



**Using an Attorney Mastery Scale**

*Lisa T. McElroy, Southern New England School of Law*

We’ve all heard the argument: “You’re holding me to too high a standard! You can’t actually expect me to write like a lawyer! I’m just a first-year law student!”

No, we don’t expect our students to write like lawyers – at least, not from the first day of law school. But critical to the students’ professional development is a true understanding of how their writing compares to that of real lawyers.

When I began teaching, I graded on a classic A/B/C/D/F scale. The students liked this grading system because they understood it – it was familiar to them, and it corresponded to the semester-end grade they’d eventually receive. For me, however, this grading system created two major problems: the students who received the A’s thought that they were writing even better than many real lawyers, and, by virtue of the

grading curve, all of the students compared themselves to their colleagues (other first-year law students), rather than to lawyers. They thereby lost sight of the progress they needed to make to pass the bar and become competent attorneys.

Because professionalism has always been an important component of my course, I created a new grading scale. The Attorney Mastery Scale includes scores of 1-10, with explanations accompanying each score and explaining how a supervising attorney would likely evaluate this writing if it were submitted by a junior attorney.

At the beginning of the semester, students receive a copy of the scale. I grade all assignments according to this scale and weight the scores at the end of the semester.

**Attorney Mastery Scale**

- 10 – Perfect: needs no revision.
- 9 – Near perfect: needs almost no revision.
- 8 – Truly excellent: at the level of a seasoned attorney.
- 7 – Excellent: at the level of a quality junior associate; needs revision and reworking as marked on paper.
- 6 – Excellent: at the level of a top first-year student; needs revision and reworking as marked on paper.

- 5 – Very good: obvious attention to detail, good analytical and research skills; needs revision and reworking as marked on paper.
- 4 – A good first effort: lacking in research, analytical, or writing skills, or any combination of these; needs revision and reworking as marked on paper.
- 3 – Needs significant improvement: displays some obvious effort, but is seriously lacking in research, analytical, writing skills, or any combination of these; needs revision and reworking as marked on paper.
- 2 – Poor: evidences poor effort, poor understanding of the concepts, or both; is seriously lacking in research, analytical, or writing skills, or any combination of these; needs revision and reworking as marked on paper.
- 1 – Very poor: evidences extremely poor effort, poor understanding of the concepts, or both; is very seriously lacking in research, analytical, or writing skills, or any combination of these; needs revision and reworking as marked on paper.
- 0 – Needs to start research and writing from scratch.

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## Letter from the Editors

In one of my first job interviews after college, a particularly surly interviewer told me that for all my education, I had no useful skills - all my Bachelor of Arts degree was good for was “a working knowledge of the English language.” We came to this issue of *The Second Draft* hoping that you would share with us how you prepare students to leave law school with more than just a working knowledge of legal language. As usual, our hopes were exceeded, and we think you’ll agree that this issue is filled with practical and innovative guidance for bridging the gap between law school and legal practice. From using an “Attorney Mastery Scale” to give students “real world” feedback and context, to taking students on “field trips” to learn what that “real world” looks and feels like, this volume of *The Second Draft* provides new ideas to help us prepare our students to practice law.

Our next issue furthers this practical theme, and its subject, “Methods of Providing Students with Effective Oral and Written Feedback on Their Writing,” calls on colleagues to share the best ways in which they have provided their students with constructive critiques during conferences and in written comments. We look forward to seeing your submissions, and guidelines and dates can be found at [www.lwionline.org](http://www.lwionline.org). Thanks to all who submitted articles to this *Second Draft*. Enjoy!

Lisa Healy

Kathy Vinson

Stephanie Hartung

Samantha Moppett

## THE LEGAL WRITING INSTITUTE

*The Legal Writing Institute is a non-profit corporation founded in 1984. The purpose of the Institute is to promote the exchange of information and ideas about legal writing and to provide a forum for research and scholarship about legal writing and legal analysis.*

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*The Second Draft is published twice yearly and is a forum for sharing ideas and news among members of the Institute. For information about contributing to The Second Draft, please visit the Institute's website at [www.lwionline.org](http://www.lwionline.org).*

# The President's Column



*Susan Hanley Kosse*  
*University of Louisville-Louis D. Brandeis School of Law*

Dear LWI members:

We are off to a great start! I am pleased to announce that the 2006-2007 committees have been posted on our website, [www.lwionline.org](http://www.lwionline.org). I am thrilled that over 140 (yes that is ONE HUNDRED FORTY) of you answered our pleas and have volunteered to help! That has to be a record. Appointing so many people would not have been possible without the help of the committee on committees. I want to thank:

**Chair:**

- Michael Smith, Wyoming

**Members:**

- Judy Rosenbaum, Northwestern University
- Anne Enquist, Seattle University
- Rachel Croskery-Roberts, The University of Michigan
- Judith Stinson, Arizona State University
- Jessica Elliott, Roger Williams University

An extra big thank you to Rachel who collected and organized all the names. She deserves a huge round of applause.

