-card ballots likely covered by a provision in a separate statute governing electro-mechanical voting systems: "Voting squares may be placed in front of or in back of the names of candidates . . ."⁴

³ Fla. Stat. Ann. § 101.151; *see Crossfire* (CNN television broadcast, Nov. 9, 2000), LexisNexis Library, CNN File (statement of Greta Van Susteren that "people are [not] really looking at" statute covering punch-card ballots).

⁴ Fla. Stat. Ann. § 101.5609(6) (emphasis added).

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2. Anticipate ambiguities.

Because some voting squares on the butterfly ballot were in front of the names and some in back, the “in front of or in back of” language raised its own issue: Must all voting squares on each ballot uniformly be either in front or in back of the names?⁵ The legislative drafters presumably found their own words clear, but that was no guarantee that others would. I stress in class that to root out potential ambiguities, students must learn to edit their writing from an outsider’s perspective.

3. Don’t use “which” for “that.”

One of my favorite ambiguities to teach — because students quickly grasp how to edit around it — is the comma-less “which.” I ask my class to edit the following: “Do not obey rules of grammar which serve no purpose.” After playful protests, everyone agrees that instead of adding a comma, we should switch the “which” to “that.” Florida law offers a more debatable example: “If [a] manual recount indicates an error in the vote tabulation which could affect the outcome of the election, the county canvassing board shall [pursue one of three options].”⁶ Could all errors affect the outcome, or only some?

The choice for the precise writer in this situation is between a restrictive clause — “that could affect” — or a nonrestrictive clause — “[comma] which could affect.” In a “that” clause, only some errors “could affect the outcome” and thereby trigger the options. In a “[comma] which” clause, all errors “could affect the outcome”; the clause aims to describe rather than to delimit. The courts that interpreted the comma-less “which” to mean “that” could have been spared that work by careful legislative drafting.⁷ Just as some errors apparently do not affect the outcome of elections, some grammar rules do serve a purpose.

4. Rely on primary sources.

Students love citing encyclopedias, treatises, periodicals, annotations, and even headnotes —

which are useful finding tools but not final destinations — because they neatly sum up the law. I caution that often the law is messier than secondary sources let on, but students give me the same “how picky *is* this guy?” look as when I warn that session law trumps unenacted titles of the *U.S. Code*.

As luck would have it, the frenzy of recount litigation spawned ample misinformation about court opinions; journalists were dissecting decisions without reading them. For instance, many secondary authorities, most notably the *New York Times* on its front page, reported that the case filed in federal court by George Bush, Dick Cheney, and voters asking to enjoin county canvassing boards from continuing with manual recounts had been dismissed for lack of jurisdiction.⁸ In fact, the court held simply that the plaintiffs had not met the standard for preliminary injunctive relief.⁹ This example is now my poster child to remind students to trust their own reading of a case, not someone else’s.

5. Update all research.

Someone else’s take on primary law does matter, of course, if that someone else happens to be a court of appeals reversing a lower court’s decision or a legislature revising its code. Failure to check case history may be the legal researcher’s biggest sin, and likewise, being caught with the wrong version of a statute should embarrass even 1Ls, not to mention judges. When the Florida Supreme Court voted 4-3 to overturn a trial court’s decision to block Al Gore and Joe Lieberman’s contest of the certified state results, all seven justices agreed on one thing: the trial judge had relied on an outdated version of the contest statute and on case law interpreting that same old version.¹⁰ In articulating a standard based on “reasonable probability” that the election result turned on an irregularity, the judge had neglected a 1999 amendment providing that a contest plaintiff need show merely that the irregularity

⁵ Compare, e.g., David Tell & William Kristol, *Gore’s Spoiled Ballot*, Wkly. Standard, Nov. 20, 2000, at 9 (answering “no”), with Philip B. Heymann, *The Case for a Do-Over*, Wash. Post, Nov. 10, 2000, at A45 (answering “yes”).

⁶ Fla. Stat. Ann. § 102.166(5) (emphasis added).

⁷ Palm Beach County Canvassing Bd. v. Harris, 772 So. 2d 1273, 1282 (Fla. 2000); Palm Beach County Canvassing Bd. v. Harris, 772 So. 2d 1220, 1228 (Fla. 2000); see Siegel v. LePore, 234 F.3d 1163, 1186 (11th Cir. 2000) (Anderson, C.J., concurring).

⁸ Todd S. Purdum & David Firestone, *U.S. Judge Refuses to Block Hand Tallying of Votes*, N.Y. Times, Nov. 14, 2000, at A1.

⁹ Siegel v. LePore, 120 F. Supp. 2d 1041, 1047-54 (S.D. Fla. 2000).

¹⁰ Gore v. Harris, 772 So. 2d 1243, 1255-56 (Fla. 2000); *id.* at 1266 (Wells, C.J., dissenting); *id.* at 1271 (Harding, J., dissenting, joined by Shaw, J.).

was “sufficient to change *or place in doubt* the result of the election.”¹¹ Thanks to this high-stakes blunder, my students are on heightened notice that until updated, the result of all their research is in doubt.

6. Leave no doubt about the reason for the result you urge.

As potentially damaging as doubt about the validity of authority is doubt on a reader’s part as to how a writer has reached a certain result. Students often jump from facts and law to conclusions, with little analysis. On occasion, courts can skip that step: if a court says something is so, then it is so. But even for judges, fuzzy writing can backfire.

When the Florida Supreme Court held that the secretary of state had abused her discretion in rejecting returns filed after the statutory deadline, it wrote at length about both the right to vote in Florida’s constitution and internal inconsistencies in the state’s election statutes.¹² What it did not do was explain which point—and how—led to its conclusion. It turned out that someone wanted to know: the United States Supreme Court.

All nine Justices agreed to vacate the Florida opinion while awaiting clarification of whether its conclusion was based on the state constitution or on statutory interpretation.¹³ After suffering that slap like a student ordered to rewrite a paper, the Florida court had to not only draft a new opinion,¹⁴ but also endure Justice O’Connor’s thinly veiled annoyance during oral argument in Washington at what was taking the court so long to hand it in.¹⁵

7. Mean what you say.

Unintentional obfuscation and delay sometimes cannot be avoided; lies can. I stress to students that although holdings are somewhat elastic, precedents are not empty vessels into which advocates may pour their positions. One case I have used to illustrate that point involved a representation by counsel to a federal court in Texas that a certain precedent “expressly limit[ed another precedent] to its facts.”¹⁶ The court begged to differ, noting that even a “dim-witted or overly hasty lawyer” could not have arrived at such “blatant mischaracterizations.”¹⁷ Like the chastised Texas lawyer, Gore attorney David Boies overreached in representing to the Florida Supreme Court at oral argument that an Illinois Supreme Court decision had “expressly held” that “any mark” on a ballot should be considered evidence of the voter’s intent.¹⁸

The Illinois decision did hold that chads that “did not completely dislodge from the ballot” should be counted; it expressed nothing, however, about whether “any mark” was enough.¹⁹ In an effort to fill that void, Boies scrambled to support his statement. Hours after the Florida court’s decision ordering the secretary of state to accept amended certifications reflecting manual recounts, Boies called an attorney from the Illinois case. The next morning, that attorney signed an affidavit stating that on remand after the Illinois Supreme Court’s decision, the trial court had counted chads that were merely “dimpled.” That day, Boies relied in part on the affidavit in convincing the Broward County Canvassing Board to count dimpled chads.

The next day, though, the Illinois attorney recanted, signing a new affidavit stating that after reviewing the transcript, he realized that the trial court had counted ballots only if light

“Thanks to this high-stakes blunder, my students are on heightened notice that until updated, the result of all their research is in doubt.”

¹¹ *Id.* at 1255 (quoting Fla. Stat. § 102.168(3)(c) (emphasis added by court)).

¹² *Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d 1220, 1231–38 (Fla. 2000).

¹³ *Bush v. Palm Beach County Canvassing Bd.*, 531 U.S. 70 (2000).

¹⁴ *Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d 1273 (Fla. 2000).

¹⁵ Tr. of Oral Argument, Dec. 11, 2000, at *44, *Bush v. Gore*, 531 U.S. 98 (2000) (No. 00-949), at <news.findlaw.com/cnn/docs/election2000/uscbushgoretms1211.pdf> (“I did not find really a response by the Florida Supreme Court to this Court’s remand in the case a week ago. It just seemed to kind of bypass it and assume that all those changes and deadlines were just fine and they would go ahead and adhere to them, and I found that troublesome.”).

¹⁶ *Safeway Transport., Inc. v. West Chambers Transport, Inc.*, 100 F. Supp. 2d 442 (S.D. Tex. 2000).

¹⁷ *Id.* at 447.

¹⁸ Tr. of Oral Argument, Nov. 20, 2000, *Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d 1220 (Fla. 2000) (Nos. 00-2346, 00-2348, and 00-2349), at <www.cnn.com/2000/LAW/11/21/court.transcript.pol/#boies>.

¹⁹ *Pullen v. Mulligan*, 561 N.E.2d 585, 611 (Ill. 1990).

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could pass through them.²⁰ So the upshot was that both Boies' statement at oral argument and the affidavit he submitted to the canvassing board were false. His misrepresentations may not have been intentional, but he should have taken more care to stay on the right side of the truth. And, like the Texas brief, his excessively zealous advocacy brought a threat of sanctions. Although an ethics complaint was eventually dismissed,²¹ no spin could undo the damage to his reputation.²²

* * *

My students last semester, of course, had their own spin on the election. When I warned them a week before their appellate briefs were due that emergency all-nighters did not conduce to effective writing, they reminded me that almost all the briefs for Bush and Gore had been produced during caffeine binges. On my heels, I improvised: "Sure, but those briefs would have gotten Cs!" And the message got through: one lesson my students had long since mastered was that much like a state high court's interpretation of state law, my decisions on grades—absent constitutional or decanal intervention—are final.

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²⁰ Rowan Scarborough, *Republicans Say Gore Team Continues to Misstate Facts*, Wash. Times, Dec. 1, 2000, at A1; *No Controlling Dimple Authority*, Wash. Times, Nov. 30, 2000, at A22; Lee Anderson, *For the Record: An Underreported Affidavit*, Chattanooga Times, Dec. 17, 2000, at G5.

²¹ Nicole Sterghos Brochu, *2 Gore Lawyers Cleared by Bar*, Sun-Sentinel, Feb. 18, 2001, at 1B.

²² See Michael Barone, *Lies and Statistics*, 129 U.S. News & World Rep., Dec. 11, 2000, at 42.

SOUNDING LIKE A LAWYER

BY MARTHA FAULK

Martha Faulk is a former practicing lawyer and English instructor who teaches legal writing seminars through The Professional Education Group, Inc. She is co-author with Irving Mehler of The Elements of Legal Writing (Macmillan Publishing Co., 1994). She is a regular contributor to the Writing Tips column in Perspectives.

“But Martha, if I use these words you suggest, will I sound like a lawyer?” This question, asked recently by a first-year student attending one of my Legal Writing seminars for practitioners, is not as naïve as it may appear. Every law school graduate takes pride in acquiring skill in legal analysis—*thinking* like a lawyer—as well as skill in legal writing—*sounding* like a lawyer. Lawyers themselves, wary of abandoning entrenched writing habits, sometimes question the advice to avoid legal jargon, and to use short words, plain English, and common terminology.

A Profession of Words

Students of the law come to respect the power of legal language and their obligation to write coherently. As David Mellinkoff, an astute observer of legal language, notes, “The law is truly a profession of words.”¹ In addition to acquiring legal concepts, every student of the law also acquires a legal vocabulary. Much of this vocabulary has functional justification. Terms of art, for example, identify in a shorthand way a more complex idea (*proximate cause*, *hearsay*, *res ipsa loquitur*). Words of identification (*plaintiff*, *conformed copy*, *appellee*) also have conventional meaning within the profession. Indeed, all lawyers must have at their disposal a comprehensive lexicon of functional and descriptive words such as these examples. Why, then, is this legal lexicon often the subject of criticism and even derision?

