



Legal Writing  
institute

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## Legal Writing: A Foundation for Learning in Law School

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## Dear LWI Colleagues,

In keeping with the theme of this issue, this column will highlight some of the ways that legal writing professors are engaging more broadly with legal education and the legal profession and helping their students do the same.

### Teaching International Students

The Global Legal Writing Skills Committee is creating a linked video library and webinar series on teaching international students and building cultural competencies. After potential webinar participants review several videocasts featuring experts from our field, the committee will host a live, follow-up Q & A webinar to encourage discussion between the presenters and those interested in learning more. The committee hopes to have the first videocasts available in early 2015 with the related Q & A webinar to follow a few weeks later and then to repeat that pattern twice during the spring. Contact the committee co-chairs, Sammy Mansour ([mansou25@law.msu.edu](mailto:mansou25@law.msu.edu)) or Cara Cunningham Warren ([cunnincl@udmercy.edu](mailto:cunnincl@udmercy.edu)) for more details.

### Applied Legal Storytelling

LWI will co-sponsor the 2015 Applied Legal Storytelling Conference July 21-23 in Seattle. This year's co-sponsors are the Clinical Legal Education Association and Seattle University School of Law. The storytelling conference always draws a lively cast of characters and spotlights diverting plot twists. More information as well as an impressive (and still growing) bibliography on Applied Legal Storytelling can be found at [http://lwionline.org/applied\\_storytelling\\_conferences.html](http://lwionline.org/applied_storytelling_conferences.html).

### Moot Court Conference and Handbook

After a very successful first conference at Marquette in October 2014, the LWI Moot Court Committee has already lined up tentative conference hosts for the next two conferences. In addition, the committee-produced Moot Court Advisors' Handbook is due out from Carolina Academic Press in December 2014. See <http://www.cap-press.com/books/isbn/9781611634730/The-Moot-Court-Advisors-Handbook> for more on the handbook.

### Monograph Series: Advanced Legal Writing

The Editorial Board is putting together Volume 4 of the LWI Monograph Series: Advanced Legal Writing. Volume 4 will bring together articles about teaching advanced legal writing courses with articles providing more in-depth analysis of the topics that might be covered in an advanced course. Both full volumes and individual articles from the Monograph Series are available for download from the LWI website, [http://www.lwionline.org/monograph\\_series\\_contents.html](http://www.lwionline.org/monograph_series_contents.html).



Linda Berger  
*President, Legal Writing Institute*  
*UNLV William S. Boyd School of Law*

### Teaching Resources: Idea Bank 2015+

Once again, Idea Bank 2015+ offers a range of teaching resources for legal writing professors. This resource highlights the multiple ways that professors of legal writing are involved in strengthening teaching and learning across the law school curriculum. Thanks to Rutgers for continuing to host the Idea Bank. Contact Sabrina DeFabritiis, [defabritiis@suffolk.edu](mailto:defabritiis@suffolk.edu), for more information, especially if you are a new legal writing professor looking for first-time access.

### LWI Lives

To catch a glimpse of some legal writing professors you may not know and find out more about their distinctive talents, gifts, interests, and interactions with their communities, take a look at LWI Lives, the regular electronic publication of the Faces of LWI Committee. This committee's charge is to explore and communicate the emerging identity of LWI and its members, and the results so far have been inspiring, amusing, and illuminating.

From the 2014-16 LWI Board of Directors, special thanks to the new Editorial Board of The Second Draft for taking on the editing and production of this valuable resource for our members. If you have questions or comments about LWI programs and projects, please feel free to contact me or any member of the Board.

Best wishes,

Linda Berger

# Not the Golden Gate: Legal Writing Bridges the “Divide” Between Doctrine and Skill



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In this environment of reform in legal education, legal writing courses are already in good shape. Aside from the general observation that legal writing professors are accustomed to staying innovative and anticipating changing technological and economic realities of law practice, our courses are intrinsically less constrained, perhaps, than others, to adapt to either impending pre-bar admissions requirements or market expectations. Why? Because legal writing classes already bridge that so-called divide between doctrine and skill. So-called, because the divide is in many respects artificial, by focusing on a traditional, increasingly obsolete model in which experiential educational learning is not included in the classroom. And how do legal writing courses bridge it? By merging the substantive and practical into an indistinguishable whole—unlike the Golden Gate Bridge, which spans across two otherwise separate bodies of land—in interactive, multi-faceted classrooms.

## THE ARTIFICIAL DIVIDE<sup>1</sup>

A distinction between doctrine and skill, or theory and practice, has characterized most of legal education in the United States. Traditionally, law schools have followed the Langdellian model of legal education, known also as the casebook method, taught via Socratic method as famously depicted in *The Paper Chase*.<sup>2</sup> Before Langdell’s innovation, legal training was mostly technical, in which students simply memorized black letter law in preparation for careers.<sup>3</sup> Now, with the pendulum swinging away from Langdell’s methodology, and support growing for modifying law school curricula to create practice-ready students—stemming in large part from a weakened legal economy demanding practice-ready graduates, and a growing discontent with the disconnect between the academy and the profession<sup>4</sup>—the image of what is a typical law school education may look more like the legal writing classroom.

With practical skills pre-admission requirements upon us,<sup>5</sup> law schools will be graduating not only more students with experience in clinics, externships, and other experiential opportunities, but also students who have taken courses that integrate the “doctrinal” with the “practical.” However, the concept of “integration” assumes a distinction between the two, and so in some ways is a misnomer. An underlying goal of Langdellian legal education has been to teach abstract conceptualization and critical reasoning as the core to learning doctrinal material.<sup>6</sup> Treating the practical skills aspects of lawyering as a merely technical component that will subsume, detract from, or

replace students' opportunities to practice and attain fundamental intellectual skills would be a mistake. The doctrinal material should provide a vehicle for teaching practical skills; the practical skills, likewise, should provide a vehicle for teaching doctrine. One cannot exist without the other. In an ideal legal education, the two will be inextricably intertwined, as complementary, virtually indistinguishable aspects of a law student's experience.

Many professors of doctrinal subjects in fact don't view experiential learning and practical skills as distinct and separate from the doctrinal material, but as another dimension of learning the doctrine, enhancing both retention and relevance.<sup>7</sup> At Western State College of Law, for example, some classrooms have been using substantive material not only as material for pedagogy via Socratic method but also as a platform to teach litigation skills, client interviewing and counseling, or transactional document drafting, to name a few. So while the pendulum is swinging back the other way, certainly legal education should not return to the pre-Langdellian era in which law school was primarily an apprenticeship, either. Rather, enlightened legal education should find a balance. In legal writing classes, happily, we need not scramble in this age of reform to find a way to integrate both ends of the spectrum, as our courses have always had this balance between intellectual analysis and practical execution. The long-held dichotomy between "doctrinal" and "practical" may yet diminish, with legal writing classes leading the way.

## HOW LEGAL WRITING COURSES BRIDGE THE "DIVIDE"

### Connecting the Dots between Doctrine and Skill

While legal writing has always been considered a "skills" course, legal writing professors are keenly aware that the abstract conceptualization, critical reasoning, and knowledge of substantive material that form the basis of traditional doctrinal courses is an essential component of our courses as well. Legal writing courses teach the abstract analysis required to comprehend and analyze the law, whether we are utilizing first-year material such as torts or criminal law, typically upper-class subjects such as constitutional law or employment discrimination, or any other substantive topic for writing and research

assignments and oral arguments. Communicating about a topic, particularly in written form, is the ultimate test of substantive understanding. Without an appropriate understanding of the doctrine, even a very good writer will not be able to craft an effective piece of legal writing. At the same time, without the appropriate structural framework for a writing project, even a good understanding of substantive material cannot be communicated effectively. We teach our students that details, too, such as syntax and proper citation, are part of the package of effective communication and credibility. In these ways, our goal always has been to enable students to make connections between the substantive and practical dots.

As experiential lessons become integrated in doctrinal courses,<sup>8</sup> the critical skills 1Ls learn in legal writing courses will resonate and carry over to their other courses and, eventually, to the practice of law. Students will come to expect to learn how to apply their new-found knowledge in a skills capacity in classes besides legal writing. In this way, legal writing courses are key to creating a mindset among students that they are more than just academic scholars of legal doctrine, reading casebooks. Students will come to expect that the foundational analytical and written and verbal communication skills they learn in legal writing will be immediately transferred to their other courses not just to write effective law school exams, but in other practical applications that will be asked of them within those classrooms and ultimately in real life.

### Interactive, Multi-Faceted Classrooms

The interactive classroom that utilizes a variety of teaching methods and gives students the opportunity to apply their skills is already de rigeur in legal writing classes. We are accustomed to tasking our students with small group work, pairing off to parse a statute, or editing one another's work round-robin style. Students come to our classrooms knowing that they are likely to be switching seats and engaging in an activity at some point during the class period.<sup>9</sup> In this way our classroom pedagogy sets the stage for students to be receptive to similar approaches in their larger, doctrinal classes, where traditionally students have generally expected lectures via Socratic method.

Likewise, unlike traditional classrooms in which the student's grade is based on one or two high-stakes exams, most legal writing classes require many, and

many kinds of, assignments. As part of the requirement for these assignments, legal writing courses typically provide clear, established, detailed “local rules.” Often, for the 1L student, taking the time to take in each detail of the instructions and adhering faithfully and carefully to classroom “local rules” for each and every assignment can itself be a process. As doctrinal courses begin to incorporate more written, experiential tasks beyond the mid-term and exam,<sup>10</sup> students will be better equipped to approach those assignments with meticulousness and care, because of their experience in their legal writing course.

The multiple tasks legal writing students are expected to complete in a semester also provide the opportunity for assessments, and one form of assessment is student feedback. Students are given ample opportunities in legal writing courses to think about what they don’t understand well or need help with and, in fact, typically are required to schedule one or two conferences with their professor during the semester.<sup>11</sup> Legal writing courses thus provide an ideal starting point for many students to learn to self-critique, to engage in a conversation with their professor, and to take an active role in their own learning. The smaller class sizes and interactive model of the legal writing classroom facilitates this type of initiative and may more encourage students to carry the same initiative into their learning of material in doctrinal courses as well and, eventually, outside of the classroom.

## CONCLUSION: NOT THE GOLDEN GATE

As law schools evolve and develop ways to incorporate skills training into doctrinal material, the role of the legal writing class in the students’ 1L year will be critical. The casebook versus legal writing dichotomy will erode as the symbiotic nature of the two becomes more and more evident. Legal writing, because it already incorporates both doctrine and skills, or the analytical and practical, will be even more of a cornerstone of the law student’s education, as students carry the lessons learned in our classrooms into the rest of the curriculum and beyond. Unlike the Golden Gate Bridge, a rigid structure spanning between two bodies of land forever separated by ocean, legal writing courses help bridge the artificial divide between doctrine and skill by showing how disciplines traditionally viewed as distinct really can be just one.

And legal writing courses do this simply by continuing to do what we already do. For that reason, legal writing is indeed “the most important first year course.”