In addition to appointing committees, I have also appointed a board liaison for each committee. The liaisons will answer questions and keep the Board informed about the committee's activities. The names of the board liaisons are also posted on the website. Please feel free to contact any of the liaisons if you have any suggestions, comments or concerns.

Each committee has been given a date to complete its charge. The schedule for this year is as follows:

**Oct:**

Plagiarism, Committee on Mentoring Programs, Blackwell

**Nov:**

Website, ABA Standards Education Committee, Committee on Committees

**Dec:**

New Member Committee, Professional Development

**Jan:**

Long-term Planning Committee (progress report at board meeting), Scholarship Development, By-laws (report for board meeting), Conference Scholarship (January 2008)

**Feb:**

Teacher Exchange, Scholarship Outreach, Archive Project

**March:**

Clinical, Upper-level Writing

**April:**

Idea Bank, Committee on Teaching Resources, Monograph Project

**May:**

Bar Outreach, Survey Committee Report, Golden Pen

As the months go by I hope to report on many exciting initiatives coming out of these committees. In addition to these activities, the Board will be discussing the job posting issue at its January Board meeting. Thanks to all of you who sent us your comments. Finally, the Board is already beginning to think about the 2010 & 2012 conferences and will be sending out a request for proposals soon. Please start thinking about whether you would like to showcase your school and city.

Hope the fall semester is going well for all of you!

Susan



## Student to Lawyer: Teaching the Culture(s) of Law Practice

*Sarah Ricks, Rutgers School of Law - Camden*

I have added “teaching the culture(s) of law practice” to my One L curriculum. I did it for many reasons. Many first year law students’ exposure to law practice is limited to Law & Order. Others may know lawyers socially and may even know what legal assistants might do, but have little idea what lawyers themselves do day-to-day, whether in law firms or other law offices. Finally, lack of familiarity with the culture of law practice can have adverse consequences for students seeking jobs. I’ve seen many fine law students shoot themselves in the foot in the job market, in part because of unfamiliarity with the formality and hierarchy of some law workplaces.

To teach One L students about the cultures of different law workplaces, I have organized a series of field trips. Each field trip allows a small group of One L’s to meet Philadelphia lawyers in their natural habitats – either the lawyers’ offices or meetings of the local bar association. The idea is to expose students to how lawyers in different workplaces dress, act, and talk in professional settings. The field trips give students a glimpse of what they might expect to experience on a callback interview – such as a security procedure, a receptionist, and busy lawyers in the halls – but with less at stake, because the field trips take place outside the context of job-seeking. The students ask the lawyers what they do on a typical day. Because I ask students to visit lawyers practicing in an area the student might want to pursue, the field

trip might be a first chance for the student to get a sense of his/her own future work life.

Unlike bringing lawyers to campus, when lawyers may adjust their behavior to the less formal atmosphere of the law school, bringing students to the lawyers’ offices lets the students absorb a bit of the real atmosphere of the law offices. Seeing the lawyers’ papers piled on desks, rows of case files, boxes of documents, and hearing phones ringing creates a more vivid impression of how busy lawyers can be than I could in my classroom. Visiting the lawyers’ offices also requires students to begin stepping into the shoes of a lawyer in a more literal sense, since I require students to dress more formally than they would on campus – no open-toed shoes, no jeans, no short sleeves.

Field trips to lawyers’ offices so far have included the Philadelphia District Attorney’s Office, a small plaintiffs’ consumer and antitrust law firm, local government transactional and real estate practitioners, a commercial litigation boutique, and in-house transactional counsel for a large corporation. Field trips to Philadelphia Bar Association committee meetings have included meetings with attorneys only, as well as several meetings with federal judges. Typically, the attorneys and judges have welcomed the presence of students, invited their questions, and even tailored their comments to the students.

In addition to field trips, I teach the culture of law practice by encouraging students to attend

on-campus career panels, to take advantage of workshops on networking and other career-building skills, and to attend law school functions that include practicing attorneys. I have also invited clinical faculty to speak to my class. Finally, I weave stories from my eleven years of law practice into my teaching.