Legal Jargon

One answer may be that legal language is readily identifiable. Although terms of art may not be accessible to the lay person, legal jargon is certainly recognizable. When playwrights and

parodists choose to amuse us, they use language that taints the character or the passage with words that only lawyers use. Consider this example:

The party of the first part hereinafter known as Jack, and the party of the second part hereinafter known as Jill, ascended or caused to be ascended an elevation of undetermined height and degree of slope, hereinafter referred to as “hill.”²

It’s the silly, overstuffed sound of the archaic and repetitious “hereinafter” that makes us smile. The cautiously defined “hill” is also recognizable as a typical (and sometimes essential) lawyerly technique for specificity.

Jefferson’s Lament

Thomas Jefferson, considered to be one of our best writers, recognized the problems of legal language early in our history. When English common law came to this country with the English colonists, the ponderous writing style of English lawyers came with it. In 1817, Jefferson complained about the “taste of my brother lawyers,” who, he said, had an affinity for “making every other word a ‘said’ or ‘aforesaid’ and saying everything over two or three times so as that nobody but we of the craft can untwist the diction.”³

Modern Complaints

Recognizing that problems with legal language persist, modern commentators, including law professors, judges, and English teachers, have condemned the way contemporary lawyers write and offered ways to correct bad writing. Richard Wydick, a professor of law, says

We lawyers cannot write plain English. We use eight words to say what could be said in two. We use arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose.⁴

“Students of the law come to respect the power of legal language and their obligation to write coherently.”

¹ Quoted in David Crystal, *The Cambridge Encyclopedia of the English Language* 375 (1995).

² From D. Sandburg’s *The Legal Guide to Mother Goose* (1978), quoted in Crystal, *supra* at 375.

³ Quoted in Tom Goldstein and Jethro K. Lieberman, *The Lawyer’s Guide to Writing Well* 7 (1989).

⁴ Richard Wydick, *Plain English for Lawyers* 3 (1985).

“Because of the large volume of legal documents requiring scrutiny, understanding, and decision, judges desire readability most of all.”

Wydick's *Plain English for Lawyers* contains excellent advice for overcoming arcane language, redundancies, and verbosity. This book should be required reading for law students and a companion piece to any handbook for citation form.

Judges, those intended readers for much of our writing product, also plead for clear, concise, and appropriate diction. The American Bar Association's excellent publication *Judicial Opinion Writing Manual* offers this advice in its “Writing Style” section:

Use the simplest, shortest, most precise words possible. . . . Unduly formal or abstract words and expressions make your writing difficult to follow. Eschew words such as ‘eschew.’ Avoid Latinisms and other foreign terms that are not necessary terms of art.⁵

Because of the large volume of legal documents requiring scrutiny, understanding, and decision, judges desire readability most of all.

English teachers bring a unique approach to their criticism of legal writing. Dr. Terri LeClercq, who has taught writing skills at the University of Texas School of Law for many years, believes that “[i]t is a compliment to be told that you think like a lawyer, but an insult to be told that you write like one.”⁶

Professional Language

Despite this good advice from many sources, law students and practicing lawyers alike are concerned about using language that sounds lawyer-like, or, from their perspective, professional. Two prominent journalists explain that being a professional requires effort and skill. Tom Goldstein and Jethro Lieberman suggest that for lawyers, “professionalism means writing the best possible document within the deadline, just as it means doing sufficient research.”⁷

Court Documents

For those legal writers still not persuaded by the advice of law professors, judges, English teachers, and journalists, a good source for professional advice is Irwin Alterman's *Plain and Accurate Style in Court Papers*. This American Law Institute–American Bar Association publication provides examples of language suitable for the most formal of legal writing situations: complaints, answers, motions, discovery matters, and briefs. For example, Alterman suggests that “it is unnecessary to add the phrase ‘defendant in the above entitled cause’ to any court paper. Simply name the party or say ‘defendant(s)’ or ‘defendants(s)_____.’”⁸

Archaic Language

As an example of inappropriate legal language, law students and even some practicing lawyers may be surprised to find the following suggested list of “Words to Avoid” in *Plain and Accurate Style in Court Papers*. The book lists several categories of unacceptable legalisms; the following words are archaic forms of modern and shorter prepositions. Many legal writers routinely use these words and others like them without giving much thought to their usefulness:⁹

Hereafter
Herein
Hereinafter
Hereinbefore
Hereby
Hereof
Heretofore
Hereunto
Herewith

This “here” list is merely representative. Most legal writing books, including those cited here, contain copious lists of words to weed from legal documents.

⁵ *Judicial Opinion Writing Manual* 39 (1991).

⁶ Terri LeClercq, *Guide to Legal Writing Style* xv (1995).

⁷ *The Lawyer's Guide to Writing Well*, 114.

⁸ Irwin Alterman, *Plain and Accurate Style in Court Papers* 77 (1987).

⁹ *Id.* at 168.

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Wydick and others, including Jefferson, have selected words such as “aforesaid” and “said” as examples of legal jargon, words that have no larger frame of reference and serve merely to give a legal aroma to lawyers’ writings. These words may unduly influence law students into thinking their documents have a professional sound. But good writing, legal or otherwise, will always deliver the meaning to the reader in a clear and concise manner. To do otherwise is to confirm the worst suspicions about the profession and to further burden the courts and shortchange our clients.

Best Advice

The best advice I can give students who ask “Will I sound like a lawyer?” is this: Sounding like a lawyer means using appropriate and precise language. You will then feel confident about your knowledge, and your readers will be appreciative.

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“Sounding like a lawyer means using appropriate and precise language.”

“For the past three years, I have begun my Advanced Legal Writing classes by having my students read aloud.”

READING OUT LOUD IN CLASS

BY LOUIS J. SIRICO JR.

Professor Louis J. Sirico Jr. is Director of Legal Writing at Villanova University School of Law in Villanova, Pa. He is co-author of Legal Writing and Other Lawyering Skills (Matthew Bender/LEXIS, 1998); Persuasive Writing for Lawyers and Other Legal Professionals (Matthew Bender/LEXIS, 1995); and Legal Research (Casenotes, 2001). He is a member of the Perspectives Editorial Board.

When I was in grade school, my teachers would sometimes have us take turns reading the pages in a textbook out loud. While this technique may have made for easy class preparation for the teachers, it held some benefits for us. We students, even the shy ones, received an opportunity to be the center of attention. We also had the opportunity to learn using both our eyes and our ears. In addition, the diversity of voices provided variety.

In my experience, a good teaching device can work for many audiences, from children to law students. This technique has proven no exception to that principle.

For the past three years, I have begun my Advanced Legal Writing classes by having my students read aloud. I hand them a page or two from a book or article in which writers talk about writing and ask them to take turns reading it to the class, one paragraph per student. I let the students volunteer to read, and I also take a turn. Although most of the readings speak for themselves, I sometimes use them as a springboard for discussion.¹

The readings serve as a method for reinforcing the messages that I try to convey in my teaching. The messages are sometimes about writing techniques, but more often they are about how the impassioned writer pursues his or her craft. Because they come from third parties, perhaps they carry some additional weight. In addition, they enliven the class. Every student gets to speak

aloud early in the class session without the risk of saying something embarrassing, and perhaps this opening vocal exercise encourages all the students to participate during the rest of the class. The students tell me they like this exercise.

The readings come from a variety of sources. To help ensure a variety of styles, I do not use more than two readings from the same author. To further ensure variety, I include very few passages written by lawyers. I have never believed that legal writing or analysis is much different from the sort of writing and thinking that nonlawyers do. We lawyers can learn from skilled writers of all types. I keep the selections short so that no reading takes up more than five minutes of class time.

I am including a list of 10 readings and a brief description of each. I have used them all with success.² These readings cover four topics: personal writing style; achieving a simple, uncluttered style; overcoming roadblocks to good writing; and how plain English relates to the needs of the practitioner.

William Zinsser, On Writing Well 3-6, 7-9 (6th ed. HarperPerennial 1998)

Chapter 1: The Transaction

Zinsser, a prominent professional writer, tells of taking part in a panel discussion with a surgeon who writes part-time. The surgeon describes writing as great fun, with words flowing easily and rewriting not being very important. In contrast, Zinsser describes the writer's life as a hard and lonely one. The message: There is no correct way to write; everyone has a different method.

Chapter 2: Simplicity

According to Zinsser: "Clutter is the disease of American writing." How do we achieve freedom from clutter? "The answer is to clear our heads of clutter. Clear thinking becomes clear writing: one can't exist without the other."

Warren Buffett, Preface to A Plain English Handbook: How to Create Clear SEC Disclosure Documents 1 (1997)

Billionaire investor Buffett endorses writing in

¹ I developed these exercises after attending conference presentations by two educators who had begun working with in-class reading exercises: Darryl Ann Lewis of the Northwestern School of Law, Lewis and Clark University, and Mark Weisberg of the Queen's University Faculty of Law (Kingston, Ontario).

² In some cases, time constraints have compelled me to edit paragraphs out of these passages. Some of the readings may not be readily accessible. If you have difficulty locating any of them, please contact me by e-mail at sirico@law.villanova.edu or by telephone at (610) 519-7071. I would also be interested in receiving suggestions for other readings.

plain English and explains his technique: he writes with a particular audience in mind, his sisters. Buffett describes Doris and Bertie as intelligent people who are not experts in accounting or finance. They will understand plain English, but jargon may puzzle them. "My goal is simply to give them the information I would wish them to supply me if our positions were reversed."

Natalie Goldberg, *Writing Down the Bones: Freeing the Writer Within* 55–56, 159–61 (Shambhala Publications 1986)

Chapter: The Samurai

Author Goldberg views writing creatively and editing critically as separate stages in the process. She describes an editing process in which the writer ruthlessly cuts out parts of a draft that do not work well. Wielding the Samurai sword includes rejecting any parts of a piece that lack sufficient energy and summoning the courage to start over again.

Chapter: Don't Marry the Fly

Writing well requires us to know our goal and stick with it. Wander too far afield or indulge in peripheral detail and you risk losing the reader. If you are writing about a restaurant scene, don't become obsessed with describing the fly on the napkin. "Recognize the fly, even love it if you want, but don't marry it."

Anne Lamott, *Bird by Bird: Some Instructions on Writing and Life* 28–31, 162–64 (Anchor Books/Doubleday 1994)

Perfectionism

According to Lamott, a nonlegal author who is popular in legal writing circles, the desire to write a perfect draft prevents you from writing a first draft. "Besides, perfectionism will ruin your writing, blocking inventiveness and playfulness and life force (these are words we are allowed to use in California)."

Someone to Read Your Draft

Lamott admits that it is difficult to permit another person to critique your draft and even more difficult to accept the resulting assessment. However, "in a little while it may strike you as a small miracle that you have someone in your life whose taste you admire (after all, this person loves you and your work), and who will tell you the

truth and help you stay on the straight and narrow, or find your way back to it if you are lost."

Note: If I did not limit myself to two selections per author, I could mine this book for many more.

Helene Schwartz, *Lawyering* 177–81 (Farr, Strauss & Giroux 1976)

Following the riots at the 1968 Democratic Convention in Chicago, eight radical leaders were indicted and convicted for crossing state lines with the intent to incite a riot. Their trial turned into a circus. One basis for their appeal was judicial misconduct. As an attorney for the defendants, the author confronted a problem: how to reduce the massive transcripts recounting the many instances of misconduct to a manageable narrative that would provide a factual foundation for the legal arguments. Here is how she performed the feat.

Judith D. Fischer, "Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers' Papers," 31 *Suffolk University Law Review* 1, 20–22 (1997).

Suppose a lawyer writes with poor organization and style. Won't the judge simply read the briefs and motions anyway? Perhaps, but, as Professor Fischer demonstrates with numerous real-world illustrations, lawyers who write poorly can find themselves subjected to embarrassment and even judicial discipline. This lengthy article offers a comprehensive survey of instances in which lawyers have faced severe consequences for sloppy legal arguments and sloppy writing.