### NOTES

1. Substantial portions of this passage also appeared in my article, *Legal Education: Integrating Practical Skills Into the Curriculum*, *Orange County Lawyer Magazine*, Vol. 56, No. 6, June 2014, at 16. The views expressed herein represent my own and do not necessarily represent the views of Orange County Lawyer magazine, the Orange County Bar Association, the Orange County Bar Association Charitable Fund, or their staff, contributors, or advertisers.
2. *The Paper Chase* (1973). Twentieth Century Fox Film Corporation, Los Angeles. Based on the novel by John Jay Osborn, Jr. See also Mark Edwin Burge, *Without Precedent: Legal Analysis in the Age of Non-Judicial Dispute Resolution*, 15 *Cardozo J. Conflict Resol.* 143, 145 (2013).
3. “Before Langdell, the dominant method of studying law had been the lecture and textbook method.” Gary D. Finley, *Langdell and the Leviathan: Improving the First-year Law School Curriculum by Incorporating Moby-Dick*, 97 *Cornell Law Rev.* 159, 162 (2011), referencing Jacob Henry Landman, *The Case Method of Studying Law: A Critique* 18 (1930). See also Filippa Marullo Anzalone, *Handbook of Reflection and Reflective Inquiry: Mapping a Way of Knowing for Professional Reflective Inquiry* 87-88 (N. Lyons, ed. 2010).
4. A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 *Wash. & Lee L. Rev.* 1949, 1951-53 (2012).
5. See e.g., ABA Section of Legal Education and Admissions to the Bar, *Revised Standards for Approval of Law Schools*, Standard 303(a) (3) (August 2014), requiring six credit hours in one or more experiential courses; State Bar of California Task Force on Admissions Regulation Reform: Phase I Final Report (June 24, 2013), requiring 15 units of practice-based, experiential course work designed to develop law practice competencies.
6. See G. Edward White, *The Impact of Legal Science on Tort Law, 1880-1910*, 78 *Colum. L. Rev.* 213, 225-26 (1978).
7. E.g., Michele Mekel, *Putting Theory into Practice: Thoughts from the Trenches on Developing A Doctrinally Integrated Semester-in-Practice Program in Health Law and Policy*, 9 *Ind. Health L. Rev.* 503, 508 (2012) (“the emphasis on expanding and truly integrating practicum programs with doctrinal academics . . . is rising to the fore”); Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 *J. Legal Educ.* 51, 57 (2001).
8. E.g., Anne M. Tucker, *Teaching LLCs by Design*, 71 *Wash. & Lee L. Rev.* 525 (2014); Jerome Borison et al., *Contemporary Trusts and Estates - An Experiential Approach*, 58 *St. Louis U. L.J.* 727 (2014).
9. See Johanna K.P. Dennis, *The Renaissance Road: Redesigning the Legal Writing Instructional Model*, 38 *S.U. L. Rev.* 111, 131-132 (2010) (“[B]y comparison to their doctrinal colleagues who routinely lecture through the Socratic method, legal writing professors spend less time lecturing (32% of class time) and more time engaging with students in hands-on skill development exercises, such as individual in-class exercises (10%), demonstrations (11%), group in-class exercises (17%), in-class writing (8%), and question and answer discussion sessions (23%).”).
10. E.g., Borison et al., *supra* note 8, at 733-36.
11. See Aida M. Ataka, *Phenomenology of Error in Legal Writing*, 28 *Quinnipiac L. Rev.* 1, 50 n.255 (2009) (“The average legal writing instructor . . . spends almost 50 hours each semester working with students in the individual conferences.”).

# The First Year Legal Writing Course: Praxis is Pivotal



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First, a praxis exercise. Give it a try.

Imagine you are preparing for your first-year legal writing course. You carefully review last year's teaching notes, reflect on what was successful and what wasn't, and consider what you want students to learn this year.

Now, get a pen and paper, and, for thirty-seconds, brainstorm a partial list of the learning goals for your class for this year. Be specific.

Write down whatever comes into your head.

Know that you won't complete the list in thirty seconds—you'll just have a sample. Go.

Finished? Your list probably has at least ten goals including items like "produce accurate citations to authority in an objective memo" and "synthesize legal rules from multiple authorities." And, I bet if you had more time, your list of goals would be much longer than it is now.<sup>1</sup>

Now, put a check mark next to any learning goal in your list that anticipates students will learn a skill or demonstrate their learning by engaging in the activities of law practice. For example, will your students learn "rule synthesis" by building the rule for a simulated client's legal problem like lawyers do in practice? Will students answer questions in a simulated appellate argument to demonstrate that they have learned competence in the techniques of oral argument?

Finally, put an X next to any learning goal that either implicitly or explicitly requires students to judge what is "right" or "good" or "best," meaning the students will need to make choices between various strategies or outcomes based on judgments about effectiveness and ethics. For example, students might need to decide which authorities will be most effective in furthering a client's arguments. They might need to identify the differences between an ethically persuasive description of a fact in a brief and an unethical misstatement of that same fact. In other words, indicate which learning goals involve practice-oriented activities that will require students to make choices about what is most effective and ethical in a given situation?

Ok. You're done. Take a look at your list. I predict that nearly every, if not every, goal has both a checkmark and an X. Am I right? What accounts for that consistent connection between learning goals in legal writing, using judgment, and taking "real world" action?

The checkmarks and Xs on your list likely reveal what you already intuitively know: the first-year legal writing course requires students to engage in **praxis—the process of enacting knowledge, skills, and values in practical situations after making judgments about the most appropriate ends and means**. In fact, your list probably reveals that most of your learning outcomes require students to make thoughtful choices about the best application of legal knowledge, skills, and values<sup>2</sup> and then to take action to implement those choices, which are the same choices lawyers confront in practice. (And, by the way, not only was the exercise at the beginning of this article a demonstration of how learning legal writing demands praxis, but it also allowed you, as legal writing faculty, to experience praxis for yourself. By using your knowledge about legal writing learning goals to judge what would be most appropriate (that is, what is "right" or "good" or "best") for your legal writing course and then to document those goals as you would in planning a course, you were engaging in praxis. Voila! Engaging praxis about praxis!)

To understand praxis better, consider how Aristotle contrasted practical knowledge, or praxis, with two other forms of knowledge: theoretical and productive.<sup>3</sup> Theoretical knowledge contemplates generalities, rules, and "truths," like whether natural law exists; it does not involve much action in the real world.<sup>4</sup> Productive knowledge (also known as demonstrative knowledge) provides for action in the real world, but focuses on the process of "making" something; this form of knowledge enables the construction of something from a plan.<sup>5</sup> For example, the generally applicable rules about sequencing the sections of an appellate brief are a form of productive knowledge because they enable a writer to put the sections of a brief—any brief—in the right order.

Of the three forms of knowledge, however, only practical knowledge treats deliberation, which is the careful and conscientious decision-making process, as a legitimate action that produces knowledge and starts that deliberation with the particulars of the situation rather than with generalities.<sup>6</sup> Moreover, praxis has an overt ethical component that the other two forms of knowledge lack; praxis requires making judgments about the "right" or "best" outcome for the situation and then choosing the means that are both "right" or "best" in and of themselves and are also adapted to desirable outcomes.<sup>7</sup> Finally, through the action and reflection required for making judgments in specific situations, praxis generates new knowledge and can have a transformative effect on both the individual and the objects of his or her action.<sup>8</sup>

**Praxis is what makes the first-year legal writing course pivotal—and transformative—for students.**

In the legal writing classroom, students often have their first opportunities to enact—and even embody—their knowledge, skills, and values in practical situations. Students take what they have learned about the law, legal communication, lawyering ethics, and social values, and apply that substance to particular situations that lawyers confront in practice. By considering new legally problematic situations, students create knowledge about the law and legal practice that not only transforms their understanding of law and lawyering but also can transform their identities as lawyers.

Praxis is happening in the legal research and writing course when students consider what legal outcomes are appropriate in a situation, which authorities best apply, what arguments are most suitable (and ethical), and what communication strategies will best serve the most desirable outcomes. A point of praxis unfolds when students write memoranda, client letters, and briefs that tackle specific legal problems. Students who are asked to perform as lawyers in office conferences and oral arguments, where deliberation is central to decision-making, use their practical knowledge to solve problems. When students

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.....

use their logical, ethical, and creative capacities to communicate solutions to legal problems, they are squarely within the realm of praxis—taking practical action through exercising judgment about the possibilities of the situation. Through well-designed legal communication<sup>9</sup> assignments that focus on praxis, students begin the process of *becoming* lawyers—lawyers who make judgments about appropriate action in situations of uncertainty. Arguably, no other typical first-year course requires as much practical, situational, ethically challenging, action-oriented student performances. And these praxis-oriented performances are what make the first-year legal writing course unique in, and pivotal to, the first-year experience.

Does praxis occur elsewhere in the first-year curriculum? Absolutely. Whenever students are asked to begin with a specific “real world” situation, judge what action and outcomes are best for the particular situation, and take action consistent with that judgment, students are engaged in praxis. What makes the legal writing course pivotal in the first year of law school is its emphasis on assignments that engage praxis and thus help to transform students into legal professionals.

#### NOTES

1. For a discussion of how to construct legal writing learning outcomes, see Victoria L. VanZandt, *Creating Assessment Plans for Introductory Legal Research and Writing Courses*, 16 *Legal Writing: J. Legal Writing Inst.* 313 (2010).
2. See Anne Colby, William Sullivan, & Judith Welch Wegner, *Educating Lawyers: Preparation for the Profession of Law* (2007) (dividing legal education into instruction into knowledge, skills and values).
3. Aristotle, *Nicomachean Ethics VI* (Trans. W.D. Ross).
4. For a concise, accessible discussion of practical knowledge as contrasted with other forms of knowledge, see Mark K. Smith, *What Is Praxis?* *Encyclopaedia of Informal Education*, available at <http://www.infed.org/biblio/b-praxis.htm> (last visited August 4, 2014).
5. *Id.*
6. *Id.*
7. *Id.* Aristotle discussed this concept but spoke in terms of the individual’s assessment of “the good life in general.” Aristotle, *supra* note 3. The “good life” arguably involves making ethical choices about both the means and ends of action. For example, one might argue that a “good life” in the law is not served simply by accomplishing justice in a case but by accomplishing that end with means that are themselves just.
8. Paolo Freire, *Pedagogy of the Oppressed* 79 (1970) (noting that praxis is “the action and reflection of men and women upon their world in order to transform it”).
9. Some communication scholars that praxis is inextricably tied to communication. See, e.g., Ramsey E. Ramsey & David J. Miller, *From the Loving Struggle to the Struggle to Love: A Conversation with Calvin O. Schrag in Experiences Between Philosophy and Communication: Engaging the Philosophical Contributions of Calvin O. Schrag* 22 (Ramsey E. Ramsey & David J. Miller, eds.) (2003). For those of us who teach legal communication courses such as legal writing, this connection between praxis and communication should persuade us to be bold in our claims of the centrality of legal communication—and the praxis it provides-- to the law school curriculum. In fact, the American Bar Association accreditation standards for law schools recognize the importance of both praxis and communication to legal education. The standards state that a law school’s learning outcomes must include, among others, competency in legal communication, legal analysis, and ethical behavior. ABA Standard 302. The new standards call for courses that “engage students in performance of . . . professional skills.” ABA Standard 303.

# Legal Writing: A Catalyst for Student Transformation



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Legal writing is the most important first-year course not because it leads students to develop essential skills of legal analysis and communication, although it does this quite well. It is the most important first year course because it fosters and demands a transformation in each student's identity, from a layperson to a fledgling professional with first-hand understanding of the creative possibilities inherent in lawyering and in the law. The transformation is thrillingly apparent at the end of the spring semester, when students—who in September didn't even know where to start asking questions—emerge from their moot court arguments feeling and acting like lawyers, justifiably brimming with a sense of their own emerging powers. Legal writing classes lead to these remarkable effects in three ways: by enculturating students into the legal discourse community, by requiring students to think creatively in the face of unfavorable facts and law, and by inviting students to engage in interstitial lawmaking.

First, legal writing catalyzes a transformation in student identity by enculturating students into the legal discourse community. This enculturation occurs through the use of legal writing problems that require students to grapple with practical yet foundational questions about the legal system. Legal writing immerses students in the language of law, requiring them to “speak” it themselves in the form of one analytic document after another - most commonly, objective memoranda in the fall, and persuasive documents in the spring. Before students can speak effectively, they must ponder a host of foundational questions: what makes a “legal” problem, as opposed to some other kind of problem? How does a legal question get framed? Which facts “count” in legal analysis? What are the potential sources of legal authority, and the forms of authority, and the relationships among authorities? How do you read legal authorities? What if the authorities don't clearly answer the question that's been asked? What kinds of arguments does the legal system recognize, and which are most convincing? When you are communicating a legal analysis, what is assumed or commonly understood, and what needs to be stated? And for any of these questions—why?

Students grapple with such questions through the iterative process of analyzing statutes and case law, synthesizing rules, writing and revising memos and other communications, and reflecting on their own experiences as legal writers. As they engage in this process over the course of a year, they do more than acquire a new body of theoretical knowledge. Rather, they internalize a functional understanding of shared knowledge, assumptions, norms and conventions of the legal system. As this functional understanding matures, so does a student's authority as a writer.