My student evaluations from last year reflect that, for many students, the high point of the first semester was a field trip to meet practicing lawyers and judges. “The highlight of the course was lunch with a federal appellate judge.” “The field trip I went on was fantastic. It allowed me to see what it is that I am aiming for at a time when that seems so far away.” This year’s student reaction also has been positive. “It was great to get away from the classroom ‘law in theory’ and to see ‘law in action.’” “The field trip to a litigation boutique was a wake-up call about how much work to expect in law practice.”

# Teaching Legal Reading For the Practice of Law

Leah M. Christensen, University of St. Thomas School of Law

Most of us would agree that reading statutes and judicial opinions is central to the practice of law. However, there has not been much research about how lawyers read legal text. If legal education is supposed to prepare students to practice law, then perhaps we need to teach our students how to read like legal experts.

In 1997, Mary Lundeborg conducted a study in which ten experts (eight law professors and two attorneys) and ten novices (individuals who were presumed to be good readers but who had no training in law) thought aloud as they read a judicial opinion.<sup>1</sup> Lundeborg found that while very few of the novices began their reading by noting the names of the parties, the date of the opinion, or the court and judge deciding the case, almost all of the experts did. In addition, most of the legal experts made statements agreeing or disagreeing with the court's holding or rationale. Further, the experts were more likely than the novices to preview the opinion, reread it analytically, and to engage in synthesis. Over the past year, I have been in the process of conducting my own empirical research on the way in which lawyers read the law. In my present study, I examined the way in which ten legal experts (lawyers and judges who have been out of law school for more than 15 years) read a simple legal opinion.<sup>2</sup> I compared the reading strategies used by the lawyers or experts to the reading strategies used by first year law students. The results were fascinating: practicing lawyers and judges read cases very differently than law students. The following list highlights the ways in which

practicing lawyers and judges' reading of the law differs from that of first-year law students:

## **Lawyers read with a purpose.**

They ask "why am I reading this case?" before they begin to read.

## **Lawyers establish the context of the case before they begin to read.** They note the date, court and parties.

## **Lawyers preview the opinion.**

They look at the length of the opinion, the keynotes, and the basic legal issue before they begin to read.

## **Lawyers summarize each paragraph and then move on.**

They focus on the most relevant paragraphs of the case and skip around the opinion, skimming irrelevant text.

## **Lawyers synthesize the law as they read.** They analyze the facts of the case, comparing and contrasting them with prior precedent as they read.

## **Lawyers evaluate the case as they read.** They agree or disagree with the court's reasoning and evaluate the end result of the case. Was it correct? Was it a just and fair decision?

## **Lawyers use their experience and knowledge to enhance their understanding of the case.** They analyze the case based upon their past experience in the courtroom, knowledge of judges, etc. to contextualize the text as they read.

## **Lawyers do not waste time highlighting or underlining text; they move through the text efficiently.** They rarely mark the case as they read, but instead summarize the case, focusing on the issues most relevant to their legal problem.

## **Lawyers reread the text when they are confused.** They make sure they understand each paragraph, each word, and each fact or rule before reading on.

Most of us try to teach our students how to become good legal readers. Yet, we also need to think about how to teach our students the techniques that "expert" legal readers use. Lawyers and judges encounter far more legal text each day than even the busiest of law students. Legal experts have developed unique skills that enable them to read large volumes of text efficiently and purposefully. If our goal as legal educators is to prepare students for practice, then we need to teach them to read like legal "experts" and practicing attorneys. The more they can achieve some of these skills during law school, the better for the individual students and the better for the legal profession as a whole.

<sup>1</sup> Mary A. Lundeborg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 *Reading Res. Q.* 407, 411 (1987). See also Ruth Ann McKinney, *Reading Like A Lawyer: Time-Saving Strategies for Reading Law Like an Expert* (2005). Professor McKinney's book provides an eloquent and accessible way to introduce new law students to the challenges of legal reading.

<sup>2</sup> Using a think-aloud protocol, I asked each of the participants to read a case and talk out loud as they read. I then transcribed the think-alouds and coded the data to determine what percentage of time each participant spent utilizing a specific reading strategy.

# The Next Step

## Research in the Real World

Joan Malmud, University of Oregon Law School

Angus Nesbit, Reference Librarian, University of Oregon Law School

Each spring, reference librarians and legal writing faculty at the University of Oregon prepare first year law students to research in the real world by assigning short, independent research projects. As in the real world, and for these projects, the professor does not know the answer, the students track their billable hours, and they learn that sometimes the best resource is one they had never thought of before.