David Mellinkoff, "Real World View of the Professor," *Syllabus*, June 1983, at 1 (*Syllabus* is the quarterly publication of the American Bar Association's Section of Legal Education and Admissions to the Bar.)

Although students may accept plain English as the prescribed writing style for law school, they wonder what will happen in the real world when they face senior lawyers who expect legalese: "What's the old man going to say when I cut last *will and testament* down to *will*?" The late Professor Mellinkoff explains what will happen and how plain English can eventually advance your career.

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“Writing well requires us to know our goal and stick with it.”

HOW MANY CASES DO I NEED?

BY MARY DUNNEWOLD

Mary Dunnewold is a Legal Writing Instructor at Hamline University School of Law in St. Paul, Minn.

Every year, I can see it coming. Tension builds as my students work on their first major research project. They are confused. They resent the time that the research “steals” from their already overburdened schedules. They are sure this process will never become second nature to them, despite my claims to the contrary. Finally, in the second or third class hour devoted to discussing the research, a brave student raises a hand. “How many cases do I need?” the student asks. The entire class sighs with relief because someone dared ask *the Question*.

This question incorporates, I think, an extensive array of sub-questions: Why can't I find a case exactly like my case that answers this question easily? Am I missing a case? Am I missing 10 cases? How do I know if I have the right cases? Which cases should I use? Isn't there an easier way to find an answer to this problem?

The question usually makes me quite impatient. When will they understand, I fume, that there is no magic number of cases, that the results of legal research are different in every instance, that they should trust the research process we've taught them because it will lead them to the relevant authority? But I've tried to stop fuming and instead develop a better understanding about what the students need to know to calm their anxieties about their competence as legal researchers and analysts. I've also tried to see this question as a particularly useful teachable moment that I should seize. So I've developed a three-part answer to the question.

First, I review the realities of legal research: no matter how thorough your research, you don't always find a case exactly on point. Some research problems lead you to volumes of case law; others lead you to a few cases. If you go through the steps of the research process you've been taught, you can be fairly confident that you have found all the

authority available on your topic. Real life is not like TV, where the junior attorney runs into the courtroom with the definitive case at the last minute.

Second, I give the students a practical answer: I tell them how many cases they need. That is, I tell them exactly how many cases I used when I wrote a sample memo on this particular topic. If they are using some number of cases within the same range, I assure them, they're probably on the right track. Then, however, I tell them that the answer to this question is different for every memo and it's not possible to predict from one memo to the next. So knowing the answer for this memo doesn't really help them know the answer for the next memo. Which is why they need to know how to decide for themselves which cases to use and how many cases are enough.

Finally, I try to address what I think is the larger and most important question raised by “how many cases do I need?": Of all the many cases I can find out there, which ones should I be using to develop my analysis? To address this question, I use a dartboard analogy to help the students think about how to evaluate the precedent they have unearthed in their research. Their goal is to find and use cases as close to a “bull's-eye” on the dartboards as they can.

First, I ask the students to imagine two dartboards, which I draw on the chalkboard and embellish as I talk. I label one dartboard “Authority” and the other “Issues.” Then I explain that the bull's-eye on the Authority dartboard would be an on-point case in the controlling jurisdiction, preferably from the highest court in that jurisdiction. If they have found such a case in their research, they should definitely rely on it. An on-point statute from the controlling jurisdiction would also belong here. I then move to the first circle out from the center of the dartboard. In this 50-point circle, I explain, belong on-point primary authorities from other jurisdictions that the court would be likely to rely on. Here, for instance, I might place cases from the federal circuit in which a state court sits, cases from other states in the circuit, and cases from larger states whose courts are well respected and frequently cited. Moving out, in the 25-point circle, I place cases from

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smaller states and distant states that are cited less often. Finally, in the 10-point outermost ring, I place secondary authority and other sources, which may be helpful for interpreting and understanding the law but do not establish what the law is.

I then shift to my Issues dartboard. On this dartboard, I place cases according to how similar the law and facts are to the law and facts in my research problem. The bull's-eye on this dartboard, then, is a case involving exactly the same legal issue and exactly the same facts. For instance, if our research issue is whether injuries sustained as a result of a recreational dog sled accident are covered by the state's dog bite statute, we would look for a case addressing that issue exactly. (I note that usually we are unlikely to find such a case, especially when working on a legal writing assignment.) In the 50-point circle on this board, then, I would place cases involving the same area of law but slightly different facts. So for the dog bite statute issue, I would place in this circle a case discussing whether the statute covers injuries caused by a dog running into the road in front of a car. I tell the students that if at this level they find plenty of authority that helps them analyze and predict an outcome in their case, they may not need to go any further.

I suggest that if the authority in the 50-point circle is sparse, however, they need to look at and perhaps rely on authority arising in a slightly different legal context or very different factual context but generally within the same area of law. Thus, using the example of the dog bite statute issue (a strict liability issue), if no authority interpreted this particular strict liability statute, we might look to cases discussing other strict liability statutes or nonstatutory strict liability. Or we might look to cases involving the imposition of liability on animal owners through common law rather than the statute. These authorities belong in the 25-point circle.

Finally, in the 10-point circle on the Issues dartboard, I place cases that involve a different legal idea and different factual context but that might contain clues about the policy that governs this particular area of the law. For the dog bite statute issue, these might be cases about general

responsibilities of animal owners or responsibilities of recreational service vendors.

After I've explained and illustrated the two dartboards, I tell the students that they should then envision the two boards suspended over one another. If their "dart," a found case, would hit both bull's-eyes, they have found better authority than most of us expect to find. If their dart hits the bull's-eye on one dartboard and the 50-point circle on the other, that's a good case. They should then evaluate each case according to these criteria.

Finally, I explain that this thought process is meant to help them sort out which cases to use once they have found a body of authority and are attempting to evaluate it. It does not describe the research process they should go through to initially generate the body of authority to work with. That, of course, is another class period and another essay.

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“A manager with good leadership skills can make any workplace an energizing and exciting place to be.”

BE A CLASSROOM LEADER

BY JAMES B. LEVY

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I love to teach. When I first started, though, I did not know much about it. Like most people who leave practice to teach at a law school, I had no formal training for my new career. So, to better prepare myself for the classroom, I spent a lot of time reading texts on effective teaching. The more I read, the more I recognized the similarity between teaching and other professions involving good management skills. Like the CEO of any successful business, or a winning sports coach, a teacher's success depends in large part on his or her ability to inspire, motivate, and manage others. In short, a successful teacher needs to be a classroom leader.

Consider your own work experiences and how much impact the boss' leadership skills had on your performance, productivity, and morale. A manager with good leadership skills can make any workplace an energizing and exciting place to be. When you work for the right person, it's fun to come to the office. On the other hand, a manager with poor leadership skills can demoralize and undermine the most talented, hardworking, and motivated employees such that coming to work becomes a miserable experience. Think about the kind of manager you would like to work for. Then think about the kind of classroom manager you would like to be for your students. Like any other group undertaking, a teacher's leadership skills can make or break the quality of the experience from the students' standpoint.

Fortunately, teachers do not have to reinvent the wheel when it comes to learning effective leadership skills because there already exists an abundance of material discussing the subject in other contexts. Some traits of effective leaders—like charisma—are dependent on complex interpersonal dynamics and tend to be situational and, therefore, difficult to replicate on demand.¹

¹ See Nancy C. Roberts & Raymond T. Bradley, "Limits of Charisma," in *Concepts of Leadership* 83, 101–02 (Jeffrey A. Sonnenfeld ed., 1995).

On the other hand, some traits shared by all successful leaders can be easily learned and implemented by any legal writing teacher interested in becoming a better classroom manager. Discussed below are some of the most important.

First and foremost, good leaders have the ability to motivate others. While numerous theories of human motivation exist,² central to all of them is the importance of establishing a supportive atmosphere that encourages everyone to do his or her best work. Whether in the workplace or the classroom, performance depends on motivated individuals interacting with a supportive environment. An environment that is unsupportive—or worse—frustrates performance and undermines motivation. One scholar on managerial effectiveness suggests that the relationship between individual performance and the surrounding environment is expressed by the following formula:

$$\text{Performance} = \text{Ability} \times \text{Support} \times \text{Effort}^3$$

Think about how much it means to have a boss who believes in you, who offers an occasional word of support or pats you on the back for a job well done. Contrast that with the boss who spends most of his or her time evaluating, criticizing, and judging. Whom would you rather work for? What kind of teacher do you think your students want to learn from?

Related to this, motivational theory recognizes that people are more likely to do their best work when they feel confident in their abilities.⁴ Thus, a good leader knows the importance of instilling

² See Martin E. Ford, *Motivating Humans: Goals, Emotions, and Personal Agency Beliefs* 173–200 (1992) (chart summarizing 32 theories of motivation).

³ See *id.* at 71 (citing J.R. Schermerhorn Jr., *Team Development for High Performance Management*, 40 *Training and Dev. J.* 38–43 (1986)); see also James J. Cribbin, *Leadership—Strategies for Organizational Effectiveness* 18 (1981) (referring to study that found managers who were warm, friendly, and supportive of employees' efforts tended to create environment of high productivity and job satisfaction).

⁴ See John P. Kotter, "What Leaders Really Do" in *Concepts of Leadership*, *supra* note 1, at 107 (leaders are successful because they satisfy "basic human needs for achievement, a sense of belonging, recognition, self-esteem, a feeling of control over one's life, and the ability to live up to one's ideals."); Dale E. Schunk, "Self-Efficacy and Education" in *Self-Efficacy, Adaptation, and Adjustment: Theory, Research, and Application* 291 (James E. Maddux ed., 1995).

self-confidence in everyone's ability to accomplish the task at hand. That helps explain a study that found that teachers who set high standards against an atmosphere of encouragement and warmth tend to be the most effective at helping students to learn.⁵ In a very real way, therefore, our attitudes about our students' abilities tend to become self-fulfilling prophecies. If we believe they will do good work, then we create a classroom atmosphere that helps turn that into a reality. Conversely, if we expect our students to fail, then we help to bring about that result as well. In the words of German philosopher Goethe: "If I accept you as you are, I will make you worse; however, if I treat you as though you are what you are capable of becoming, I help you become that."

It follows, therefore, that leadership depends on establishing a good working relationship with the group being led. Nothing helps motivation, productivity, and morale more than a boss who truly likes and cares about his or her employees. As one commentator noted:

Production and morale can be increased when the workers feel that management is interested in them as individuals. "If the principle is sound for business . . . is it not reasonable to assume that student morale and academic output might increase if students felt their professors were interested in them as individuals?"⁶

Consequently, students will tend to do their best when they see that the teacher truly cares about them. Some simple advice from management consultants that we can easily adapt to the legal writing classroom is to get to know the names of our students, and a little something about each of them, as quickly as possible.⁷ Taking an interest in our students helps them feel more connected to the teacher and, as a result, more interested in what is being taught. In fact, a

recent study completed by Harvard University found that a key to happiness and success among college students was their ability to establish a good relationship with at least one faculty member during their time at school.⁸

Showing students that you care about them includes praising them for a job well done. All of us want to feel worthwhile and appreciated for the work we do. Good classroom leadership, therefore, depends upon the appropriate use of praise to provide feedback, support, and encouragement. "One of the most important things a teacher can do is praise. . . . Students may learn what they should not do by making mistakes; they learn what to do by the rewards of success."⁹ However, it is important that praise be metered out with integrity since false praise is "just as likely to undermine motivation" if it is seen as patronizing or unjustified or is used as a strategy for controlling behavior.¹⁰

Consequently, good leadership also depends on trust. Members of a group are more likely to do their best when they believe the leader is a person of integrity. Students, in particular, are hypersensitive to any perceived lack of fairness on the part of the teacher. Therefore, be especially careful not to show any favoritism in class or during your outside interactions with the students. Good leadership principles suggest that a teacher who establishes a level playing field where all students feel they have a fair chance at success bolsters motivation to learn.