Legal writing also enculturates students into the legal system by requiring them to critique themselves from the perspective of other players within that system. Students are constantly asked to evaluate the effectiveness of their own (and sometimes their colleagues') written work from the perspective of the intended audience: clients, supervisors, co-counsel, opponents, judges. When a student evaluates any aspect of a document—clarity, completeness, logic, flow, use of the legal standard, and so on—she must ask whether the document is likely to achieve the desired effect on the intended audience. This question requires a student to think deeply about an audience—in particular, its constraints and concerns—and to

situation are the reason students will have jobs when they graduate from law school, and the reason those jobs will be endlessly challenging!

As students work on persuasive writing, they begin to understand that any story can be truthfully told from various perspectives. They learn to frame difficult facts and cases and rules from a client's perspective, rather than ignoring the hardest parts of a case and hoping they'll just go away. They develop a lived understanding that lawyering is creative, and that, like cinematography, a lawyer's work involves framing the given material in the way that tells the most compelling story.



*[A]t its best, legal writing catalyzes student transformation by demanding that students understand the dynamic, constructed, and evolutionary nature of law, and inviting them to participate in the process of law's evolution.*

Finally, at its best, legal writing catalyzes student transformation by demanding that students understand the dynamic, constructed, and evolutionary nature of law, and inviting them to participate in the process of law's evolution. A good

reflect on ways a communication can be made more effective in light of those constraints and concerns. The process of self-evaluation—and the empathy for the legal-writing audience that it requires—facilitates a student's movement from "outsider" to "insider," a movement that is essential to effective legal authorship and effective lawyering.

legal writing problem—which poses a question with no clear answer—requires students to collect authority, read it deeply, and then synthesize new rules to fit a new situation. As students participate in this process of interstitial lawmaking, they are forced to abandon naïve assumptions about the law as a fixed body of rules, waiting to be discovered and mechanically applied. In place of such certainty, they discover law's endless potential for development, and their own potential to shape that development. When students exercise this potential—by using their newly developed skills of analysis and communication to make creative legal arguments—they find themselves at the heart of lawyering.

Second, in addition to demanding that students internalize basic principles and practices of the legal community and critique themselves within that community, legal writing—particularly persuasive writing—fosters student transformation by requiring students to understand the creative role of an attorney in the adversarial system, and to inhabit that role. This happens most notably when students are asked to write a persuasive document, and attempt for the first time to deal with "bad" facts or "bad" law. I'm always fascinated to see that when confronted with unfavorable facts or law, a new law student's initial instinct is often to ignore or evade these difficult aspects of a client's situation. I think this reaction reflects students' misunderstanding about the powers and obligations of an attorney. The defining moment comes when a student realizes that if these "difficult" aspects of a case didn't exist, the client likely wouldn't need a lawyer; indeed, the hard parts of a client's

True authorship simultaneously demands and develops a writer's sense of authority, and thus the process of writing is transformative. No wonder, then, that as students work on legal writing, legal writing works on them, in all of the ways described above. As a result, while a successful legal writing course certainly does achieve the important goal of teaching students to think and communicate in the language of law, its more profound effect is to catalyze the development of professional identity. And that is why legal writing is the most important first-year course!

# From Students To Colleagues: The Legal Writing Classroom Can Create Conscientious & Empathetic Practitioners



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As we teach legal writing to new law students, we want them to learn to be good writers, good researchers, and good counselors and advocates. But I also want each of my students to learn about being a good colleague—to develop a professional identity that depends on being conscientious, empathetic, and collegial. The legal writing course has a special role in exposing students to the significance of these qualities, which makes it the most important course in the first year of law school.<sup>1</sup>

## What makes a good colleague?

Think about your favorite colleagues. Were they committed to always doing their best? Were they understanding of the needs of their colleagues and clients? Were they able to work well with others?

You likely answered yes to those questions because being conscientious, empathetic, and collegial are the qualities that make someone not only an effective lawyer, but a valued colleague. By teaching our students to be good colleagues, we prepare them to

be successful in practice on a personal and professional level.

The first-year legal writing course provides the best opportunity for law students to develop an identity as a good colleague. Lawyers are strangely absent from much of the classic first-year curriculum.<sup>2</sup> The cases in the textbooks are edited to remove the names of the lawyers. And the most common Socratic classroom give-and-take is not focused on the practical lawyering of each case, but on the parties, through a discussion of the facts, or the judges, through a discussion of the courts' rules and reasoning.

But students stand in lawyers' shoes in the legal writing course, which directly asks each student what kind of lawyer she wants to be. We invite students to act like lawyers. We assign them clients. We ask them to solve those clients' problems. And along the way, we teach them to treat their classmates as colleagues.

Most legal writing courses, unlike other courses in the first year, are taught by individuals with considerable practice experience.<sup>3</sup> So legal writing professors serve as role models who demonstrate the qualities a lawyer and colleague should embody. Among these qualities, three are fundamental to a student developing a positive professional identity as a good colleague, and the first-year legal writing course is especially equipped to impart all three.

## A good colleague is conscientious.

First, the legal writing course teaches first-year students that a colleague should be conscientious in both senses of the word—in tune with her personal conscience and dedicated to doing her best work. Because every writing assignment requires students to make choices (often hard ones that balance the obligation of candor with the desire for a favorable outcome) the legal writing course presents a special chance for students to practice making conscientious decisions.<sup>4</sup> When a legal writing student prepares a document, she is expected to do so ethically and in compliance with the rules of the course and instructions for the assignment.

In addition, the legal writing course teaches students that lawyers must be painstakingly thorough and meticulous.<sup>5</sup> In the legal writing course, students are confronted, possibly for the first time, with an exacting, law-trained reader. Often, students are asked to prepare their analyses for a fictional colleague (typically a senior attorney or supervisor). The legal writing course thereby gives students one-to-one instruction about the type of diligence and attention to detail that is required of a lawyer and expected of a colleague. And it is the place where students can develop a sense of pride in their evolving ability to meet that high standard.<sup>6</sup>

## A good colleague is empathetic.

Second, the legal writing course allows students to develop empathy. We teach empathy every time we ask our students to address a client’s legal problem or imagine the perspective of the reader.<sup>7</sup>

By giving our students opportunities to practice empathy, whether it is considering the view of a colleague, client, judge, or opposing counsel, we make them better colleagues. Good colleagues are those who understand the needs, motivations, and mindsets of their coworkers; this is particularly true for lawyers who work in hierarchical organizations (like law firms) and are expected to anticipate the needs of senior

attorneys. A legal writing student who is repeatedly asked to confront the needs, feelings, and perspectives of another person, learns to open up an empathetic channel that can powerfully influence her professional identity.<sup>8</sup> Through these legal writing lessons in empathy, our students learn how to be good colleagues who understand the workplace and their coworkers.

## A good colleague is collegial.

Last, the legal writing course teaches students to view the law as a collegial and collaborative profession.

Many students come to law school with a “lone wolf” attitude, which is encouraged by the intense competition for grades and general one-upmanship of the first year.<sup>9</sup>

In the legal writing course, however, students are frequently expected to work collaboratively—unlike the large lecture courses that make up most of the first year. Students may be asked to do peer review exercises, write documents with a partner, or brainstorm as a group. These opportunities teach students the advantages of teamwork and collegiality. In practice, these lessons will inform all of the collaborative work that is part of practice, whether it is putting together a big filing with the help of paralegals, participating in a conference call with numerous co-counsel, or preparing a brief with a

team of in-house attorneys. The legal writing course treats collegiality and collaboration as lawyering skills that students have to develop to be effective attorneys and good colleagues.

## Soon, our students will be our colleagues.

We can all agree that the first-year legal writing course is valuable for so many reasons. But I think legal writing is the most important course because—more than anything in the first year—it can teach law students how to be good colleagues. And someday soon, one of your students may be sitting in the office next door.

.....  
*[L]legal writing professors serve as role models who demonstrate the qualities a lawyer and colleague should embody. Among these qualities, three are fundamental to a student developing a positive professional identity as a good colleague ....*  
.....

## NOTES

1. See Beth D. Cohen, *Helping Students Develop A More Humanistic Philosophy of Lawyering*, 12 *Legal Writing: J. Legal Writing Inst.* 141, 145 (2006) (“Given the unparalleled access of the legal research and writing faculty to first-year law students, this faculty has the best opportunity to promote professionalism and the development of a humanistic philosophy of lawyering.”).
2. See Allison Donahue Kehner & Mary Ann Robinson, *Mission: Impossible, Mission: Accomplished or Mission: Underway? A Survey and Analysis of Current Trends in Professionalism Education in American Law Schools*, 38 *U. Dayton L. Rev.* 57, 66 (2012) (“the Carnegie Report and Best Practices [in Legal Education Report by the Clinical Legal Education Association] both called for law schools to include more opportunities for students to reflect on the values, behaviors, attitudes, expectations, and ethical requirements of a lawyer.”).
3. See Mitchell Nathanson, *Taking the Road Less Traveled: Why Practical Scholarship Makes Sense for the Legal Writing Professor*, 11 *Legal Writing: J. Legal Writing Inst.* 329, 339 (2005) (“it appears as if legal writing professors bring significantly more practical experience to the academic table than do our doctrinal counterparts.”).
4. See Melissa H. Weresh, *Fostering A Respect For Our Students, Our Specialty, and the Legal Profession: Introducing Ethics and Professionalism Into the Legal Writing Classroom*, 21 *Touro L. Rev.* 427, 442 (2005) (“what we owe our students is a more basic understanding of the ethical and professional choices they will face when they actually become lawyers. These choices will undoubtedly be reflected in their writing.”).
5. Kehner & Robinson, *supra* note 2, at 86-87 (“Students must do everything with care and produce written products that are polished and professional in appearance because that is what is required for these products in law offices and courts.”).
6. See Michael J. Cedrone, *The Developmental Path of the Lawyer*, 41 *Cap. U. L. Rev.* 779, 829-30 (2013) (“To write, students . . . discover that the devil is so often in the details . . . Writing, in this sense, becomes a vehicle for understanding professional abilities in the law . . .”).
7. See Ian Gallacher, *Thinking like Nonlawyers: Why Empathy Is a Core Lawyering Skill and Why Legal Education Should Change to Reflect its Importance*, 8 *J. ALWD* 109, 147 (2011) (“Writing, after all, is—or should be—an exercise in applied empathy. In order to persuade a reader of something . . . a writer must attempt to place him or herself in the mind of the reader and try to imagine the reader’s response to the written material.”).
8. See *id.* at 830 (“writing demands that the student attend to context-to the audience(s) and purpose(s) of their communications . . . Navigating these waters requires a mature concept of the lawyer’s professional role.”).
9. See Cohen, *supra* note 1, at 146 (“Typically, the lawyer in thinking like a lawyer is conceived and presented as a thoroughly competitive notion of ‘advocate or gladiator’ rather than as a collaborative, compassionate, and humanistic problem-solver or counselor, advisor, or problem-avoider.”).

# Helping Students Implement Legal Writing Conventions: the Importance of Providing Concrete Strategies for Concise and Precise Writing

At Lewis & Clark Law School's Writing Center, students come to me for help with many different writing questions, but one of the most common is how to translate a professor's comments on an assignment into meaningful revisions. Of all the comments that I see, perhaps the one that most frequently bewilders students is the simple instruction to "be precise" or "be more concise." How is it that such a seemingly straightforward comment can so flummox students? After all, the need to write concisely and precisely is one of the most common conventions fledgling legal writers will hear. Indeed, almost every legal writing textbook or style manual students will encounter contains some version of this advice, and it is advice I often have given students in my own classroom.

Undoubtedly, writing precisely and concisely is a good idea, and writing in this manner will serve students well. But does simply telling students to write precisely and concisely actually help students write this way? Unfortunately, the answer is often no. Even if students understand in theory what it means to write precisely and concisely, many do not understand how to do so in practice. Put differently, since students do not intentionally write in a manner that a professor or employer might deem wordy or unclear, simply telling students that writing precisely and concisely is important is usually not sufficient to help them actually do so.