Here's how it works: First, students choose a short research project. They can either choose a project from a prepared list or they can choose a project of their own. Allowing students to research an issue of their own keeps the research project interesting and meaningful. Topics have included expunging a conviction, proper execution of a living will, responsibility for cleaning up asbestos in a condominium, and a topic the students thought would appear on their property exam.

Students then have one to two weeks and a set number of billable hours to work on the research project. Because the project occurs at the end of the year when students are gearing up for exams, we set the billable hours low, somewhere between six to eight hours. During that time, students must conduct their research, meet with a reference librarian, record their billable hours on a time sheet, and write a two to three page memo explaining what they have found so far and what research remains to be done.

The project has many benefits. For example, introducing the project gives another opportunity for the professor to provide practical advice about receiving an assignment from a senior attorney.

Some of the wisdom passed along includes:

- Always walk into a senior attorney's office with a pad of paper and a writing implement.
- Always ask for a due date.
- Always ask for the billing number.
- Determine whether the project has constraints in terms of time or money.
- Determine what the end product should look like.
- Consider asking for a sample if the end product is new to you.

The professor can also discuss what to do if the student can't find an answer to a research question and how much more common that is outside of school. And the professor can discuss what to do if the student finds an answer, but it's not the answer the client wants to hear.

Meeting with the reference librarians helps students to see them as resources beyond the curricular support they provide during the academic year. When the students meet with the reference librarian, the students are asked about the research steps they have taken, what they found, and what obstacles they encountered. While these projects present a chance for students to revisit a number of standard primary and secondary resources, they also present the librarian with an excellent

opportunity to introduce attorney practice guides, treatises, and the more specialized, topical databases found in Lexis and Westlaw. In addition, the librarians will typically offer to help construct online search strategies and critique overall research plans.

These consultations provide the librarian with the chance to reinforce the traditional steps in a research process, including when to stop. The librarian can also provide some practical advice the students may not have needed for their school assignments:

- The assigning attorney will rely on what you uncover about the issue(s) being researched.
  - It is not cheating to ask about previous, related research, or to ask for preliminary guidance from another attorney. It's economical!
  - Consult with a librarian early on about the resources available to you, including those available at your firm's library, the county or other public access law libraries, and online.
- At the end of the project, the students meet again as a class. As a class, they discuss not only the answers that they found but also what they have learned about researching. They describe new-found appreciation for resources such as loose-leaf binders.

They discuss the value of a telephone call to the right government agency. They report that six billable hours is a really short period of time.



## The Humanity of the Practice of Law

*Ann McGonigle Santos, Suffolk University Law School*

Last year, as I began my eighth year of teaching, I made a conscious effort to sprinkle nuggets of humanity throughout my lectures. Now, before you roll your eyes, my goal was not to create “kinder and gentler” lawyers, but rather to ensure that these first-year law students did not feel the need to alter their personalities or moral character upon entering law school. The challenge was to convey to the students that, contrary to how they may have seen lawyers portrayed on television and in the news, kindness in the practice of law does not reflect weakness.

I have always addressed the issue of how to behave in court or in a law office. This typically arises toward the end of the year, as we discuss preparing for oral arguments. As a former Assistant District Attorney, I rely on my experience when I tell the students that, legal knowledge and careful preparation aside, one must also be courteous and professional at all times. I tell them that law students and lawyers should always make an effort to be kind to the following people: court officers, clerks, probation officers, secretaries, and of course, judges. I intentionally begin the list with those persons that students may assume are only “support staff.” I explain that no one has more power in the courtroom than the court officers and the clerks, because they control the “calling of the list.” I explain that on many occasions I witnessed an attorney sitting in the courtroom, waiting for his or her case to be called, only to learn that the case had been moved to the bottom of the list. Invariably, this attorney was either curt or rude to someone in the courtroom, and suffered the

consequences of that behavior. The same consequences are surely doled out in a law office, where an administrative assistant will likely be more willing to help out an attorney who treats that person with respect and kindness.