Credibility is also an important leadership quality.¹¹ Never try to bluff your way through material you are not sure about or fake an answer to a question you do not know. Instead, admit your lack of knowledge and agree to look up the information and get back to the students next time. Likewise, if you misstate something in class, admit it. Students are very forgiving of those teachers they believe are engaging them from a position of honesty and trust. Conversely, any

“Showing students that you care about them includes praising them for a job well done.”

⁵ See Don Hamachek, *Psychology in Teaching, Learning, and Growth* 401–02 (4th ed., 1990).

⁶ See Jon G. Penner, *Why Many College Teachers Cannot Lecture—How to Avoid Communication Breakdown in the Classroom* 58–59 (1984) (citing Dan B. Wolf, *Can Education Learn from Business?* 13 *Improving College & U. Teaching* 110–11 (1965)).

⁷ See Warren Blank, *The 9 Natural Laws of Leadership* 190 (1995).

⁸ Kate Zernike, *The Harvard Guide to Happiness—A 10-Year Study Reveals How to Have a Better College Experience*, N.Y. Times, April 18, 2001 (Education Life Supplement), at 18.

⁹ Penner, *supra* note 5, at 174 (citing Donald A. Bligh, *What's the Use of Lectures?* 58 (1971)).

¹⁰ Ford, *supra* note 2, at 204.

¹¹ See Blank, *supra* note 7, at 206.

“It is not enough to say that you respect the students; you have to demonstrate that respect every day in the classroom.”

defensiveness on the part of the teacher for mistakes made during class tends to undermine that trust and, therefore, negatively impacts your ability to lead them.¹²

As the reader has probably gathered by now, leadership is born out of mutual respect between the leader and the group.¹³ Members of a group will work hard for someone when they believe he or she has the same respect, devotion, and commitment to them. It is not enough to say that you respect the students; you have to demonstrate that respect every day in the classroom. Admittedly, it is sometimes difficult for legal writing teachers to feel that way since we often bear the brunt of student frustration and disappointment over their academic performance. Good leaders, however, never take that kind of criticism personally. Instead, good leaders try to understand the reasons behind the frustration in order to resolve it in a constructive way.

Good leaders, therefore, do not get embroiled in personal disputes. Management consultants warn against getting drawn into personality conflicts because they tend to undermine the leader's credibility and respect with the rest of the group.¹⁴ If a disagreement or dispute arises, do your best to see it from the other person's standpoint. Rather than take it as a personal affront, ask yourself what you can do to resolve the situation in a way that is positive for all parties. That does not mean you should ever tolerate bad student behavior; experts agree you should not.¹⁵ But good leaders know it is important to discourage only the bad behavior without discouraging or disparaging the student.

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¹² See Roberts, *supra* note 1, at 99 (discussing example of school commissioner who was unable to transfer her leadership success to new position because she became embroiled in personal disputes and, as a result, was perceived to be on the defensive).

¹³ See Blank *supra* note 7, at 12–13, 186–88 (leadership is the result of good personal relationships based on mutual trust and respect).

¹⁴ *Id.* at 186–87.

¹⁵ See Gerald Amada, *Coping with Misconduct in the College Classroom: A Practical Model* 43–44 (1999).

WHY YOU SHOULD USE A COURSE WEB PAGE

BY JOAN BLUM

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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 now, several years into the Internet Age, many of us who are the least bit technologically savvy or technologically curious use a Web page in connection with our legal research and writing (LRW) courses. Most legal writing professionals in this group find that a course Web page is essential to making the course function well and therefore cannot imagine how they ever did without it. If you are one of these people, this article is not for you. This article is for those among us (a sizable minority if not the majority) who don't use a Web page because a) they don't need it, b) their students wouldn't use it, c) they don't want to invest the time learning how to set up and maintain it, or d) all of the above. I address each of these objections in turn.

A. You need a course Web page.

How can I presume to tell you what you need? I don't know the intricacies of your course or the specific teaching methods you use. But what I do know is that any LRW course has numerous handouts and assignments. Having a course Web page will make your life much less hectic by helping you maintain your focus on what is really important in the course—teaching your students—and not allowing yourself to be consumed by housekeeping details. I also know that we often struggle to create interesting problems for our students and that the multimedia

hosting capability of a Web page opens up lots of possibilities for creativity in problem development.

A course Web page can be an essential information center for your course, provided that you require your students to visit it daily. If you put every handout or assignment on the Web page, you can free yourself forever from having to keep extra copies of handouts or assignments. When a student asks, just say, "It's on the Web page." You will also save yourself (and the environment) from unnecessary photocopying. For example, you might want to offer your students a supplementary sample memo. Some students might benefit from reviewing the sample; others might not. Putting the sample on the Web page allows those who want it to gain access to it more conveniently than if it were on reserve in the library, and doesn't leave you with a pile of extras.

The course Web page is also a good vehicle for providing answer keys for self-graded research assignments and other materials that students do not necessarily need to print. (Many of us who use course Web pages take the view that we shouldn't use the Web page to shift the responsibility and cost of printing required class materials to the student. Thus, I hand out in class anything that I think everyone in the class should have in hard copy.) The course Web page is a good bulletin board for materials that students need to be able to refer to but don't necessarily need in hard copy, for example, a schedule of oral arguments or class presentations or a list of opposing counsel.

Finally, the course Web page allows you to post announcements between classes without overloading your school's e-mail server and to provide answers to common questions that students ask in person or via e-mail. (I've found this a particularly important use of the Web page in the week or so before a major assignment is due.) Judicious posting of answers to frequently asked questions contributes to students' sense of security about information flow in the course because they are assured that all important information is distributed to everyone, not just to a small group.

While I think just about everyone who has a course Web page benefits from using it to streamline housekeeping, some of us find that the multimedia hosting capabilities of a Web page provide the additional benefit of allowing us to

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“Just like the baseball field in the movie *Field of Dreams*, if you build it, they will come.”

develop novel problems for our students. Having a Web page allowed me last spring to use a problem I could not have used without it. The problem involved a claim by MasterCard International that Pemberton Bar Review (PBR), a fictional company, had infringed MasterCard's copyright in one of its "Priceless" commercials. PBR argued that its use of MasterCard's commercial was a fair use and not an infringement because PBR's commercial was a parody of the original. Whether a work is a parody depends on whether its parodic nature can be reasonably perceived, not on the intent of the author of the second work. *See Acuff-Rose Music Co. v. Campbell*, 510 U.S. 569, 582 (1994). As this question has an important factual dimension, the students needed to view the two commercials several times in order to be able to argue either side. While the students could view the original MasterCard commercial at AdCritic.com, the PBR commercial was a video that we produced at the law school for purposes of this assignment, and digitized and posted on the course Web page. Without the Web page, I would have had to put copies of the video on reserve in the library and students would have had to take turns borrowing them. With 45 students in the class, that would have been a recipe for anxiety and confusion. Knowing that, I would not have used this problem, which with the Web page turned out to be an excellent teaching tool.

You can also use a Web page to point your students to other relevant material that is available on the Web. For example, for my "Priceless" problem, students representing MasterCard were able to get factual data about their client from the MasterCard International home page. These were rich facts that I did not have to take the time to develop. (I did have to develop corresponding facts about PBR, the defendant, which I put on the course Web page.) In previous years, I used my Web page to point students to relevant nonlegal secondary sources that were not available in our library.

B. The students will use your Web page.

Just like the baseball field in the movie *Field of Dreams*, if you build it, they will come. Today's law students are computer-literate and have access to computers (in the law school computer center

if not at home). Although you may find an occasional first-year law student who does not have the technological competence to plug a URL into a browser, the student will need to attain that minimal level of competence at some point during the first year of law school in order to use computer-assisted research tools. So long as your law school provides Internet access for students who don't have it at home, you are justified in requiring your students to check the course Web page daily and are therefore justified in using it as an information center for your course.

Even though technical barriers to access are minimal, students still need to be motivated to go to your Web page regularly. You can announce that checking the Web page is a requirement of the course, but students will not go there unless they feel that there is something on the Web page that they can't get elsewhere. The way to motivate students to go there is to use it for important course materials and announcements. Resist the impulse to send global e-mail messages to give really important notices that you want to be sure everyone gets. If students think that there is a significant possibility that they will miss something important if they neglect to check the Web page, they will be sure to check it regularly.

C. You don't have to spend a lot of time setting up and maintaining a course Web page (unless, of course, you want to).

While some people enjoy learning how to set up a Web page from scratch, I have never felt the urge to do so. I'm interested in the utility a Web page brings to me, not in the experience of developing one. Thus, I have been content to use prepackaged Web courseware products. From my perspective, using courseware for a course Web page is like using a bread machine to bake homemade bread: you don't have the same *experience* you'd have starting from scratch and doing every step yourself, but you get a *result* that is the functional equivalent.

Over the three years I've had a course Web page I have used two products—for two years Web Course in a Box, and this past year WebCT, which is now the preferred Web courseware for Boston College. Web courseware like these products is designed for people who are not technology

experts; most novice users find courseware easy to use because it has convenient preset features, including categories for announcements, handouts, and links to other resources.

Courseware also gives the user easy-to-follow protocols for uploading documents to the Web page. Most courseware will convert small pieces of plain text to HTML (Hypertext Markup Language), and thus allow the user to avoid one step in the process of putting material on the Web page, at least in the case of very short documents. If you want to put a longer document on your Web page, you can use a conversion program (I use Front Page Editor) to convert a word-processing document to HTML, or you can use tools within your courseware package to link non-HTML and non-text materials to your Web page. I used one of these tools (and about four mouse-clicks) to upload my “Priceless” video to my WebCT site.

D. Don't be daunted—help is on the way!

Even if each objection can be overcome, you may feel that no matter what benefits it offers, launching a course Web page is not high enough up on your list of things to do. You may feel that you simply do not have the time to do it, even with the help of prepackaged courseware. You may think that the potential benefits do not outweigh the costs in terms of time. To this objection, I say get some help getting started. Even a half-hour spent with a member of your law school's technical staff may be sufficient to get you up and running with courseware. Use the technical staff or the ample support that courseware vendors provide to help you the first few times you try to upload documents. Putting documents up on your Web page will become second nature sooner than you think.

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Sooner or later all of us (except the total Luddite holdouts) will be using Web pages in connection with our LRW courses. Using a Web page will enhance your teaching not only because it will free you from some housekeeping chores, but also because it will open up possibilities for more creative course content. With today's easy-to-use courseware and ample technical support, just about everyone can launch a course Web page

with minimal effort, so I urge everyone to take the plunge. I'd be interested to hear about what you do with your Web page—please contact me at blum@bc.edu.

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“Putting documents up on your Web page will become second nature sooner than you think.”

TYING IT ALL TOGETHER

BY BRENDA SEE

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.villanova.edu.

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Understanding the reasoning of a court, applying the law to a fact situation, presenting a case to the court, and advocating another person's cause: Most students who come to law school have had little, if any, exposure to these skills. Teachers of skills courses have a challenge in introducing and nurturing the students through the first steps of skill building, filling in the gaps that other courses neglect.

Two incidents, one from long ago and one more recent, framed my idea to assign case reports to my first-semester Legal Research and Writing students. Each student was to give a five-minute oral briefing on the case in front of the class.

The first incident. When I was a first-year law student at the University of Alabama more than 20 years ago, I had a "Kingsfield" torts professor who used the classic Socratic method. Students had to stand and recite a case, enduring his questions and hoping we were not making fools of ourselves before the class. I remember thinking that when it was my turn to perform I did not learn a thing because I could not take notes or really think about his questions. The method was confusing to all of us at first. In addition to overwhelming us in class, the professor gave us supplementary bibliographies so we could learn even more about torts. The lists included all the Alabama cases on each subject we covered in class,

and he told us that we should read those to get a full understanding of Alabama tort law.