This disconnect is significant because writing precisely and concisely falls squarely within one of the primary goals of legal skills education: to teach students the structure, conventions, and style of written legal analysis. An understanding of these concepts is important not only to a student's success in law school, but also to a student's ability to find a job and succeed in practice. The fact that a student's understanding of these concepts comes primarily through legal writing courses is one of the reasons that legal writing is the most important first-year course. Although students may be exposed to these concepts in other settings, it is primarily within first-year writing courses that students have the opportunity to experiment with and

ultimately to learn to correctly implement the concepts and skills that are so important in practice. Because many students will have limited instruction in writing after their first year, it is especially important that we give first-year students the necessary tools to use these important concepts effectively.

When students come to the Writing Center for help with writing precisely and concisely, two of my favorite strategies to share with them are repetition (or "mirroring") and sentence structure changes. However, simply introducing strategies is not enough; students need help actually understanding how to use the strategies. Thus, an effective approach includes several steps: identify the strategy, provide examples of it, and provide context for it. Using mirroring and sentence structure as examples, the sections below provide an overview of how to approach helping a student understand how to write more precisely and concisely using these strategies.

## Identify Strategies

Strategies for precise and concise writing that are second nature to writing professors or practitioners may be unfamiliar to students entering law school. As a result, introducing mirroring and sentence structure changes – or any strategy – to a student should involve a basic explanation of what the strategy is and why it is helpful in terms of achieving the goal of writing more precisely and concisely.

## Repetition/Mirroring

Students often arrive at law school believing that they must avoid repetition. Consequently, students tend to use synonyms rather than repeating the



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same terms throughout the analysis of a legal issue. However, one of the most effective ways students can make their writing more precise and concise is to eschew synonyms and repeat or “mirror” key terms throughout their analysis.

When I explain mirroring to a student, I explain that two aspects of mirroring are particularly helpful in terms of making writing more precise and concise. First, a precise writer will use the same word consistently to refer to the same thing rather than alternating between different synonyms. This is because using different words signals to a reader that the writer is talking about different things rather than the same thing. Second, a precise writer will repeat key legal terms throughout each part of the analysis of a particular legal issue. For example, in a memorandum, key legal terms should appear in the question presented, the brief answer, rule statements, case explanations, thesis sentences, and conclusions. Mirroring key legal terms throughout the analysis keeps the legal issue at the forefront and helps the student and the reader stay focused on what is really at issue in the analysis.

## Sentence Structure Changes

Many law students write intuitively without considering the structural choices they are making in their writing. However, making changes to their sentence structure is a very effective way for students to make their writing more precise and concise. Although there are numerous sentence structure changes that may help students write more precisely and concisely, minimizing passive voice and eliminating excessive nominalizations are two concrete approaches that

are particularly effective. I find these two strategies effective both because they address common problems – almost all students can benefit from using passive voice and nominalizations more selectively – and because the changes in clarity and brevity that result from eliminating excessive passive voice and nominalizations are easy for students to see.

When introducing passive voice, I explain that passive voice consists of a form of the verb “to be” combined with the past tense of another verb. In terms of precision, passive voice can be problematic because it relies on the weak verb “to be” rather than a strong verb, and because it hides or minimizes the actor. In addition, sentences written in passive voice are usually less concise than sentences written in active voice.

Similarly, when introducing nominalizations, I explain that a nominalization is a noun form of a verb or an adjective. I also explain that while using nominalizations is not wrong (and is sometimes unavoidable), nominalizations tend to make writing less precise because they replace strong verbs or adjectives with weaker nouns. In addition, nominalizations make writing less concise because using a noun in place of a verb usually requires lengthier sentence constructions.

## Provide Examples

Once I identify a strategy, the next step is to provide examples that illustrate to students how the strategy can make their writing more precise and concise. Providing examples can also make concepts more concrete and help students feel more confident about implementing new strategies.

FIGURE 1

<b>QUESTION PRESENTED</b>	Did the supplier materially breach the contract, given that the supplier delivered only 100 of the 500 devices ordered?
<b>BRIEF ANSWER</b>	Yes, the supplier probably materially breached the contract, given that the contract specified 500 devices and the supplier only delivered 100.
<b>RULE STATEMENT IN RULE SECTION</b>	A contract is materially breached when one party’s failure to perform deprives the injured party of the benefit the injured party reasonably expected. <i>Walton v. Smith</i> .
<b>THESIS SENTENCE IN APPLICATION SECTION</b>	In this case, the supplier probably materially breached the contract, because the supplier delivered only 100 devices when the buyer reasonably expected 500.

## Mirroring

As mentioned above, there are two aspects of mirroring that may help students write more precisely and concisely. I like to illustrate the first, consistent word choice, by providing students with two examples for comparison:

*Example 1:* On June 18, 2014, Gregory Wells entered Anna Smith's apartment through a broken window and stole several items. After leaving the victim's apartment, the suspect sold the stolen jewelry.

*Example 2:* On June 18, 2014, Gregory Wells entered Anna Smith's apartment through a broken window and stole several pieces of jewelry. After leaving Smith's apartment, Wells sold the stolen jewelry.

In the first example, a reader may not be sure whether Wells is the same person as the suspect, whether Smith is the same person as the victim, and whether the jewelry is the stolen property that Wells sold. The second example illustrates how a writer can eliminate this confusion by consistently using the same words to refer to the same people and things.

An effective way to illustrate the second aspect of mirroring, consistently mirroring key legal terms, is to use a chart like the one below (Figure 1). Given that many students enter their first-year legal writing courses resistant to repetition, a chart helps students understand just how explicit a legal reader wants them to be in terms of identifying the issue they are analyzing. In addition, by showing how a repeated term serves a different purpose in each section of a memorandum, a chart can help students see that repetition is about pattern and consistency, not redundancy.

## Sentence Structure Changes

To help students understand how to implement changes to their sentence structure, consider offering side-by-side comparisons of sentences with and without passive voice or nominalizations. This illustrates to students how minimizing these constructions can make their writing more precise and concise.

To demonstrate how eliminating passive voice (in bold) can make a student's writing more precise and concise, I might show a student the following two examples:



*[S]tudents come to me for help with many different writing questions, but one of the most common is how to translate a professor's comments on an assignment into meaningful revisions.*

*Example 1:* During the hearing, it **was argued** that the statute **was not violated** by the defendant.

*Example 2:* During the hearing, *the defense attorney argued* that the defendant *did not violate* the statute.

The first example is less precise because we do not know who argued that the defendant did not violate the statute. It is also less concise because using passive voice requires the writer to use more words to express the same idea.

Simple side-by-side examples are also helpful to illustrate how eliminating excessive nominalizations (in bold) can make a student's more precise and concise.

*Example 1:* The statute does not contain a **limitation** on the scope of the **inquiry**. As a result, the police conducted an **investigation** of the suspect's family and friends.

*Example 2:* The statute does not *limit* the scope of the inquiry. As a result, the police *investigated* the suspect's family and friends.

The first example contains three nominalizations: limitation, inquiry, and investigation. In the second example, replacing two of these nominalizations makes the sentence more concise and more precise. The strong verbs “limit” and “investigated” convey a more specific action than the wordier constructions “contain a limitation” and “conducted an investigation.”

## Provide Context

To use a new strategy effectively, students must have some context that helps them understand when it is appropriate to use the strategy. For example, a discussion of what constitutes a “key” legal term is necessary for students to effectively use mirroring to make their writing more precise and concise. Similarly, a discussion of when using passive voice or nominalizations might be appropriate or necessary will help ensure that a student’s implementation of that strategy is flexible rather than rigid. When students understand how and when to use a strategy, they feel more confident about the strategy and are more likely to actually use it to improve their writing.

In conclusion, whether you share these or other strategies with your students, providing students with concrete strategies for precise and concise writing will help students learn to use them as tools to improve their writing in law school and beyond. The unique opportunity that a first-year writing class presents to achieve this goal is one of the reasons that first-year legal writing courses are so important.

# No Course Is Most Important



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Consider this scene: During one spring office-hour session, a professor conferred with a student about a completed assignment and an upcoming final assignment. The completed assignment was an advice letter about whether a client had formed a contract with his employees. The upcoming assignment was two-fold: (1) an advice letter addressing scenarios involving the same client and his customers arising under a contract the client had drafted himself and (2) revisions of that contract. What was the first-year course? The answer is not the legal writing course, but rather Contracts.

The question “why legal writing is the most important first-year course?” presupposes a dichotomy that is increasingly irrelevant at William Mitchell College of Law, where I teach. That is because legal writing—by which I mean writing that practitioners do—has become an integral part of many first-year courses here. We have concluded that legal writing is too important to be confined to one course so denominated in the curriculum. Rather legal writing belongs in all courses. I would argue that this approach merits consideration in all law schools.

The journey to our current curriculum involved some fits and starts, of course. In retrospect, the first step was a study of the forms of evaluation used in all of our existing courses, which triggered a discussion of the types of writing lawyers do, as compared to the types of writing students typically were doing in our courses. Not long thereafter we engaged in a concerted effort to employ objectives-based course design, an initiative that began informally with colleagues who learned teaching theory from partners outside of the law school and became an institutional focus in faculty training and evaluations. As we formally considered the new curriculum, we discussed the themes—not the doctrines, but the themes—a first-year curriculum should cover. We determined that students needed to know not only what intentional torts and summary judgment are by the end of the first year, for example, but that they also needed to acquire insight into the

analytical building blocks of the U.S. lawyer's way of thinking about the law, such as common law analysis and drafting contracts. We needed to be as explicit about the place of these themes in the curriculum as we were about the rules of law.

These various efforts converged in a proposal to shift to a new first-year curriculum. We ran the pilot curriculum for two years. Effective fall 2014, the pilot curriculum became *the* first-year curriculum.<sup>1</sup> In the fall, students study three themes and doctrinal areas:

- Common Law—Torts
- Statutory Law—Criminal Law
- Civil Dispute Resolution (which encompasses traditional civil procedure and basic non-litigation processes)

In the spring, students study three additional themes and doctrinal areas:

- Transactional Practice—Contracts
- Advanced Legal Reasoning—Constitutional Law
- Comparative Law—Property

These courses are taught by full-time faculty to sections of about sixty students, sometimes with adjunct assistants.

Complementing this set of courses is Writing & Representation: Advice & Persuasion, which is directed by full-time faculty and taught by teams of two practicing lawyers to homerooms of about twelve students. This six-credit, year-long course is the most obviously focused “skills” course. In both semesters,<sup>2</sup> the curriculum includes both writing components—i.e. research, reasoning, and writing—as well as interpersonal elements (what we mean by “representation”). In the fall, students study Advice by writing office memoranda (long and short forms) and by interviewing and counseling clients. In the spring, students study Persuasion by writing advice and demand letters, contract clauses, and motion practice memoranda; by negotiating contract clauses and a dispute settlement; and by arguing a motion.

Furthermore, each first-year section has one faculty member who serves as team leader, and all faculty

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*The question “why legal writing is the most important first-year course?” presupposes a dichotomy that is increasingly irrelevant.... [L]egal writing is too important to be confined to one course so denominated in the curriculum.*

.....

members are strongly encouraged to collaborate in such matters as cross-over teaching and coordinating assignments.

Practice-based writing in first-year courses has blossomed as an effect of these overlapping developments, with the various assignments reflecting the themes of the particular courses and advancing their stated objectives. Not too many years ago, the office-hour discussion described above would have been a meeting between WRAP teacher and student. As noted above, the discussion was between me and one of my Contracts students. As we talked about how to write out the advice to a client, we also talked about rules that govern client behavior; as we talked about how to write the contract language, we also talked about whether the courts would enforce the contract

as written. Our discussion demonstrated an inevitable coalescence between writing and rules: when you have students write the document that practitioners use to implement rules, they cannot help but engage deeply with the rules even as they develop their writing skills.

Similarly in my Civil Dispute Resolution class, students wrote a complaint. Writing it required synthesizing not only the substantive rule of law governing the client's case but also the pertinent federal rules of procedure and cases. It was a rich writing experience as well, as students navigated an unfamiliar format, technical requirements, ethical parameters, and persuasive language.

This approach has come naturally for me. I was hired both to coordinate William Mitchell's first-year skills course and to teach doctrinal courses in employment law; I have never seen much of a dichotomy between skills and doctrine. Colleagues without this dual focus have adopted it as well so that practitioner writing has become commonplace in William Mitchell's first-year curriculum. For example, in Criminal Law last year, students wrote memoranda to judges, statutes, dissenting opinions, and jury instructions. In Torts, students wrote exculpatory clauses with explanatory memos and jury instructions. In Constitutional Law, students wrote Supreme Court opinions.

As someone who has taught not only WRAP but also Contracts for many years, as well as Civil Dispute Resolution and Torts on occasion, I find it awkward, indeed counterproductive, to argue that the legal writing course is the most important course in the first year. Rather, as the increasing and widespread integration of practitioner writing into our doctrinal courses recognizes, the real point is that legal writing—*as a skill and as a practice*—is critical to the first year.

Certainly in the legal writing course, writing is in the foreground, whereas in doctrinal courses, writing is in the background and doctrine is in the foreground—but both elements are in the picture nonetheless. Certainly it is in the writing course that writing fundamentals are covered and, most likely, the most intense critique occurs—but the writing that occurs in doctrinal courses is situated in fully taught legal doctrine and thus can achieve analytical nuance. Certainly it is in the legal writing course that the main forms of legal writing are taught—but the particular forms of practitioner writing that occur in a doctrinal course can build on those forms in a useful way.

Recently, indeed, some projects in our curriculum have spanned courses. Last year, for example, one WRAP case (which encompassed research, interviewing, and counseling) covered a doctrine covered in Torts; one professor used the WRAP score as part of the Torts grade. Some Contracts professors incorporated the WRAP contracts negotiation topic into their curriculum. The WRAP motion practice assignments involved constitutional law topics that arose in an area that the Constitutional Law professors identified, and those professors taught an introductory class session on the topic. These cross-overs have had the effect of mooting the question, for students, of which first-year course is the most important—an entirely salutary effect, we think. Rather they see a curriculum that coalesces—all to the good, in their eyes and ours.

#### NOTES

1. William Mitchell also has a part-time program. Students in that program do not take Civil Dispute Resolution or Constitutional Law in the first year.
2. Students also take Writing & Representation: Advocacy, a three-credit follow-up course, which similarly covers research, writing, and representation skills involved in trial and appellate advocacy.

# Producing Professionals: Opportunities to Practice Professionalism in the 1L Legal Writing Course



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The legal writing course that most students take in their first year of law school addresses two critical goals of a legal education – helping students acquire practical legal skills and helping students develop a sense of professionalism.<sup>1</sup> While skills instruction is one of the primary goals of a legal writing class, the course is also an opportunity for students to begin to understand the values, habits, and traits necessary to become civil, competent members of the profession.<sup>2</sup> This professionalism component makes legal writing the most important first year course.

Much of the instruction relating to professionalism in a legal writing course occurs organically due to the nature of the material being taught. Assignments are set in an actual practical context just by virtue of work-product being produced, such as office memos, briefs, and client letters. Professors embed in these practice-related assignments the expectation that students will produce writing that is polished and professional in appearance because that is what is required for their written work in law offices and courts. Similarly, professors usually have strict rules for formatting documents and require timely submissions, drawing

explicit connections to practice by emphasizing courts' refusals to accept late-filed documents and the malpractice claims that may result. These are just some of the ways that the professionalism aspects of written communication can be easily highlighted and addressed as students work on acquiring traditional legal skills.

In addition, many legal writing professors articulate specific professionalism expectations for their course and their classroom, and assess mastery of these expectations through the use of "professionalism points" that comprise part of the final grade.<sup>3</sup> "Although exact requirements vary, professionalism expectations in the legal writing classroom usually include expectations of civility (in class, in dealing with library and clerical staff in the law school, and in e-mail communications), meaningful participation in classroom discussions and group work, timeliness (in arriving for class and conferences as well as in assignment submission), good efforts on ungraded work, and appropriate use of technology in the classroom (no web-surfing, emailing, or texting during class)."<sup>4</sup> These requirements have obvious connections to professionalism traits that are important for practicing attorneys. For example, civility in dealing with professional colleagues and opponents is often part of professionalism codes adopted to guide practicing attorneys' conduct.<sup>5</sup> Just as these codes usually require lawyers to treat others with fairness and consideration, students must behave with consideration when working together on projects or opposing one another in moot court encounters or

mock trial situations.<sup>6</sup> And students need to begin to practice restraint in their use of cell phones and other technology and understand the appropriate role of technology in the workplace.<sup>7</sup>

Students also must learn to use email in a professional manner. Many legal writing classes include e-mail assignments or specific instruction in constructing an appropriate e-mail as part of the strategy to help instruct students in the importance of professionalism in electronic communications. Part of this instruction can emphasize that responding promptly is also an aspect of professional behavior.

Legal writing professors also often use hypotheticals and examples from cases, disciplinary actions, news stories, or personal experience to help students relate to professionalism issues on a personal level. These can be the basis of classroom discussions or exercises, or the ethical or professionalism issues may be incorporated into the fact pattern or subject of a research and writing assignment.

Professionalism instruction in a 1L legal writing class is possible because of class size; for most students their legal writing class has fewer students than their other first year classes. This allows students to interact more regularly with their legal writing professors, forming a first professional relationship in law school. Indeed, students usually get their first grades from their legal writing professors and, at that time, get their first sense of what is necessary to meet the expectation for law school performance and the standard for professional competence. The nature of the grading process in the legal writing class also provides an opportunity for students to learn to accept and learn from feedback on their writing while maintaining a professional demeanor.



*While skills instruction is one of the primary goals of a legal writing class, the course is also an opportunity for students to begin to understand the values, habits, and traits necessary to become civil, competent members of the profession.*

Conferences between the student and the legal writing professor are an essential part of most 1L legal writing courses. Conferences provide opportunities for professors to model professional behavior in a one-on-one setting and to require professional behavior from students during the conference. To demonstrate professional behavior in a conference, students should be prepared for the conference, be on time, be aware of and comply with stated time constraints, and be courteous in interactions with the professor.<sup>8</sup> Conferences also offer opportunities for legal writing professors to encourage students to become self-reliant and self-motivated, which are traits that successful professionals need to acquire.

Thus, most legal writing professors include professionalism instruction in their 1L legal writing courses and draw the connection between professionalism expectations in practice and professionalism expectations in the legal writing classroom. They use a variety of methods, which include requiring students to emulate the polish and precision they will use when they write documents in practice; articulating explicit standards for timeliness as well as standards for behavior in

class, in conferences, and in interactions with others; and creating stand-alone lessons and exercises to specifically address professionalism issues. This professionalism instruction – this opportunity to help students begin to understand and adopt the traits, habits, values, and appropriate behaviors of a legal professional – is often well-received by students who appreciate this early glimpse of the “real world” of practice,<sup>9</sup> and it makes legal writing the most important first year course.

## NOTES

1. See Roy Stuckey et al., *Clinical Leg. Educ. Ass'n, Best Practices for Legal Education: A Vision and a Road Map* (2007) [commonly referred to as "Best Practices"]; William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (2007) [commonly referred to as the "Carnegie Report"]; The Carnegie Report and Best Practices have had a substantial impact on law school curricular reform, and both call for increased emphasis on professional skills and professionalism in the curriculum.
2. For a fuller discussion of the history and the current state of professionalism education and the ways in which legal writing professors incorporate professionalism instruction in the classroom, including results of a survey of legal writing professors, see Alison D. Kehner & Mary Ann Robinson, *Mission: Impossible, Mission: Accomplished or Mission: Underway? A Survey and Analysis of Current Trends in Professionalism Education in American Law Schools*, 38 *U. Dayton L. Rev.* 57, 86-92 (2012).
3. *Id.* at 87-88.
4. *Id.*
5. *Professionalism Codes*, [http://www.americanbar.org/groups/professional\\_responsibility/resources/professionalism/professionalism\\_codes.html](http://www.americanbar.org/groups/professional_responsibility/resources/professionalism/professionalism_codes.html) (last visited July 29, 2014).
6. See generally Donna Chin et al., *One Response to the Decline of Civility in the Legal Profession: Teaching Professionalism in Legal Research and Writing*, 51 *Rutgers L.J.* 889 (1999) (Discussing how legal writing professors can help foster civility in law students).
7. William Melater, *Put Down the Phone and Back Away Slowly*, <http://www.attorneyatwork.com/put-down-the-phone-and-back-away-slowly/> (last visited July 30, 2014).
8. Adhering to these standards of behavior in a conference is often one of the bases for awarding professionalism points as described in the text above accompanying notes 3 & 4.
9. See Kehner & Robinson, *supra* note 2, at 108 (describing some students' reactions to professionalism instruction as reported by their professors).

# Mentoring and Legal Writing: How 1L Legal Writing Courses Prepare Students for Mentoring Relationships in the Legal Profession



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Mentoring contributes significantly to career success, including promotions, job satisfaction, and earnings.<sup>1</sup> I experienced this firsthand in my years as a litigation attorney. I was the beneficiary of strong mentoring relationships, and I witnessed the positive impact of mentoring on others' legal careers.<sup>2</sup> The lawyer mentor can serve many purposes. The mentor can help with professionalism and skills development,<sup>3</sup> and can also support junior colleagues in the performance-evaluation and partnership-assessment processes.<sup>4</sup>

While many law school and local bar association programs already provide law students with access to lawyer mentors, preparing law students for effective participation in mentoring relationships in the legal profession falls primarily to the 1L legal writing courses.<sup>5</sup> That unique function alone distinguishes the legal writing course as possibly the most important course of the 1L curriculum. 1L legal writing professors often engage in three teaching methods that help students develop skills and qualities suited to maximizing the benefits of mentorship in law

practice: modeling, role playing, and reflecting. Many legal writing professors employ some or all of these teaching methods in their 1L classrooms without explicitly acknowledging to colleagues or students how they help prepare students for mentoring relationships. Below, I describe these three teaching methods, including variations that can increase each method's impact.

## Modeling Mentoring through Conferences

Legal writing professors model the mentoring relationship when they conference with students about their drafts, although many professors may not have thought of or described their conferencing in this way. When professors engage in high-quality feedback loops, they advance students' acquisition and development of "valuable professional skills," according to Professor Bill Henderson, who studies lawyer development.<sup>6</sup> He comments that law schools do not invest in giving high-quality feedback as much as they should: "Law professors and law firm partners fully understand the costs of giving feedback. However, because we don't fully appreciate its benefits, we tend to under-invest in it."<sup>7</sup> But, many 1L legal writing professors of course do make a substantial investment in giving feedback.

When 1L legal writing professors regularly meet

with students about their writing and provide feedback about their progress and learning, they model mentorship in the legal profession. Much has been written about the four basic tools of “cognitive apprenticeship” in legal education: modeling, scaffolding, coaching, and fading.<sup>8</sup> Modeling has been described in the legal writing context as “demonstrating how to perform a task through a detailed analysis of representative work.”<sup>9</sup> For example, legal writing professors modeling the writing process might show how an expert analyzes authorities and sifts through facts.<sup>10</sup>

Through their meetings with students, legal writing professors also engage in another version of modeling: demonstrating to students how the feedback process might work in the legal profession. In my 1L legal writing course, to reinforce the benefits of modeling a feedback conversation between mentor and mentee, I make explicit the connection between the draft memo conferences and the mentoring relationship. I encourage students to take advantage of the conferences to practice receiving and responding to feedback and to continue to engage in this activity with supervisors and mentors in law practice.

Thus, legal writing professors are doing much more than helping to improve a student’s analytical and writing skills when they conference about drafts. They are also giving their students a crash course in sitting down with someone “senior” or with more experience and responding to feedback that can help accelerate their career—good practice for working with a mentor in the future.

## Role Playing the Mentoring Relationship

As with modeling mentoring, many legal writing professors currently use this second teaching method—role playing the mentoring relationship—even if they have not characterized it as such. In many legal writing courses, for example, professors, playing the role of the law firm partner, engage in simulated meetings with students in the roles of law firm associates, followed by discussions or debriefs about what occurred.<sup>11</sup> These exercises can teach students professionalism lessons such as the importance of preparation, the significance of tone when conversing with a supervising attorney, and guidelines for making a recommendation orally.<sup>12</sup> In addition, the exercise can help develop a student’s poise in conversing with

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attorneys.<sup>13</sup> All of these skills can be important in engaging in the mentoring relationship.