I tried to read them, but I just did not think I had the time. For the first time in my educational career, I decided that the assignment was too onerous and that I could not, or would not, do it, and I was not alone. I read a few cases on each topic, but just when I thought I might have time to go back and read more, we were given a new list. Besides, the cases I did read did not really mean much to me because I was new to the study of law and could not put them into meaningful perspective. That led me to read the facts of one case and then go on to the next; no one had explained that I should be trying to understand the reasoning of the court or should be looking for patterns or trends. His idea did not work for me because I did not think I got any real benefit from reading a lot of additional cases that I did not understand.

The second incident. Recently, I listened to students making their cases for reinstatement to law school after dismal performances on their exams. Each student submitted a written statement and then addressed the faculty. Admittedly, these were students who were at the bottom of the class, but I still was surprised that only one of them presented a decent argument. They simply were not advocates.

One student read aloud the written statement he had already given us. Several did not even try to make a presentation. They just said something like, "I'd like to be back in school and I will answer any questions you have." When asked questions, they did not give confident answers. It was clear they had not thought about what it might take to convince the faculty to reinstate them. I thought (without placing blame on anyone), "These students seem never to have been taught how to stand before a group and talk, much less persuade." At the least, they never learned what they might have been taught.

The idea. I was two or three weeks into the semester with a brand-new group of first-semester Legal Research and Writing students—still pliable, still eager to absorb. We were working on a one-case analysis and within a couple of weeks would begin our second project, a closed memo on whether a business would be liable to an invitee for the intentional criminal conduct of a third party. I

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decided to begin preparing them for advocacy by giving them practice in standing before a group and making a presentation. I put together a list of Alabama cases on the memo topic and assigned each student one case on which to give a five-minute report, telling the class the issue, the facts, the holding, the reasoning, and whether the student agreed with the decision. I told them that the purpose was twofold: to get them on their feet before a group, and to study this tort more thoroughly.

In our memo project, we would be using five cases different from those assigned for student reports. Therefore, the reported cases would broaden their knowledge of this area of the law. My plan was to spread the presentations over several weeks, letting one or two students present a case as time permitted. We have 75-minute classes, and while I need every minute, I decided this was worth an experimental try. Not only would the students have the opportunity to make a presentation, they would observe other students making presentations and, perhaps, formulate some opinion about what makes an effective one.

The result. Before the first student presentation, the presenter e-mailed me several questions, including whether she had to explain other cases that the court cited in her case. At that point in class, we were learning about what a court's "reasoning" is, and I asked her why the court even cited the other cases. She replied, "Oh, I see; those cases are important because neither one is like my case. The court is showing how my case is different from the ones it has already decided." This student was taking some ownership of that case and was studying it much more closely than she otherwise would have. She was understanding a concept through experience.

The first two presenters did a nice job, though they read most of their presentation. Since my objective was just to get them on their feet, I did not critique their performance as presenters other than to say that the most interesting part of each presentation was when the presenter seemed to be talking to the class and making eye contact. The cases interested the class; they asked questions and made comments. For example, because the cases were Alabama cases, one student remembered one that happened near his hometown. I used the opportunity to ask a couple of questions designed to foreshadow things to come in our second memo project.

As students presented their cases week after week, they began to understand the area of law for our memo topic; they heard about case after case where the Alabama courts have dealt with related issues. We also noticed how each case got to the court—whether by summary judgment or directed verdict—and that not many of those types of cases ever get to a jury. I was very pleased with the efforts the students made to explain the reasoning of the court because they came naturally to conclusions that in the past I have tried, perhaps artificially, to lead students to through their closed memo project. Their knowledge base was broadened with relatively little effort. Because the cases were presented by different students each time, the interest level of the class rose even though the presentations were at the end of class. Quite often the students stayed after class to discuss the cases. When we began the second memo, the students did not undertake the project blindly. They already knew the general idea behind the type of case we had.

This idea spilled over into teaching opportunities in research as well. I tied some of the cases into a research exercise on using digests, "planting" the cases as answers the students should find. One student wrote on her research answer sheet, "This was my case," referring to the case she had presented in class. As another research tie-in, when we learned about Shepardizing™ as a method for finding case law, I told the students that I had developed the list of cases they had been presenting by Shepardizing one of the key cases in our memo project.

Only after I started implementing the idea did I think of that time long ago when I was supposed to read all those cases and become an expert on Alabama tort law. If I had assigned my students all those cases, they wouldn't have read or understood them any better than I had. Because of their ownership of their assigned case, they studied and understood it. That enabled them to meaningfully discuss similar issues in the other students' cases.

I am not charged with teaching my students every case in the universe, but I am charged with helping them broaden their knowledge and develop advocacy skills. This exercise works to bring the students along in thinking, reasoning, and presenting.

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“If you are a novice at the research process, it is easy to get sidetracked by tangentially related topics.”

TEN TIPS FOR MOVING BEYOND THE BRICK WALL IN THE LEGAL RESEARCH PROCESS

BY MARSHA L. BAUM

Marsha L. Baum is Professor of Law and Director of the Law Library at the University of New Mexico School of Law in Albuquerque.

Teachable Moments for Students ... is a regular feature of Perspectives 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.

Legal researchers, especially first-year law students trying to complete a research project, sometimes are frustrated at not finding an answer and feel at a loss as to how to proceed. They feel as if they have hit a “brick wall” in the research process and see no other avenue to take. They may have found a great variety of material but not a direct answer, so they feel that they are missing something. They may have gotten started on their research but not been able to find a source that seems to be pointing in the right direction, and every search term they try hits a dead end. They may actually have finished their research and not realized it. What steps might frustrated researchers take to try to get past the brick wall standing in their research paths?

1. Reread the problem being researched. Be sure that you understand the issues and have all the facts you need. To be successful in researching, you must comprehend the issues and be able to stay focused on the problem. A carefully planned research strategy and a strong grasp of the issues are critical in maintaining that focus.

If you are a novice at the research process, it is easy to get sidetracked by tangentially related topics and become confused by what you are finding. By identifying the goals of the research at the outset and referring to your problem regularly to stay focused, you can avoid getting lost in the vast array of information.

In reviewing the problem, you may discover an overlooked issue or factual element that affects your research. Your research may have helped you to recognize an issue that you had previously overlooked. As a result, you may find that your research path is opened for you again. In any event, rereading the problem will help to clarify the goal of the research and may provide additional terms to search.

2. Review the research steps you have already taken. Look at the research strategy you followed to get to this point. Be sure that you formulated a clear search strategy before you started. If you did not have a research strategy, develop one now and begin your research anew.

In developing your research strategy, you should have considered all of the research sources available to you, determined your level of understanding of the subject matter, and moved into the most appropriate research tools. Before you start, you need to have a good understanding of the legal research tools, their contents, and the various ways to use them. If you are not familiar with legal research resources, refer to item 8.

If you started with the primary sources (i.e., statutes, regulations, and cases) but found yourself floundering and unable to locate documents with the search terms you selected, you probably need to step back into secondary sources to gain perspective and a listing of search terms related to your issue. If you knew nothing about the subject, you should have started with a secondary source to gain a basic understanding of the area of law before you attempted to search the indexes and finding

aids for the primary resources. The benefit of this approach is that the secondary sources will also provide you with citations to primary materials to get you restarted on your research.

3. Update and expand the materials you have already located. You may be able to use the documents you have already located to move beyond your current stage of research, to get through your brick wall. By using the citations within the cases you have found or by checking the cases or statutes you have located in Shepard's® or KeyCite®, you can expand your research results. You may find materials that more directly address your problem or that are from a more relevant jurisdiction.

Be sure that you have updated your research, particularly if you are working on a research problem assigned by an instructor for class (as opposed to research from an employer). Since instructors do not generally assign exercises with no answers, if you are not finding an answer in the source that seems most appropriate, be sure that you have checked the pocket parts and other supplementing materials. The answer may be in the most current materials.

4. Determine whether you are “done” with your research. If you are feeling as if you have reached a dead end and cannot determine the next step to take in your research process, you should consider the possibility that you have simply reached the end of the research trail. If you are locating the same citations over and over from a variety of sources, your research is very likely complete.

First, confirm that you are not caught in a loop resulting from using only one publisher's materials. Consider the variety of resources you have used and determine that you have not relied solely on the editorial work of one publisher or system. If you have researched in a variety of resources and are finding the same references in multiple sources, you very likely have successfully completed your research.

Remember that you do not have to find every item published on a particular topic to have completed your research. Over-researching will not provide any better result than efficiently locating

the most important and relevant resources for addressing your issues.

5. Use new sources to find search terms. Even when you are familiar with the subject matter, you can hit a brick wall in researching. Perhaps you have tried every term you can think of in a particular source (e.g., an index to a set of statutes) but find no relevant entries. This does not necessarily mean that there is no law on your subject. In fact, you may know that there is primary authority on the topic, but your search has not located the primary documents.

Think creatively about the research process. You can try another research approach to help reframe the issue and identify terms to use in your research that you had not previously considered. A quick search for your terms on the Internet or quick perusal of an encyclopedia can help you turn away from the brick wall and get you back on track. You can do some research in a treatise or locate a law review article on your subject. In the most favorable situation, these secondary sources would provide citations to the relevant primary materials. However, even without direct references to primary documents, the search in a new type of resource or a resource from a different publisher may help the research process along. By browsing indexes of previously untried sources, you may serendipitously locate new terms or concepts. Scanning the text may offer new insights into your research problem.

You generally do not need to spend a large amount of time on this secondary route before you recognize a new approach or identify references to primary sources that will get you started again. Do not add to your frustration level by struggling with multiple secondary sources or spending long periods of time reading detailed information on your topic. Take five minutes in a new research tool to try to break through the brick wall. If you do not find it helpful, move to another resource.

6. Consult an expert. If your project does not forbid consultation, consider asking for assistance from someone who can provide advice on research strategy or who can provide suggestions for search terms. Consider talking with a reference librarian, another attorney, or a faculty member. Using a

“Remember that you do not have to find every item published on a particular topic to have completed your research.”

“Do not consider your research unsuccessful if you did not find *the* answer.”

lifeline such as this can save much time and energy and get you back on track quickly.

Keep in mind that the telephone is one of your best research tools. Contacting someone at a government agency or other entity can be the quickest way to locate information and move your research forward.

7. Start over with a secondary source. If you find that your research in primary sources has been fruitless, you may want to start the research process again with secondary sources. A new start in the secondary sources will provide the opportunity to locate background information about the topic and develop an understanding of the area of law. It will also provide references to primary sources that will start you on your way with your research. Using these resources, you can let a publisher do the research work for you.

8. Learn about the many alternative research tools and how to use them. Perhaps the problem you are having in locating relevant materials relates to unfamiliarity with the various research tools available to you. If this is the case, refresh your memory on the methods for researching and the finding tools that will help you research more efficiently and effectively. You can turn to one of the legal research guides for detailed discussion of the steps in performing research in primary and secondary resources, or you can consult an expert.

9. Analogize using the materials you have found. A researcher wants to find *the* answer. Unfortunately for legal researchers, there may not be an answer directly on point. Although you may hope to find a case that exactly matches your fact pattern and your issues, the probability of that happening is extremely low, if not nonexistent. You will need to use the primary sources that you have found to develop and support your argument and conclusion.

Do not consider your research unsuccessful if you did not find *the* answer. If you have found materials that you can use to frame your argument, your research efforts have been successful. You will now need to use your legal analysis skills to develop the analogies between the law you have found and the problem you are researching.

10. Realize that sometimes there is no answer.

As a corollary to item 9, you should understand that there is not always an answer to a research problem. Perhaps the courts and the legislatures have not acted on a particular issue. Perhaps your jurisdiction has no law related to your research problem. If this is a problem for class, there is likely an answer somewhere, but, in the real world, the answer may be that no answer exists.¹ You should not immediately jump to the conclusion that there is no answer after a few hours of frustrating research, but if you have tried all of the research steps you can try, including the above suggestions, realize that there may be no answer.