In my classroom, I also have students play the partner and engage in what I refer to as “aspirational role play.” In this type of role play, classmates play both the partner (perhaps a role to which some students aspire) and associate roles.<sup>14</sup> The student in the supervising partner’s role must ask questions of the associate. The questions might relate to inquiring about the associate’s wellbeing, to identifying the flaws in the associate’s analysis, or to eliciting the associate’s recommendation on how to proceed. With peers playing both partner and associate roles, the students cannot coast through the exercise by taking a professor/partner’s lead; instead, the students must work together to create what they believe or assume to be the appropriate tone, manner, and balance of give-and-take in the conversation.

Through this aspirational role play, first-year law students focus on long-term goals such as relationship-building and collegiality and embark on a path of developing relationship awareness and readiness. The exercise can stimulate discussion about professional etiquette and boundaries and even deeper issues concerning effective leadership and mentorship. With the student playing partner, the simulation can help establish the future associate’s empathy with the mentor partner. It puts the spotlight on the potential mentoring relationship between junior associate and supervising attorney.

## Reflecting on Mentoring in the Legal Profession

When legal writing professors initiate discussion and invite student comments on topics such as audience expectations for a legal document, they provide

students with a meaningful opportunity to reflect. Through journaling assignments, legal writing courses can also provide students an opportunity to reflect about professionalism topics like mentoring.<sup>15</sup> I have found that journaling helps my students relieve stress and gives them a less formal space to express their thoughts about practicing law.

In my legal writing courses, students submit journal entries a few times during the semester. I give them journal topics to choose from, such as diversity in the legal profession or ethics in the legal profession, and I provide feedback on each entry.

I have provided students with this journaling topic explicitly about mentoring, “Reflect on the mentoring you would like to have in law school and after law school. What qualities of a mentor are important to you? What role do you anticipate mentoring will play in your legal career? Consider how you have engaged in and benefited from any past mentoring relationships.”

In response to this prompt, students have shared their thoughts about what types of mentoring relationships have worked well for them in the past and concluded that they will seek out those relationship qualities when they are practicing attorneys. They have reflected about specific mentors they encountered in college or in childhood. Some even come full circle in their reflection and share a desire to “give back” as a mentor in their legal career.

## Conclusion

The 1L legal writing course, beyond teaching legal analysis and research skills, plays a critical and unique role in preparing students for relationships with lawyer mentors, arguably making it the most important course of the 1L curriculum. Though many 1L legal writing professors may not see mentoring relationship preparation as part of their course, they already engage in quite a lot of it, when they engage their students through conferences, role plays, and reflection. In doing so, they deliver a valuable service to the law school and its students.

## NOTES

1. Cindy A. Schipani et al., Pathways for Women to Obtain Positions of Organizational Leadership: The Significance of Mentoring and Networking, 16 *Duke J. Gender L. & Pol'y* 89, 99-100 (2009).
2. A corporate litigator in my former career, I remain grateful to the mentors who were available to me for support and guidance when I went through the partner promotion process.
3. Neil Hamilton & Lisa Brabbit, Fostering Professionalism Through Mentoring, 57 *J. Legal Educ.* 102 (2007).
4. Bar Ass'n of S.F., Supplement, Bottom Line Partnership Task Force Report, S.F. Att'y Mag., Nov. 2010, available at <http://www.sfbar.org/forms/diversity/bottom-line-report-part1.pdf>.
5. For example, The Ohio State University's Moritz College of Law offers students mentoring and innovating programing through its “Mentoring & More” program. Mentoring and More @ Moritz, <http://moritzlaw.osu.edu/programs/mentoring/> (last visited July 23, 2014). That program is complemented by local bar association programs like the mentoring program for law students offered by the Asian Pacific American Bar Association of Central Ohio. Asian Pacific American Bar Association of Central Ohio, Committees, [http://www.apabaco.org/who\\_committees.html](http://www.apabaco.org/who_committees.html) (last visited July 23, 2014).
6. William D. Henderson, Supercharging Lawyer Development Through Feedback, *NALP Bull.*, June 2014, at 12, 12-13.
7. *Id.* at 13.
8. See, e.g., Sarah O. Shrup and Susan E. Provenzano, The Conscious Curriculum, From Novice Towards Mastery in Written Legal Analysis and Advocacy, 108 *Nw. U. L. Rev. Colloquy* 80, 92 and ft. 19 (2013).
9. *Id.*
10. *Id.*
11. See, e.g., Sarah Morath, From Awkward Law Student to Articulate Attorney: Teaching the Oral Research Report, 27 *Second Draft* 6 (Fall 2013/Winter 2014). Also, in a recent presentation, Professor Katherine Kelly discussed the Partner Status Update simulation exercise that her students engage in. Katherine Kelly, Assistant Clinical Professor of Law and Director, Academic Support Program, Moritz Coll. Law, Two Skills, One Assignment: Research Meetings that are Productive, Professional, and (Relatively) Painless, 16th Biennial Conference of the Legal Writing Institute (July 1, 2014).
12. Morath, *supra* note 8.
13. *Id.*
14. Katrina Lee, Focusing on a Critical Developmental Relationship through Aspirational Role Play: Elevating Students to Partner in the First Year of Law School, 2012 Conference Proceedings, 5th Annual Mentoring Conference, University of New Mexico Mentoring Institute, 1046-1055 (2012).
15. See, e.g., Katrina Lee, Assistant Clinical Professor of Law, Moritz Coll. Law, Beyond Memos and Briefs: Journaling and Reflection in the 1L Legal Writing Classroom, Rocky Mountain Legal Writing Conference (Mar. 22, 2013).

# The Five Hundred Hats of LRW: A Cautionary Tale?



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A lawyer plays many roles when analyzing and presenting information, in writing and otherwise. As the first-year course that exposes the law student most directly to that variety of roles, as well as for numerous additional reasons other commentators have addressed, LRW is the most important course in the first-year curriculum. As LRW curricula have expanded to reflect more of these roles,<sup>1</sup> however, the increasing number and variety of assignments create potential stumbling blocks for LRW students. Just as the hero of Dr. Seuss's *The 500 Hats of Bartholomew Cubbins* was mystified by what to do with the many hats that kept appearing on his head,<sup>2</sup> the law student may become confused by the multiple roles to be played—the different hats to be worn—when preparing and presenting LRW assignments.

Certainly, the idea of multiple lawyer roles is not new to the law school curriculum. First-year law school courses have long taught law students that the interpretation and application of legal sources can vary depending on whose interests the lawyer is representing.<sup>3</sup> And the LRW curriculum has long recognized the role differentiation between objective

analyst and persuasive representative,<sup>4</sup> as well as the writer's roles as the reader's educator and a self-editor.<sup>5</sup>

With the increased focus on practical education in recent years,<sup>6</sup> the expectations for the roles traditionally taught in LRW, as well as the number of roles taught over the course of the curriculum, have expanded significantly. To touch on just a few, LRW students may now be expected, in addition to the historically assigned roles, to play roles as varied as client communicator and advisor,<sup>7</sup> drafter,<sup>8</sup> soothsayer,<sup>9</sup> painter,<sup>10</sup> and electronic and oral communicator in a variety of settings.<sup>11</sup> At the same time, scholarship about traditional LRW and newly-added LRW roles has become increasingly sophisticated, as in the focus on the role of the legal writer as storyteller.<sup>12</sup> Finally, the roles are not all of the same type, since some affect the perspective from which analysis is done, some influence the way the material is presented, and some require prediction and analysis of possible future events. Not only must students wear different hats, but they must wear them in different ways—a challenge that not even poor Bartholomew had to confront.

The expansions of role in the LRW curriculum are, of course, cause for celebration, and they further cement LRW's own central role in the first-year curriculum. LRW programs around the country are introducing their students to a more complete and nuanced picture of the legal writer and communicator. Further, for LRW faculty, the opportunity to expand one's teaching to new areas can be both rejuvenating and satisfying.

The perspectives of first-year law students, however, may well be different. While exposure to the different hats of the lawyer is of critical importance, this



*With the increased focus on practical education in recent years, the expectations for the roles traditionally taught in LRW, as well as the number of roles taught over the course of the curriculum, have expanded significantly.*

approach to learning is usually novel, and even overwhelming, for novices. For many of them, undergraduate reports and presentations generally required playing one role.<sup>13</sup> Few LRW students have previously needed to shift role frequently within a course or within an assignment.

Significantly, even before current LRW curriculum expansion, students were challenged by such shifts. The traditional office memo is the prototypical example. While formats varied (and still vary)<sup>14</sup>, over the course of an office memo, the student acts as an objective judge when predicting an outcome and explaining the rationale for it; as a persuasive advocate when presenting arguments for each side of the dispute; as a storyteller when presenting the facts; as a teacher for an educated but uninformed reader; and, perhaps for the first time, as a rigorous self-editor. All of these roles require analytical and writing shifts that often befuddle the novice legal writer, and they typically now are just the start of an LRW curriculum that requires constant shifts in order to complete a rich assortment of assignments.

So what do we do with this embarrassment of riches? First, in contrast with Dr. Seuss, acknowledge the mystery to yourself. Recognize that shifts in role that appear as natural to you as the seasonal shift from baseball cap to knitted cap may make no sense to the novice writer. Second, as Scott Fruehwald recently suggested and again in contrast with Dr. Seuss, be explicit<sup>15</sup> throughout the curriculum about the shifts of role. Recognize and explain the different hats lawyers wear, and how they differ. For each assignment, identify the role(s) played (or better yet, ask the students to do so). In the author's experience, something as simple as talking through the different roles played over the course of a research memo, for example, turns on light bulbs and eases fears of running afoul of expectations. Third, take it a step at a time. Merely adding more hats does not,

without more, teach the lessons LRW must teach. If you are considering adding assignments, consider, too, the amount of time realistically available in your curriculum to explain the various new roles the new assignments will require. Fourth, make sure the students understand why these role shifts are a necessary and important reflection of the real-life roles lawyers play—not just the arbitrary appearance of new hats that so bewilders Bartholomew.

In *500 Hats*, Bartholomew initially perceives all his hats as the same as each other. (Perhaps Dr. Seuss intended them to be, but if he did not, he certainly gave Bartholomew no way of figuring out the differences.) It is only toward the end of the story that Bartholomew sees differences between his hats, which gradually become more elaborate and impressive. And it is shortly after this recognition of the differences that the uncontrolled flow of hat after hat is stemmed. In contrast, we must give our students the means to recognize and control the differences between the hats. We must help our students see from the start that they will wear a number of hats, that the hats have both similarities and differences, and that there is method and meaning to all of them. Understanding these differences will help our students to appreciate and negotiate the diverse responsibilities they will assume as members of the legal profession, and we are uniquely positioned in LRW to foster this professional development.

#### NOTES

1. As noted in the Table Comment for Question 20 of the 2014 ALWD/LWI Survey, there has been an “increase in the average number of different types of assignments and skills taught in schools’ LRW programs” in the years from 2010-2014. Assoc. Leg. Writing Dirs. & Leg. Writing Inst., 2014 Survey Results 13 (2014) (available at <http://lwionline.org/uploads/FileUpload/2014SurveyReportFinal.pdf>).

2. Dr. Seuss (Theodore Geisel), *The 500 Hats of Bartholomew Cubbins* (1938). In *500 Hats*, Bartholomew is ordered to remove his hat to show respect for the king. Each time Bartholomew thinks he has complied with the demand by removing his hat, however, a new one, of mysterious purpose and origin, appears on his head. No one ever explains to Bar-

tholomew (or to the reader) why he keeps getting a new hat, and he does not know what to do with each new hat he gets. As a result, Bartholomew spends the story in confusion and fear of falling afoul of the king's commands, but he keeps trying to solve the mystery of the hats—just as LRW students often struggle to understand what they are supposed to do in each of their assignments and worry that they are not meeting their professor's expectations. It is only toward the very end of the story that Bartholomew starts perceiving some difference among the new hats and new ones finally stop appearing.