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¹ If you are working on a class exercise and are not finding an answer, you will want to use the suggestions above to move you forward in your research. Very rarely would an instructor assign a research exercise with no answer, although the exercise may be one that has no direct answer but instead requires analogization.

WHICH LEGAL RESEARCH TEXT IS RIGHT FOR YOU?

BY JOAN SHEAR AND KELLY BROWNE

Kelly Browne is Head of Reference Services at the University of Connecticut School of Law Library in Hartford. Joan Shear is Legal Reference Librarian and Lecturer in Law at the Boston College Law School in Newton, Mass.

Isn't it handy when you can buy something "one size fits all"? Maybe, but this "miracle of modern science" doesn't work well for shoes, and it doesn't work well for legal research texts, either. We all have different teaching styles, time and budget constraints, and goals for our classes. Every couple of years the legal research landscape changes, and so we update the content we present and tweak the techniques we use to present them. We also reexamine the available textbooks from time to time to see which one best meets our needs. Sometimes we find a book that does everything we want it to. More often, however, we make compromises, choosing a book that has some features we deem essential even though it misses the mark in other areas.

There are so many legal research texts to choose from that we thought it would be nice to get a leg up in our evaluation process by finding out what other people do. We asked subscribers of LAW-LIB and LEGWRI-L to let us know which legal research text they use and why. What are its greatest strengths and weaknesses? Does the text address electronic research and technology adequately? Does it discuss the integration of manual and electronic research? Is supplemental material (like a workbook) available? Does the instructor use the accompanying materials, or does the instructor prepare his or her own research problems? We received a total of 30 responses. This is what we learned about how some of the texts are being used:

Texts with Multiple Recommendations

Basic Legal Research, by Amy Sloan (Aspen 2000).

The greatest number of respondents are using the new kid on the block, *Basic Legal Research*. Sloan's book is being used in first-year programs by eight of our respondents, and three more first-year programs are moving to it next year. Those who used this text were generally satisfied with their choice: "After several years of frustration because I could not find a text for first-year students that seemed to be up-to-date and yet addressed research basics in a way that was palatable to law students, we chose Amy Sloan's new text published last fall by Aspen for our first-year course, which integrates research and writing." "It's the right size for a first-year course, at least one that is really only 10 class sessions. I guess that would depend on how much legal research instruction you really have in the first year." *Basic Legal Research* is being used in both integrated legal research and writing programs and stand-alone legal research classes. In some cases the text was chosen by librarians. In other cases the text was chosen by legal writing faculty, even though the research classes themselves were taught by librarians.

Strengths:

Most of the proponents of Sloan's text praised the quality of the writing, organization, and illustrations. They favored the book's conciseness, stating that it did not overwhelm the reader with too much detail, yet covered what is needed to instruct first-year law students. In addition, they appreciated that the text is up-to-date and contains good sample pages and checklists for types of sources. People also commented on the conscious way research process was stressed over bibliographic material, and on the way Sloan's integration of print and electronic formats made it clear they are just different sources of the same material. Respondents felt the book was easier to teach from, and therefore easier to learn from, than its competitors:

- "We have been happy with the text because it is not overwhelming and I think it may be a plus that it was written by someone who

“We all have different teaching styles, time and budget constraints, and goals for our classes.”

teaches writing and brings that perspective rather than the overly bibliographic perspective of a librarian.”

- “The strengths of Sloan’s book are that it is concise (much shorter than the Kunz book [*The Process of Legal Research*, by Christina Kunz et al.]); has lots of illustrations; is graphically pleasing with the use of diagrams, space, and color; and covers all that I need for the first-year students.”
- “Sloan is less detailed, better written, easier to teach from and, I think, to learn from. And it is better organized.”
- “Sloan’s book has the great virtue of being concise and up-to-date on all aspects of legal research. While it doesn’t strive for the kind of comprehensiveness that is provided by others, it is a wonderful teaching tool for 1Ls because, in lucid and well-illustrated ways, it gets the students started so that they can learn by doing their own research. Thus, I am convinced after this first year of using it that Sloan’s book is the right one for the basic class in legal research and writing.”
- “Her charts and sample pages are very useful as well as her checklists. For our purposes her text is current and covers exactly what we want to cover in an introductory first-year course.”
- “We selected it because it *is* basic. It is also extremely well written. The basic tools are covered, of course, and she keeps focused on the process. Electronic sources are integrated into each chapter, and because the text is new it includes good coverage of Internet resources. For example, the chapter on federal legislative history research includes Thomas, GPO Access, and Congressional Universe. There is also a separate chapter on electronic research, generally. Each chapter ends with a checklist.”

Weaknesses:

- “The Sloan book has no weaknesses for my purposes; however, for some, it may not be sufficiently comprehensive. May not be enough for a course addressing advanced research topics.”

- “The only disconnect for us in using the Sloan research text this year was that her citation discussion is geared to *The Bluebook* format rather than ALWD [Association of Legal Writing Directors] and we elected to use the new *ALWD Citation Manual* this year, but it was not a big problem.”
- “No exercises. I don’t like the fact that it does not come with a workbook.”

Supplemental Materials:

- “I found her teacher’s manual with suggested problems and class plans also practical and useful.”
- “There is a teacher’s manual, but we created our own assignments.”

***The Process of Legal Research*, by Christina Kunz et al. (Aspen 2000).**

This text is also used by many programs, although some of these programs have migrated or are considering migrating to the Sloan text next year. General comments on *The Process of Legal Research*:

- “I use Kunz and love it. I teach research as a component of Legal Research and Writing. I cover all secondary sources, enacted law, and case law; the students have a comprehensive assignment for each of these. I cover manual research first, then online research. Students have to submit a research plan that integrates manual and online resources before they can do full-text searching online.”
- “We are a first-year required, four-credit course over two semesters. We cover research throughout and writing as well.”
- “I don’t currently use a text for my Advanced Legal Research; although the Kunz book is recommended, it is not assigned.”

Strengths:

The strengths of the Kunz book are that it has exercises that require application for each step in the research process and that its coverage is very comprehensive, so it is useful for Advanced Legal Research classes. The text addresses electronic research and technology adequately and discusses the integration of manual and electronic research.

- “Kunz has good graphics, good structure, good organization, and encyclopedic coverage

and works well as a reference book for students later on in summer positions with law firms or with judicial clerkships.”

- “It is strong in coverage and depth, with good, detailed exercises. The exercises are time-consuming, but they do get the students into the books.”
- “Lots of great examples, a hypothetical that students work with all the way through for text examples, and 10 variations on each exercise with a common hypothetical for each variation that students carry through all exercises. The continuity of hypotheticals, as well as the multiple variations on each exercise, was a real attraction for us.”
- “The text integrated print and electronic resources in each chapter—I think it was done very well.”
- “Only textbook that starts with secondary sources.”
- “Most of the other legal research texts are more appropriate to a legal bibliography course, rather than an actual research course. Kunz’s publication, on the other hand, is geared more toward the actual research process.”

Weaknesses:

- “The weakness of the Kunz book is that it was too long and my students were not reading it.”
- “It covers topics in such excruciating detail that it may put law students to sleep.”
- “Just did not work for me. Too detailed, I think, for one thing.”

Supplemental Materials:

- “It has problem sets in the back, although we do not use them. We make up our own research exercises because we use the book year in, year out.”
- “I use the detailed exercises. Students rarely come back and complain that they did not learn what to do. The drawback is that the exercises are time-consuming, long, and arduous. As a result, I have them work in groups. Also, some libraries do not have all the materials needed.”
- “The exercises, however, were extremely frustrating to the students—they had

difficulty at times figuring out what was expected of them. If we use this book again, we will not use the accompanying exercises.”

***Fundamentals of Legal Research* and its abridgement, *Legal Research Illustrated*, by J. Myron Jacobstein, Roy M. Mersky, and Donald J. Dunn (Foundation Press 1998).**

This title, or its abridgement, is being used in two different year-long stand-alone legal research classes taught by librarians and in a third program that didn’t state whether librarians were involved in teaching research. *Fundamentals of Legal Research* is also being used as a text in an Advanced Legal Research course and as an instructional supplement to the instructor of another Advanced Legal Research course. Each respondent felt his or her choice was the best book for the particular class, but none found it to be a perfect fit. Only one of the three who used *Fundamentals of Legal Research* in a first-year program actually stated that he or she liked the text. The second user chose *Fundamentals of Legal Research* as the lesser of available evils, while the third confessed that he or she hasn’t found a suitable research book for his or her program. A librarian who taught Advanced Legal Research this past fall used a different text in class but read extensively in *Fundamentals of Legal Research* to provide more fodder for lecture notes and additional background. This novice teacher found the combination quite effective, both by giving her something to say during class that the students had not already read, and by providing different approaches to some subjects.

Strengths:

- “Its strength is as a reference text. The way the book satisfactorily blends information about electronic format is useful since my class very much focuses on the books.”
- “Compared with other texts, *Fundamentals of Legal Research* is much more up-to-date, especially in its coverage of CALR [computer-assisted legal research].”

Weaknesses:

On the weakness side of the equation, one respondent mentioned that *Fundamentals of Legal Research* didn’t interface smoothly with his or her problem-oriented teaching method, but then

again none of the other books did, either. One of the respondents presents the material in class in a sequence very different from how it is presented in the book.

Supplemental Materials:

One instructor tried using the assignment manual accompanying *Fundamentals of Legal Research* but found it riddled with typos and is determined never to use it again. Another instructor assigns the book *Fundamentals of Legal Research* for pre-class reading only, to give the students some background in the material they are about to look at, and so does not use any supplements that are available.

***Finding the Law*, by Robert C. Berring and Elizabeth A. Edinger (West Group 1999).**

Finding the Law is used in a two-semester Legal Research class taught as part of the Legal Process course to all first-year students at one institution. It is also used at two other schools for Advanced Legal Research classes.

Strengths:

This text was repeatedly praised as concise and easy to understand and for doing a fine job of integrating print and electronic resources. People liked the light style and practice orientation. The Web site allows the book to keep up with important changes in legal publication since it was published.

Weaknesses:

One user wished *Finding the Law* had some of the better graphics and charts found in other texts. Another user thought the book was particularly weak in its coverage of secondary materials. The instructor of one advanced legal research class lamented that the book did not present material in the same order as it is presented in class (beginning with secondary sources, which is the way most people would approach a legal research problem in an area they were unfamiliar with).

Supplemental Materials:

Accompanying exercises have been used in the past, especially when one program was short-staffed, but most users prefer to use their own customized exercises.

***Legal Research in a Nutshell*, by Morris L. Cohen and Kent C. Olson (West Group 2000).**

Legal Research in a Nutshell is being used by two first-year programs and one Advanced Legal Research course. One of these instructors was also planning (pending approval by the curriculum committee) to teach a legal research class during summer intersession (three weeks in May) aimed at students who are worried about summer jobs and don't remember much from their legal research class—a sort of legal research “boot camp.” After debating what text to use, if any, this instructor decided to probably just stick with the *Nutshell* since half of the students who might sign up for the class already have that book. However, this “boot camp” will rely mostly on handouts, in-class exercises, and homework.

Strengths:

- “It provides a concise review without overwhelming and boring the students with too much bibliographic detail, and it includes the international and foreign materials that I like to cover in Advanced Legal Research. I have tried the larger, more detailed research texts for this class and always come back to Cohen.”
- “I would say the *Nutshell's* strengths are its brevity and simplicity. Personally, I think first-year legal research should be kept pretty simple because it really is hard for a 1L to grasp. That's why I like the *Nutshell*.”

Weaknesses:

- “I don't really like the way the *Nutshell* addresses CALR resources. It mixes them in with the print sources, which in a way is good. However, the *Nutshell* does not discuss *how* to use Westlaw® and LEXIS® very much, which I see as a major weakness because different approaches are needed. The *Nutshell* also doesn't say anything about when to use CALR and when to use manual sources. So I put together some handouts and talked about that in class. But then again, a lot of students don't bother to read the text anyway (at least here) so I guess it doesn't matter a whole lot!”

Supplemental Materials:

Legal Research: A Practical Guide and Self-Instructional Workbook, by Ruth Ann McKinney

(West Group 2000), may be used alone or in conjunction with the *Nutshell*. Comments on this book appear later in this article.

Winning Research Skills, by Nancy P. Johnson, Robert C. Berring, and Thomas A. Woxland (West Group 1999).

Winning Research Skills is being used by librarians teaching legal research at two different schools. One of these schools teaches first-year students legal research in the second semester only. The other didn't specify the details of its instructional program.

Strengths:

- "It is free from West Group. When necessary, we use supplementary readings and other materials, but we find that the book covers over 80 percent of what we need. So why require students to spend big bucks on a full-fledged textbook for the other 20 percent?"
- "We're using it because it is concise and we only have the spring semester for legal research classes, which is not enough time to do anything in depth or deal with legislative history. We used to use the Kunz book, but it was too much."
- "It covers the research basics, including cases, statutes, administrative law, secondary sources, and citators. There are a number of illustrations, used effectively. There is a fine discussion of the research process."

Weaknesses:

- "It's a bit West-centric, but the authors were given enough freedom so that Shepard's®, Am Jur®, USCS [*United States Code Service*], and other competing products are covered."
- "It is heavily weighted to West products, so we try to be more balanced."

Happily Being Used by At Least One Person

Legal Research: A Practical Guide and Self-Instructional Workbook, by Ruth Ann McKinney (West Group 2000).

Strengths:

- "Everyone here is a big fan of the McKinney workbook and I'm glad they came out with a new edition this year that also included a small electronic legal research supplement."

Weaknesses:

- "Last year, we used McKinney but the problem with McKinney is that it's meant to be used with the *Nutshell* (Cohen). So, we used the *Nutshell* last year as our textbook and we hated it. The workbook does list the *Nutshell* reading assignment pages so that is why we used the *Nutshell*. But we hated it. So this year we used Sloan, but on the first day of class and on the syllabus told the students the corresponding pages in Sloan and told them to read that rather than when it says to read the *Nutshell*. The combination worked well and I think that is what we will use again."

Supplemental Materials:

Teachers' manual and computer-assisted legal research problem set by Phillip K. Woods.

Legal Research—Without Losing Your Mind, by Edward C. Good (LEL Enterprises 1993).

This text is used by a teacher of legal research and writing who has been doing this for five years.

Strengths:

- "Professor Good is able to explain legal research in a context that is more enjoyable for most students than the technical descriptions typically contained in most texts."
- "A single hypothetical is used throughout the text employing comical characters to illustrate various legal research techniques, making it possible for teachers to assign chapters out of sequence."

Weaknesses:

- "Some of the information in this book is out-of-date."
- "There are some factual errors in this book."
- "This book does not cover electronic legal research."

How to Find the Law, by Morris L. Cohen, Robert C. Berring, and Kent C. Olson (West 1995).

How to Find the Law was used by one librarian teaching advanced legal research this past fall. This novice teacher read extensively in another legal research text to give herself something to say in class that her students hadn't already read. Also,

she enjoyed the different approaches that the books took on some subjects, such as CALR.

Weaknesses:

This book is somewhat out-of-date, especially with respect to electronic resources.

Supplemental Materials:

Legal Research Exercises, Instructor's Manual, by Nancy P. Johnson and Susan T. Phillips (6th ed. 1999).

***Legal Research and Citation*, by Larry L. Teply (West Group 1999).**

Legal Research and Citation is used in one integrated LRW program, which supplements Teply's exercises with some locally developed research notes in which students use a variety of sources to answer the question presented by the factual scenario. "As with the Teply exercise book, this reinforces how all of the research tools can be used to solve a problem. With the research notes, students must prepare a written memo of their findings. A full-length open memo is the final project for the fall."

Strengths:

- "The research exercise book gives the students hands-on experience using library and CALR materials and is so comprehensive that each student does a different question for each problem. The book takes the problem approach so that the same fact pattern is used in all the different resources throughout the semester. This approach helps the students see how all the tools work together to solve a legal problem."

Weaknesses:

The only drawback mentioned is that the edition is not updated to cover the *ALWD Citation Manual* as well as *The Bluebook*.

Supplemental Materials:

Legal Citation Exercises and Teacher's Answer Key. Teply's *Citation Exercises* book is used to reinforce citation format. "We use some supplemental problem materials to cover local materials not included in the exercise books, such as [local state] statutes, administrative code, digest, form books, Shepard's, etc."

Searching for Mr. Goodtext

A four-year-old integrated legal writing, research, and alternative dispute resolution program without library involvement has tried a couple of texts in the past. Having a number of new hires in the library has raised the hope that librarians will be able to assist in structuring the legal research portion of the course. This program provided insight for other professors of legal writing who hadn't really focused yet on the legal research portion of an integrated curriculum. One professor said, "Before the current program, it had just been assumed that a research text could be adopted and that portion of the curriculum could be put on autopilot. In the last four years, I've discovered that that is absolutely not true—like every other portion of the curriculum, the research part has to be well planned, integrating a number of resources along with materials specifically tailored to our program. This summer, for the first time, I'll be able to focus on the best way to handle research."

Homegrown Materials

Some respondents prompted us to ask, "Why use a textbook at all?"

- "We thought about that this year but concluded it was too much work for us to gather all of the necessary Web sites. I mean, there are Web sites out there that tell you how to use a digest, what an annotated code is, etc. There are 'textbook' equivalents on the Internet, various legal research Web sources, links, etc. One possibility is to assign a bunch of Web sites as reading on how to do legal research. I don't think that personally will work for Advanced Legal Research yet because I have not seen the depth on the Web yet that you need to teach that course. But certainly there are Web sites that give you as much information about how to Shepardize® and update cases as any of the textbooks. And I think that might work better with this point-and-click generation we are educating. I did make it a point to refer to such Web sites in my class when I could, but it was not a complete substitute for a text."

-
- “I don’t use a text for my Advanced Legal Research class. Most of my readings are available through links on my syllabus. I do, however, at several points suggest portions of *The Process of Legal Research*, 5th edition.”
 - “Some students were just not comfortable without having something to read, so often we would assign readings from the texts they used for legal writing, or else I would order multiple copies of various legal research texts and put them on reserve for students to check out whenever they felt they needed more or if they missed a class. The other reason I liked to have multiple copies of various texts on reserve was that some texts did a better job with certain kinds of research compared to other texts. That way, no one was tied to just one text.”
 - “I wanted to put my two cents in even though I am not teaching this year. I have always made up my own problems whenever I taught advanced legal research. None of the problems in the existing texts was ‘real enough.’ I would make up problems based on real cases that I had read about in *Lawyer’s Weekly*, *National Bar Journal*, or in the state and federal sections of some national paper. I would simply change the fact pattern to reflect whichever state the students intended to practice in. Very often there were no direct answers in their jurisdiction’s cases or statutes, but it would force the students to find materials upon which they could fashion an answer for their clients. Students would come to me and say, ‘I can’t find anything.’ I would say, ‘Yes, but this client is waiting for some kind of advice—what will you tell him or her?’ It was difficult to wean them from ‘finding the golden answer,’ but at the end of the semester they were always grateful for the hard work they had to do.”

Conclusion

So has this survey made your job any easier? Do you now know which legal research text is right for you? Neither do we, but we sure have a lot to think about before designing our next research course!

COMPILED BY DONALD J. DUNN

Donald J. Dunn is Professor of Law at Western New England College. He is a member of the Perspectives Editorial Board in Springfield, Mass. 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.

David Armond, *Access Services: Linking Patrons to Electronic Legal Research*, Legal Reference Services Q., No. 3/4, 2000, at 203.

Suggests that access-services librarians “must integrate technology with library service models to maintain efficient patron access.” Abstract.

Carol M. Bast & Ransford C. Pyle, *Legal Research in the Computer Age: A Paradigm Shift?* 93 Law Libr. J. 285 (2001).

Argues that the “new legal research paradigm will be the computer code used in computer-assisted legal research” rather than the digest system now in common use. *Id.*

Best of Perspectives: Teaching Legal Research and Writing, 2001. [St. Paul, MN: West Group, 156 p.]

A collection of 30 articles considered by the *Perspectives* Editorial Board to represent the “best” from volumes 1–9, 1992–2001, of this publication. Complimentary copies are available upon request from the publisher.

[Editor’s note: Complimentary copies of *Best of Perspectives* can be ordered from Beckie Burmeister, West Group, Product and Client Communications, D5-S354, 610 Opperman Drive, Eagan, MN 55123, phone: 651-687-5702, fax: 651-687-8722.]

Howard S. Beyer, *Model Penal Code Selected Bibliography*, 4 Buffalo Crim. L. Rev. 627 (2000).

Lists American Law Institute publications, books, secondary materials, and symposia relating to the model penal code.

Bibliography of Select Materials on Africa in the Third Millennium: Legal Challenges and Prospects, 10 Transnat’l L. & Contemp. Probs. 659 (2000).

Accompanies a symposium issue on the topic. Contains an unannotated listing of articles, books, U.N. documents, cases, miscellaneous international legal materials, and constitutions.

Kathy Biehl, *The Lawyer’s Guide to Internet Research*, 2000. [Lanham, MD: Scarecrow Press, 350 p.]

Teaches how to transfer traditional library and office techniques to the Internet.

Teresa Brostoff & Ann Sinsheimer, *Legal English: An Introduction to the Legal Language and Culture of the United States*, 2000. [Dobbs Ferry, NY: Oceana Pubs., 412 p.]

Originally prepared for a preparatory course for LL.M. students at the University of Pittsburgh School of Law, the text is designed with the non-native English speaker in mind. Discusses reading and understanding case law and statutes.

Herbert E. Cihak, *Teaching Legal Research: A Proactive Approach*, Legal Reference Services Q., No. 3/4, 2000, at 27.

Argues that an aggressive approach is necessary with regard to the issue of teaching legal research in an academic law library. Examines the methods the author uses in providing this instruction.

Bobbi Cross & Michelle Ayers, *Privacy and Legal Research on the Web*, Legal Intelligencer, June 7, 2000, at 8.

Discusses tools such as a cookie manager or a cloaking program that can protect one’s privacy from unwanted advertisers, etc., while conducting legal research on the Web.

Jean Davis et al., *Perspectives on Teaching Foreign and International Legal Research*, Legal Reference Services Q., No. 3/4, 2000, at 55.

Includes “an overview of teaching

international legal research” using various formats, a discussion of “some of the resources that are helpful for those who want to begin teaching foreign and international legal research,” and a discussion of “teaching techniques and class activities for a semester-long course.” Abstract.

Drake Law Review, *A Bibliography of Online Resources on the Law of the Internet*, 49 Drake L. Rev. 457 (2001).

An alphabetically arranged, annotated listing of references that are useful in locating sources dealing specifically with issues concerning the law of the Internet.

James E. Duggan, *The New Reference Librarian: Using Technology to Deliver Reference Services*, Legal Reference Services Q., No. 3/4, 2000, at 195.

“[E]xamine[s] how advances in technology have changed forever the way reference librarians interact with both patrons and reference sources.” Discusses services to remote users and offers some predictions about the way reference service will be provided in the future.” Abstract.

Robert Eagleson, *Plain Language: Changing the Lawyer's Image and Goals*, 7 Scribes J. Legal Writing 119 (1998–2000).

After examining the views of literary writers about legal writing, the author uses examples from poorly drafted statutes to illustrate how legal writing can be improved by using plain language.

Amy J. Eaton, *Teaching Legal Research in the Law Firm Library*, Legal Reference Services Q., No. 3/4, 2000, at 47.