3. The “thinking like a lawyer” approach to law school teaching has its origins in the 19th century and remains with us today. See, e.g., Stephen R. Alton, Roll over Langdell, Tell Llewellyn the News: A Brief History of American Legal Education, 35 Okla. City U. L. Rev. 339, 351 (2010).
4. Commun. Skills Comm., Sec. Leg. Educ. & Admis. to B., Sourcebook on Legal Writing Programs 45-46 (Eric B. Easton ed., 2d ed., ABA 2006) [hereinafter Sourcebook]. For a general discussion of the first-year LRW curriculum, see id. at 13-47.
5. See generally Anne Enquist, Talking to Students about the Differences between Undergraduate Writing and Legal Writing, *Persp: Teaching Legal Res. & Writing*, Winter 2005, at 104.
6. For a general discussion of recent reports encouraging more practical legal education, see Mary Dunnewold & Mary Trevor, Escaping the Appellate Litigation Straitjacket: Incorporating an Alternative Dispute Resolution Simulation into a First-Year Legal Writing Class, 18 *Legal Writing: J. Legal Writing Inst.* 209, 220-23 (2012).
7. Many of the standard first-year LRW texts have included letter-writing of various types for a while. See, e.g., Linda H. Edwards, *Legal Writing: Process, Analysis, and Organization* (6th ed. 2014) (Part II covers “Professional Letter Writing”); George W. Kunev & Donna C. Looper, *Mastering Legal Analysis & Drafting* (2009) (Chapter 4 covers “Letters”); Richard K. Neumann, Jr. & Sheila Simon, *Legal Writing* (2d ed. 2011) (Chapter 25 covers “Client Advice Letters”).
8. While the number of drafting assignments is not yet large as compared to other assignments used, see 2014 ALWD/LWI Survey, *supra* note 1, at 13, it appears to be only a matter of time before drafting assignments become an important part of the curriculum for most LRW programs. See generally Karin Mika, A Third Semester of LRW: Why Teaching Transactional Skills and Problems is Now Essential to the Legal Writing Curriculum, *The Second Draft*, Fall 2013/Winter 2014, at 8.
9. This word choice is, of course, too strong. But asking students to draft agreements and legislation essentially asks them to foresee the future. See, e.g., Susan L. Brody, et al., *Legal Drafting* 6 (1994) (“[D]rafting . . . requires you to consider all possible future contingencies.”).
10. Document design is becoming increasingly recognized as an important aspect of the legal writer/drafter’s work. See Ruth Anne Robbins, Painting with print: Incorporating concepts of typographic and layout design into the text of legal writing documents, 2 *Legal Comm’n. & Rhetoric: J. Assoc. Legal Writing Dirs.* 108 (2004). At the author’s school, for example, students are graded on this aspect of various LRW assignments.
11. The 2014 ALWD/LWI Survey’s Highlights section noted in particular that “[o]ver the past few years, the percentage of responders requiring email memos, client letters, oral reports to supervising attorneys, and other speaking skills has increased considerably.” 2014 ALWD/LWI Survey, *supra* n. 1, at vii.
12. See Carolyn Grose, *Storytelling Across the Curriculum: From Margin to Center, From Clinic to the Classroom*, 7 *Legal Comm’n. & Rhetoric: J. Assoc. Legal Writing Dirs.* 37 (2010). The Fifth Applied Legal Storytelling Conference is scheduled to take place in July 2015 at the Seattle University School of Law. [http://lwionline.org/applied\\_storytelling\\_conferences.html](http://lwionline.org/applied_storytelling_conferences.html). For one of the texts that now emphasize the importance of the client’s story and storytelling, see Ruth Anne Robbins, Steve Johansen, & Ken Chestek, *Your Client’s Story: Persuasive Legal Writing* (2012).
13. See Enquist, *supra* note 5. The degree of experience with role shifts may depend on a number of factors, including degree program(s)

pursued and teaching methodologies in earlier courses. But even for those with some role-change experience, the new roles in LRW can be confusing.

14. Not all texts suggest exactly the same approach to the office memo, and email memos are becoming an increasingly common assignment included in the LRW curriculum. See, e.g., Neumann & Simon, *supra* note 7, at Chapter 26 (“Email Memoranda”).
15. Scott Fruehwald, *Legal Writing Professors Need to Draw on General Education Research in Order to Remain in the Forefront of Evolving Best Practices in Legal Education, The Second Draft*, Fall 2013/Winter 2014, at 12-13.



## PROGRAM NEWS

### HAMLIN UNIVERSITY SCHOOL OF LAW

The Hamline Law faculty has voted to increase the number of credits for the three-semester Legal Research and Writing program from 7 total credits to 8 total credits. The Hamline Law faculty also voted to upgrade the title for full-time Legal Research and Writing faculty to "Professor of Legal Writing."

### SANDRA DAY O'CONNOR COLLEGE OF LAW, ARIZONA STATE UNIVERSITY

**Amy Langenfeld** is coordinator of the legal writing program at Sandra Day O'Connor College of Law, Arizona State University. The program rotates coordinators every two years.

## HIRING AND PROMOTION

### HAMLIN UNIVERSITY SCHOOL OF LAW

Hamline Law is pleased to announce that it has hired **Daniel J. Gunter**, former full-time and now part-time partner at the Seattle, Washington law firm of Riddell Williams, to teach the Litigation-focused course option for the Legal Research and Writing program's required third semester. Daniel brings extensive appellate litigation experience in multiple jurisdictions, as well as teaching experience, to the job.

### UNIVERSITY OF OREGON SCHOOL OF LAW

**David Cadaret** will teach two courses in the law school's International LLM program in the Fall 2014 term, in addition to his work with the Legal Research and Writing Program.

**Joan Malmud Rocklin** has been named the Academic Achievement Specialist at Oregon Law, a role she will fill while continuing to teach legal writing courses.

### UNIVERSITY OF TEXAS SCHOOL OF LAW

The University of Texas School of Law is pleased to announce the hiring of **Lisa Eskow** as the newest faculty member in the David J. Beck Center for legal Research, Writing, and Appellate Advocacy. Lisa holds degrees from Harvard and from Stanford Law, where she was law-review articles editor. She clerked for Judge Pamela Ann Rymer of the Ninth Circuit and practiced law for the Texas Office of the Solicitor General and for Weil, Gotschal & Manges.

## PUBLICATIONS, PRESENTATIONS, AND ACCOMPLISHMENTS

**Lori Bannai** and **Stephanie Wilson**, of Seattle University School of Law, jointly presented "Law Libraries and Advocacy: Using Special Collections to Tell the Story of the Japanese American Internment" at the American Association of Law Libraries annual conference. Their presentation covered the law library's exhibits about Fred T. Korematsu and Gordon Hirabayashi and the how librarians provided extensive research to support the award of Honorary Degree to the University's Japanese American students incarcerated during World War II. She also spoke at a March 2014 symposium sponsored by the Berkeley Journal of Gender, Law & Justice reflecting on the book *Presumed Incompetent*. Her presentation focused on the experiences of women of color who teach Legal Writing. Her essay, *Challenged X 3: The Stories of Women of Color Who Teach Legal Writing*, has been accepted for publication by the *Berkeley Journal of Gender, Law & Justice*. The essay will be published in the symposium issue responding to the book *Presumed Incompetent*, edited by Carmen González, et al., which explores issues faced by women of color in the academy. In addition, she was a key contributor to Eric Yamamoto et al., *Race, Rights and Reparation: Law and the Japanese American Internment* (2d ed. 2013), most significantly assisting in drafting the discussion of the relevance of the World War II Japanese American incarceration to present day legislation authorizing indefinite military detention.

**Lori Bannai, Janet Dickson, Anne Enquist, Connie Krantz, Chris Rideout, and Mimi Samuel**, of Seattle University School of Law, presented an all-day CLE on April 4, 2014, "Moving Your Legal Writing Forward 3.0." **Bannai** spoke on "(Un)Conscious Assumptions and (Un)Intended Messages: Recognizing Bias in Legal Writing, Analysis, and Argument"; **Dickson** presented "The Tools of Persuasion"; **Enquist** discussed "How Multitasking Affects Writing Productivity"; **Krantz** presented "Principle-Based Case Descriptions: Responding to Adverse Authority"; **Rideout** spoke about "Plain Language Issues for Lawyers"; and **Samuel** presented "Back to the Basics: Organization."

**Rita Barnett-Rose** of Chapman University's Fowler School of Law published: *Informed Consent, Psychotropic Medications, and a Prescribing Physician's Duty to Disclose Safer Alternative Treatments*, 16.1 DEPAUL J. HEALTH CARE L. 67 (2014).

**Deirdre Bowen**, of Seattle University School of Law, and co-author, **Professor Kathryn Stanchi**, of Temple University Beasley School of Law, have accepted an offer of publication from Washington Law Review for their article, *This Is Your Sword: Does Plaintiff Prior Conviction Evidence Affect Civil Trial Outcomes?* Professor Bowen's article, *All that Heaven Will Allow: A Statistical Analysis of the Co-existence of Same*



Summer 2014 LWI Writers Workshop at the Villanova Conference Center

*Sex Marriage and Gay Matrimonial Bans*, will be published in *Denver Law Review* in early 2014. Her essay, *Heaven & Purgatory: The Windsor Ruling*, will be published in the online version of the *Denver Law Review* along with a piece by

**June Carbone**, of University of Minnesota Law School, commenting on Deirdre’s DOMA work. Professor Bowen was interviewed on KIRO TV Seattle about the effect of the DOMA ruling on Washington State same sex couples who wish to marry.

Her DOMA blog for American Constitution Society for Law & Policy was referenced in the SCOTUS blog news roundup. She also wrote another guest blog for the American Constitution Society for Law & Policy on the *Fisher* ruling. She was also quoted in an article by Lou Cannon, former Chief White House correspondent for the *Washington Post*, for a story about the Supreme Court’s Affirmative Action ruling for the State Net Capitol Journal, and she was interviewed and quoted for her work on Affirmative Action and higher education in a front-page article in *The New York Times*.

**Mary Bowman**, of Seattle University School of Law, presented her forthcoming article *Mitigating Foul Blows* at the Arizona State University Legal Scholars Conference in March 2014. She also presented the 2014 Scribes Law-Review award, recognizing the best student note or comment, at the National Conference of Law Reviews Scribes dinner in

Los Angeles in March of 2014. She co-organized “Bringing Outside In: Social Justice Collaborations in the Legal Writing Curriculum,” a one-day workshop held in Philadelphia on June 29, 2014 that brought together over 80 participants from around the country. At the workshop, she presented on the Seattle University School of Law’s Real Clients in the First Year Project, which gives every 1L the opportunity to work on a live issue of interest to the school’s legal clinic or outside legal partners. In June of 2014 she also gave a presentation on using prosecutorial trial misconduct issues to teach students precision and professionalism at the Legal Writing Institute’s Biennial Conference. In addition, she has accepted an offer from the *Georgia Law Review* to publish her article, *Mitigating Foul Blows*. Her article *Full Disclosure: Cognitive Science, Informers, and Search Warrant Scrutiny*, is being published in April 2014 in the *Akron Law Review*. She was elected to a Director at Large Position for the Legal Writing Institute, 2014-2018. She was also elected to the Executive Committee of the AALS Section on Legal Writing, Research, and Reasoning. She continues to serve as Chair of the Scribes Law-Review Award Committee.

**Charles Calleros**, of the Sandra Day O’Connor College of Law at Arizona State University, presented “Comparative Legal Method: Teaching Common Law Legal Method to Civil Law Students through Metaphor, Debate, and Problem-

Solving,” at the Global Legal Skills Conference in Verona, Italy, May 21-23, 2014.

**Andrew Carter** of the Sandra Day O’Connor College of Law at Arizona State University was elected to the editorial board of *Legal Communication and Rhetoric: JALWD* as an associate editor.

**Kirsten Davis, see Tamara Herrera.**

**Christie DeSanctis, see Michael D. Murray.**

**Janet Dickson, see Lori Bannai.**

**Mary Dunnewold**, Instructor of Legal Writing at Hamline University School of Law, published columns in the ABA Student Lawyer: *Mandatory Pro Bono: Is it Right for Law Students?* ABA Student Lawyer, Feb. 2014, at 20; and *Internet Legal Service Providers: Practicing Law without a License?*, ABA Student Lawyer, April 2014, at 16.