Written from the perspective of the solo librarian, this article “proposes several ways to initiate or update legal research training for attorneys in a law firm library.” Abstract.

Carol Ebbinghouse, *Medical and Legal Misinformation on the Internet*, Searcher, Oct. 2000, at 18.

Points out the many things that can be wrong, or go wrong, with using legal information gained via the Internet. Lists numerous techniques one can use when evaluating professional advice sites.

Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer*, 2001. [New York, NY: Aspen Law & Business, 315 p.]

Helps legal writers apply the basics of grammar and punctuation to their writing. Includes a chapter on eloquence in legal prose, advice on being concise, a discussion of plain English and legalese, and a section for those for whom English is a second language.

Mark L. Evans, *Tips for Writing Less Like a Lawyer*, 7 Scribes J. Legal Writing 147 (1998–2000).

Lists 37 tips and admonitions that lawyers can use to improve their legal writing style.

Bryan A. Garner, *The Citational Footnote*, 7 Scribes J. Legal Writing 97 (1998–2000).

Argues persuasively that the texts of legal documents should not be cluttered with legal citations or other bibliographical references, but rather these citations should be relegated to footnotes. The result “will be one of the greatest helps in improving the expository prose that lawyers produce.” *Id.* at 106.

Kristin B. Gerdy, *The Internet Alternative*, Legal Reference Services Q., No. 3/4, 2000, at 119.

“[D]iscusses the practical nature of Internet legal research by providing examples of actual research problems solved on the Internet and by providing a selective listing of Internet legal resources for judicial materials, federal legislative and administrative materials, and state materials.” Abstract.

Kristin B. Gerdy, *Making the Connection: Learning Style Theory and the Legal Research Curriculum*, *Legal Reference Services Q.*, No. 3/4, 2000, at 71.

“[D]iscusses the application of three different learning style models to successful teaching in legal research courses.”
Abstract.

James L. Harner, *On Compiling an Annotated Bibliography*, 2d ed., 2000. [New York, NY: Modern Language Association of America, 44 p.]

A brief but useful guide to the techniques to employ in compiling an annotated bibliography. Uses a different citation style from *The Bluebook* and the *ALWD Citation Manual*.

Gary L. Hill et al., *Introduction: Reference Services—Teaching Legal Research and Providing Access to Electronic Resources*, *Legal Reference Services Q.*, No. 3/4, 2000, at 1.

Provides the introduction to a series of articles that focus on how legal research can be taught in a reference service environment. The various articles in this issue of *Legal Reference Services Quarterly* are annotated elsewhere in this listing of sources.

Marci Hoffman, *Developing an Electronic Collection: The University of Minnesota Human Rights Library*, *Legal Reference Services Q.*, No. 3/4, 2000, at 143.

Describes how the Human Rights Library at the University of Minnesota, one of the largest collections of human rights documents on the Web, was built, how it is used in research and teaching, and how it is maintained.

International Institute for Animal Law, *A Bibliography of Animal Law Resources*, 2001. [Chicago, IL: International Institute for Animal Law, 51 p.]

Provides references to animal law contained in books, law journal articles,

book reviews, science journals, magazine and newspaper articles, animal rights publications, government documents, videos, and more.

Donald H. Kelley & Joseph G. Hodges Jr., *Trusts and Estates Resources on the Internet*, *Trusts & Est.*, No. 3, 2001, at 20.

Identifies for the practitioner the key sources that can be used to access trusts and estates materials on the Internet.

Joseph Kimble, *The Great Myth That Plain Language Is Not Precise*, 7 *Scribes J. Legal Writing* 109 (1998–2000).

Illustrates how the use of legalese can lack accuracy and precision and that plain language can make a document both better and easier to read and understand.

Ken Kozlowski, *The Internet Guide for the Legal Researcher*, 3d ed., 2001. [Teaneck, NJ: Infosources Publishing, 360 p.]

A well-organized directory of Internet resources that is intended to guide researchers to the best sites for their research purposes. Kept up-to-date with a companion Web site that is updated every 60–90 days.

Susan Lewis-Somers, *Electronic Research Beyond LEXIS-NEXIS and Westlaw: Lower Cost Alternatives*, *Legal Reference Services Q.*, No. 3/4, 2000, at 95.

Describes how such sources as Loislaw.com, V., Congressional Universe, and CQ.com can provide access to electronic legal and congressional research without having to use either LexisNexis or Westlaw.

Frank Y. Liu et al., *Pennsylvania Legal Research Handbook*, 2001. [Philadelphia, PA: American Lawyer Media, 530 p.]

A comprehensive discussion of the sources, both print and electronic, related to conducting research in Pennsylvania.

Michael J. Lynch, *The Other Amendments: Constitutional Amendments That Failed*, 93 Law Libr. J. 303 (2001).

“[E]xplores the status of proposed but unratified amendments to the United States Constitution ... [and] describes sources available for identifying amendments introduced in Congress—most of which are never proposed for ratification—and includes a bibliography of such sources.” Id.

David McGowan, *Judicial Writing and the Ethics of the Judicial Office*, 14 Geo. J. Legal Ethics 509 (2001).

Poses several possible scenarios relating to judicial opinions, e.g., can a law clerk write them, when should an opinion be published, can an opinion be used to launch an investigation of a leak, can a judge use an opinion in an effort to influence an election? Concludes by suggesting that some rules for opinion writing be added to the *Code of Conduct for United States Judges*.

Ruth Ann McKinney, *Legal Research: A Practical Guide and Self-Instructional Workbook*, 3d ed., 2001. [St. Paul, MN: West Group, 304 p.]

A guided, self-instructional model that allows students to learn in their own style and at their own pace. Integrates the principles of legal reasoning and legal writing with the fundamentals of legal research. Includes a computer-assisted legal research supplement.

Judith Meadows et al., *Teaching Legal Research in a Government Library*, Legal Reference Services Q., No. 3/4, 2000, at 41.

Because government libraries frequently have an extremely diverse clientele, there are special opportunities for “teachable moments” that need to be utilized in providing the best forms of research service to patrons.

Samuel P. Menefee, *“Reaping the Whirlwind”: A Provisional Scopes Trial Bibliography*, 13 Regent U. L. Rev. 571 (2000–01).

This seven-part bibliography covers briefs filed in the Scopes trial; books, monographs, theses and dissertations, and book chapters; law journal publications; materials from the *New York Times*; cartoons; a “toonography”; and citations derived from Willard D. Hunsberger’s work on Clarence Darrow.

Jamie Lee Mignon, *How and Why We Write*, 50 DePaul L. Rev. 1095 (2001).

Published as part of the *DePaul Law Review* 50th Anniversary Issue, this brief essay suggests keeping Strunk and White’s *The Elements of Style* handy at all times and being vigilant to not fall into bad writing habits.

Suzanne Miner, *Success at the Reference Desk: Helping Patrons Overcome Computer Anxiety*, Legal Reference Services Q., No. 3/4, 2000, at 95.

Describes how reference librarians can reduce the anxiety students sometimes associate with online legal research by suggesting helpful information and then checking back with the patron.

Myron Moskovitz, *On Writing a Casebook*, 23 Seattle U. L. Rev. 1019 (2000).

The author discusses his theory for writing a casebook and then discusses the selection and organization of materials and how one goes about getting it published. Provides some truly useful advice.

J. Reid Mowrer, *A Bluebook Survival Guide for Students, Editors, Instructors, and Practitioners*, 2d ed., 2000. [Los Lunas, NM: Maria Delgado Pub., 58 p.]

The goals of this little booklet are to help *Bluebook* users to locate and apply the most appropriate rule or rules to a particular

authority and to highlight some of the hidden nuances in some of the rules.

Lee R. Nemchek, *Records Retention in the Private Legal Environment: Annotated Bibliography and Program Implementation Tools*, 93 Law Libr. J. 7 (2001).

“[P]rovides a reference foundation for librarians seeking to understand records retention in the private legal environment.” Abstract, at 7.

Richard K. Neumann Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style*, 4th ed., 2001. [New York, NY: Aspen Law & Business, 507 p.]

A revision of one of the standards in the field. It emphasizes that students gain a better understanding of legal reasoning and legal writing when the two are taught together. Contains new sample documents and examples and a new section on the *ALWD Citation Manual*.

Cheryl Rae Nyberg, *State Administrative Law Bibliography: Print and Electronic Sources*, 2000. [Twin Falls, ID: Carol Boast and Cheryl Rae Nyberg, 597 p.]

“This work surveys one of the last frontiers in traditional legal bibliography: the published adjudications, cases, decisions, findings, interpretations, opinions, orders, and rulings of state administrative agencies. Its purpose is to facilitate the identification and retrieval of these elusive materials.” Introduction at xi. Represents a major contribution to the field of legal research.

Joyce A. McCray Pearson, *Affirmative Action and Diversity: A Selected and Annotated Bibliography*, Legal Reference Services Q., No. 4, 2001, at 67.

Includes symposia, law review and journal articles, Web sites, and videotapes related to the multiplicity of issues related to affirmative action and diversity.

William A. Rabbe et al., *West's Federal Tax Research*, 5th ed., 2000. [Cincinnati, OH: South-Western College Publishing, 579 p.]

Designed for those who want to become proficient in the practice of federal tax research. Provides extensive discussion of the various tax sources and the methodology associated with their use.

Teresa J. Reid Rambo & Leanne J. Pflaum, *Legal Writing by Design: A Guide to Great Briefs and Memos*, 2001. [Durham, NC: Carolina Academic Press, 676 p.]

Chapters include The Design of Legal Reasoning; The Basics: Designing Clear and Effective Writing; Designing the Legal Memo; Designing the Brief; and Beginning, Middle, and Ending. Includes samples.

Warren D. Rees, *The Bluebook in the New Millennium—Same Old Story?* 93 Law Libr. J. 335 (2001).

A review of “the major changes of the seventeenth edition [of *The Bluebook*] ... concentrating on its major innovation, a new rule regarding citation of electronic materials.” *Id.*

Bonita K. Roberts & Linda L. Schlueter, *Legal Research Guide: Patterns and Practice*, 4th ed., 2000. [New York, NY: Lexis Publishing, 129 p.]

Intended to provide legal researchers with a simple step-by-step guide to the process for conducting hard-copy research.

Dennis S. Sears, *The Teaching of First-Year Legal Research Revisited: A Review and Synthesis of Methodologies*, Legal Reference Services Q., No. 3/4, 2000, at 5.

Describes how reference and legal research instruction has evolved at Brigham Young University's Law Library “through a hybrid of the bibliographic approach and the new emphasis on practical advocacy” and how this has led to better prepared law student researchers. *Id.*

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Janet Sinder, *Irish Legal History: An Overview and Guide to the Sources*, 93 Law Libr. J. 231 (2001).

“This bibliographic essay covers sources for researching Irish legal history from the earliest days of the brehon legal system to the present. In addition to suggesting sources for research, the article provides brief explanations of the Irish legal system and its major developments.” *Id.*

Symposium: The Politics of Legal Writing, 7 Scribes J. Legal Writing 29 (1998–2000).

Contains nine articles devoted to various aspects of the politics that often underlie legal writing (or what causes people to write the way they do). Especially valuable is Jan M. Levine’s “Legal Research and Writing: What Schools Are Doing, and Who Is Doing the Teaching,” at 51.

M. Kristine Taylor Warren, *Grandparent Visitation Rights: A Legal Research Guide*, 2000. [Buffalo, NY: William S. Hein, 34 leaves]

A pathfinder that covers current case law and the current standing of state statutes relating to the visitation rights of grandparents (updated through October 2000).

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LEGAL RESEARCH

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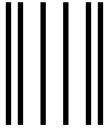


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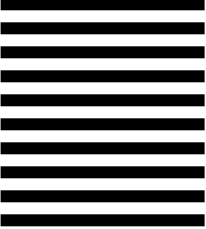


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