**Anne M. Enquist**, of Seattle University School of Law, was the 2014 Burton Award

Recipient for Outstanding Contributions to Legal Writing Education on June 9, 2014 in Washington, D.C. She also presented “Mastering Syntax: The Next Frontier for Legal English,” at the Global Legal Skills Conference in Verona, Italy, May 2014.

**See also, Lori Bannai and Laurel Oates.**

**Michael Fakhri** of the University of Oregon School of Law has been named the 2014-15 Galen Scholar in Legal Writing. The position is funded by a 2013 gift to the Legal Research and Writing Program. Professor Fakhri will develop academic curriculum for the school’s law journals.

**Liz Frost** and **Megan McAlpin** of the University of Oregon School of Law presented “Introducing Legal Writers to ‘The Reader’” at the 2014 Rocky Mountain Legal Writing Conference.

**Tamara Herrera** of the Sandra Day O’Connor College of Law at Arizona State University was awarded Outstanding Faculty Member by the 2014 graduating class. She was also elected to the Association of Legal Writing Directors Board. She presented “Frantic Frankie’s Faculty Talk or the Presenter’s Predicament” (with professors Kimberly Holst, Amy Langenfeld, Sam Moppett, and Chad Noreuil), at the Legal Writing Institute’s 2014 Biennial Conference, Philadelphia, June 29-July 2, 2014. She was also a co-facilitator of the session on “Scholarship Speed Mentoring” (with **Kirsten Davis** and **Sue Liemer**).

**Kimberly Holst** of the Sandra Day O’Connor College of Law at Arizona State University was elected to the Legal Writing Institute’s Board of Directors.

She published: *Non-Traditional Narrative Techniques and Effective Client Advocacy*, 48 THE LAW TEACHER: THE INTERNATIONAL SCHOLARLY JOURNAL OF THE ASSOCIATION OF LAW TEACHERS 166 (2014); *Developing a Scholarly Agenda – One Safe Picture, One Art Picture*, 14 THE LEARNING CURVE: AALS SECTION ON TEACHING METHODS 2 (Winter 2014); and *Clickers in the Classroom*, AALS Section on Teaching Methods Newsletter 12 (Spring 2014).

She presented “Global Connections in Legal Education,” during the plenary session at the Global Legal Skills Conference in Verona, Italy, May 21-23, 2014, and “Frantic Frankie’s Faculty Talk or the Presenter’s Predicament” (with professors Tamara Herrera, Amy Langenfeld, Sam Moppett, and Chad Noreuil), at the Legal Writing Institute’s 2014 Biennial Conference, Philadelphia, June 29-July 2, 2014.

**Beth Honetschlager**, Professor of Legal Writing at Hamline University School of Law, presented *In-Class Exercise: Researching and Presenting About Free Legal Research Sources*, at the Legal Writing Institute Biennial National Conference in Philadelphia (June 2014).

**Connie Krantz**, of Seattle University School of Law, presented “Blueprint for The Bluebook: Building a Citation Foundation” at the Legal Writing Institute 16th biennial Conference, July 2, 2014. **See also, Lori Bannai.**

**Amy Langenfeld** of the Sandra Day O’Connor College of Law at Arizona State University published *Capital Drafting: Legislative Drafting Manuals in the Law School Classroom*, 22 PERSPECTIVES: TEACHING LEG. RES. & WRITING 141 (2014). She presented “Frantic Frankie’s Faculty Talk or the Presenter’s Predicament” (with professors **Tamara Herrera**, **Kimberly Holst**, **Sam Moppett**, and **Chad Noreuil**) at the Legal Writing Institute’s 2014 Biennial Conference, Philadelphia, June 29-July 2, 2014.

**Jo Ellen Dardick Lewis**, Director of Legal Practice and Professor of Practice at Washington University in St. Louis - School of Law, presented “Developing and Teaching an On-Line Legal Writing Course for International Lawyers” to the faculty at Aoyama Gakuin University School of Law in Tokyo, Japan in June of 2014.

**Professor Sue Liemer** of the Southern Illinois University School of Law published: a *Book Review*, 10 J. ALWD 195 (2014) (reviewing Zenon Bankowski et al., eds., THE ARTS AND THE LEGAL ACADEMY: BEYOND TEXT IN LEGAL EDUCATION (2012)); and *Starting Strong in Legal Writing: Summer Prep*, 22 PERSPECTIVES: TEACHING LEG. RESEARCH & WRITING 49 (2013). She presented: “Writing Across the Curriculum” at the LWI One-Day Workshop at St. Louis University in December 2013; and “Change from Within: Leadership for Law School Reform” at the 2013 ALWD conference at Marquette. She also participated at the ALWD Innovative Teaching Workshop at Marquette University School of Law in June of 2013. **See also, Tamara Herrera.**

**Megan McAlpin** of the University of Oregon School of Law has published BEYOND THE FIRST DRAFT: EDITING STRATEGIES FOR POWERFUL LEGAL WRITING (2014). She was recently elected to the Board of the Association of Legal Writing Directors and has also joined the editorial board of the LWI journal, LEGAL WRITING. **See also, Joan Malmud Rocklin and Liz Frost.**

**Michael D. Murray** of Valparaiso University Law School published: *Post-Myriad Genetics Copyright of Synthetic Biology and Living Media*, 10 Okla. J.L. & Tech. 72 (2014); *Reconstructing the Contours of the Copyright Originality and Idea-Expression Doctrines regarding the Right to Deny Access to Works*, 1 Tex. A & M L. Rev. 921 (2014); and *Advanced*

Legal Writing and Oral Advocacy: Trials, Appeals, and Moot Court (2d ed. 2014), with **Christie DeSanctis**. He presented: "Visual Rhetoric and Storytelling in Five Sections of a Brief" at the Legal Writing Institute National Conference in Philadelphia, PA, June 29-30; "Reconstructing the Contours of the Copyright Originality and Idea-Expression Doctrines regarding the Right to Deny Access to Works" at the Texas A&M Law Review Intellectual Property Symposium in Fort Worth on October 25, 2013; "Putting Storytelling into Practice: Narrativity in Five Sections of a Brief," <http://ssrn.com/abstract=2331824> at the Central States Legal Writing Conference at the University of Kansas School of Law on September 28, 2013; and was the Co-Director of the Scholars Conference of the Central States Legal Writing Conference at the University of Kansas School of Law on September 27, 2013.

**Chad Noreuil** of the Sandra Day O'Connor College of Law at Arizona State University presented "Frantic Frankie's Faculty Talk or the Presenter's Predicament" (with professors **Tamara Herrera, Kimberly Holst, Amy Langenfeld, and Sam Moppett**), at the Legal Writing Institute's 2014 Biennial Conference, Philadelphia, June 29-July 2, 2014. He also presented "Teaching Persuasive Writing Outside the Box: Anna Nicole Smith, the greatest human ever!" at the 14<sup>th</sup> Annual Rocky Mountain Legal Writing Conference at the William S. Boyd School of Law, UNLV, Las Vegas, March 28-29, 2014.

**Laurel Oates**, of Seattle University School of Law, presented: a three-day CLE workshop on effective legal writing in July of 2014; and "Reading Comprehension in the Age of Twitter: Teaching Law Students to Read for Meaning and Materiality" at the Section on Legal Writing, Reasoning, and Research at the 2014 AALS Conference. She has also developed and is teaching an online legal writing course for international lawyers and legal professionals. She and **Anne Enquist**, have published the fourth edition of their book, *Just Memos: Preparing for Practice*. The new edition covers memos, e-memos, letters, and email, and it includes numerous "Practice Pointers" on key lawyering skills. Professors Oates and Enquist have also recently published the fourth edition of their book, *Just Research*, which describes basic research sources and walks students and attorneys through the process of researching different types of legal issues using free sources and fee-based services like Lexis Advance and WestlawNext. They also have just published the sixth edition of their book, *The Legal Writing Handbook*, which provides students with an introduction to the U.S. Legal System, the process of researching and writing traditional memos, e-memos, opinion letters, and motion and appellate briefs, and an in-depth explanation of how to write clearly and concisely. Finally, the book contains a section designed for students for whom English is not their native language, and a 1000-page supplement that shows students how to research different types of issues using free sources, LexisAdvance, WestlawNext, [Lexis.com](http://lexis.com), and Westlaw Classic.

**Sara Rankin**, of Seattle University School of Law, was asked by the National Law Center on Homelessness and Poverty in D.C. to conduct a webinar on homeless bills of rights

on April 15. On the day of the webinar, she and the Center released an associated report: "From Wrongs to Rights: The Case for Homeless Bills of Rights Legislation." She also presented her legal advocacy work relating to homeless people and to discuss ongoing collaborations with various university and non-university partners to advance the rights of homeless people in the Pacific Northwest, through the Seattle University Faith & Family Homelessness Project. She presented her work on homeless bills of rights at the Washington Low Income Housing Alliance statewide conference on ending homelessness in Yakima, WA, May 22, 2014 and presented her work on homeless rights advocacy and economic profiling at the 2014 Law & Society Annual Meeting in Minneapolis, MN, June 1, 2014. She was cited as an authority on homeless rights by actress Susan Sarandon in a Congressional briefing concerning whether the homeless should be added to hate crime legislation, June 26, 2014.

She has accepted an offer of publication from *Seton Hall Law Review* to publish her new article, *A Homeless Bill of Rights (Revolution)*. The article has already been featured and distributed by the National Law Center on Homelessness & Poverty, the National Coalition for the Homeless, and the ABA's Commission on Homelessness & Poverty. She launched the nation's first Legislative Law Blog on the Law Professor Blogs Network. The blog focuses on legislative drafting, legislative analysis, and/or legislative advocacy or policymaking, located here: [http://lawprofessors.typepad.com/legislation\\_law/](http://lawprofessors.typepad.com/legislation_law/). She was elected to the Executive Committee of the Society of American Law Teachers (SALT). She was also appointed as the Chair of the Annual SALT Teaching Conference, which will be held at UNLV in October 2014. She submitted a successful proposal to the Seattle University IRB for her students to participate in a nationwide survey administered to homeless men and women. The study is one part of a broader policy advocacy effort to stem the criminalization of homelessness in the United States, July 2014. She is the main organizer and one of two key facilitators of the first Statewide Conversation on Homeless Rights. This first conversation will focus, in particular, on the criminalization of homelessness across Washington and on efforts to collect data to combat such criminalization, September 26, 2014. Event details are at: <http://wahbor.eventbrite.com>.

**Chris Rideout**, see **Lori Bannai**.

**Joan Malmud Rocklin** and **Megan McAlpin** of the University of Oregon School of Law led the Critiquing Workshop at the 2014 biennial conference of the Legal Writing Institute. The workshop was designed by Dan Barnett of the University of Hawaii William S. Richardson School of Law in 2000 and has been offered at each LWI conference since.

**Suzanne Rowe** of the University of Oregon School of Law received the University's Thomas F. Herman Achievement Award for Excellence in Pedagogy. The Legal Research Series edited by Suzanne Rowe of the University of Oregon School of Law and published by Carolina Academic Press has added new titles and editions: Kristy L. Gilliland, *Mississippi Legal Research* (2014); Scott Childs & Sara Sampson, *North*

Carolina Legal Research (2d ed. 2014); Suzanne E. Rowe, Oregon Legal Research (3d ed. 2014); Barbara Busharis, Jennifer LaVia, & Suzanne E. Rowe, Florida Legal Research (4th ed. 2014).

**Mimi Samuel, see Lori Bannai.**

**Kathryn Stanchi, see Deirdre Bowen.**

**Ken Swift**, Professor of Legal Writing at Hamline University School of Law, presented "Helping First-Semester Students Understand Different Types of Arguments," at the Rocky Mountain Legal Writing Conference held at Boyd Law School, University of Nevada Las Vegas (March 2014) and "Distance Learning Course Development: Inside and Outside of Legal Writing," at the Legal Writing Institute Biennial National Conference in Philadelphia (June 2014).

**Mary B. Trevor**, Professor and Legal Research and Writing Program Director at Hamline University School of Law, published: *From Ostriches to Sci-Fi: A Social Science Analysis of the Impact of Humor in Judicial Opinions*, 45 U. Tol. L. Rev. 291 (2014).

**Stephanie Wilson, see Lori Bannai.**



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