Last year, the issue of the moral character of lawyers was thrust into the faces of my students when a highly-publicized e-mail, written by a recent law school graduate, traveled the globe. This series of e-mails chronicled discussions between a Boston lawyer and a recent law graduate who had recently interviewed at his firm. Upon learning that the salary offered would not be as substantial as she had hoped, she sent a testy email stating that she was no longer interested in the position. This highly publicized correspondence underscored the importance of the rule: never send an e-mail in anger. Or, as I tell my students, ask yourself the following question before sending an email: How would you feel if your email were published so that thousands of people would read it? If the answer is: “I would crawl under a rock and die,” then don’t send it. The writer of this notorious e-mail gained most of her notoriety not by the substance of what she said – although the phrase: “blah blah blah” is unprofessional on so many levels – but by her tone. Teaching about professionalism late in the year, and preparing them for their summer jobs, I referenced this email to teach my students that a lawyer must be careful what she puts in writing. However, the discussion quickly transformed into something more intangible; we began talking about the basic need to be kind and courteous in our profession. When the

discussion took place in April, the students understood my personality and had heard enough war stories about surviving in the trenches of an urban District Attorney’s office to believe me when I said: Don’t mistake kindness for weakness. The students seemed relieved that a professor, and former prosecutor, was telling them that they do not have to assume an overly hostile and cold persona to succeed as an attorney. Being compassionate, empathetic, and decent can co-exist with being aggressive, assertive, and strong-willed.

To my delight, the response to this lecture was phenomenal, and best summed up by one student’s email: “by the way you are also the only Prof. who has actually mentioned anything about treating other people in and out of this field nicely and with respect; I think that is extremely important to impart to people choosing this career before they leave the nest.”

# From the Desk of the Legal Writing Specialist

## Demystifying IRAC and Its Kin: Giving Students the Basics to Write “Like A Lawyer”

Lurene Contento, *The John Marshall Law School, Chicago*

Lawyers use IRAC, judges use IRAC. From the new associate writing his first memo, to the appellate judge writing her last opinion, everyone (well, almost everyone) uses IRAC (or its kin) to get organized. Call it what you will, IRAC is here to stay. So what better way to prepare students for the practice of law than to give them a solid understanding of IRAC: the classic small-scale organization form.

Before students can effectively use IRAC, they need to know what it is and where it goes. Early in each semester, I present an IRAC workshop for beginning (and generally overwhelmed!) students. I keep the workshop simple and keep the focus on strong visual images that help students “see” what IRAC is all about. Although most of the students have read about IRAC or at least heard of it, they come to the workshop confused about how to use it. They also want to know why they should use it when friends in other classes are using SIREAC or CRuPAC or TREAT or some other funny-sounding acronym. To clear up the confusion, I use the following overhead:

I	C	I	C	SI	T	T
R	R	R	Ru	R	R	R
A	A	I	P	E	A	E
C	C	A	A	A	A	A
		C	C	C	C	T

The students begin to see that while IRAC and kin have different names, their elements match up. After seeing the relation between the kin, the students ask, “But, what do all those letters mean?!” That comes next.

### What IRAC Means

The workshop goes into much more detail than I’ve given here. Because we all know what IRAC is, what follows is very, very basic. Line One: Whether you call it Issue, Conclusion, Sub Issue, Topic, or Thesis, you have to tell your reader what the issue is before you write about it. Line Two: Then, you need to set out the general Rules (Rules) so your reader understands the law before you apply it. Line Three: Sometimes, you will need to use precedent cases to Illustrate, Prove, or Explain, the rules. This E/I/P is “assumed” in the classic IRAC acronym. Line Four: You then Apply the rules, or in Analysis explain how the rules and precedent cases fit with your facts. Line Five: Last, you Conclude or restate the Thesis as a conclusion as to the

precise issue you defined in the Issue. Whether you’re using IRAC, TREAT, SIREAC, or another acronym, you’re presenting information in the same way – in a clear, logical way that legal readers

have come to expect.

### Where IRAC Fits

Now that students know what IRAC is, they need to see how it fits into their analysis. Most students know that IRAC is used for small-scale organization, but few students understand what that means. So, time for another overhead:

**ISSUE STATEMENT (Question Presented) for the GLOBAL ISSUE**

**BRIEF ANSWER as to the global issue**

**ANALYSIS of the GLOBAL ISSUE**

Sub-issue: I  
R  
(E)  
A  
C

Sub-issue 2: I  
R  
(E)  
A  
C

**CONCLUSION as to GLOBAL ISSUE**

This bare-bones structure helps students see how IRAC fits into their analysis, that their IRACs will be nested within the “global issue.” Everything in bold is part of the “global issue,” a.k.a. the large-scale organization. I’ve also called the global issue the “big issue,” or the “main issue” or the “legal question you need to answer.” I’ve even called it the “whole enchilada.”

Once you know your global issue – and here I spread my arms wide and draw out the “g – l – o – b – a – l” sound, then you need to find each of the little sub-issues.



And here I squint my eyes and pinch my fingers together. IRAC is used to organize each little sub-issue (pinch and squint) within your global issue (spread arms wide). Whether you have 3 sub-issues or 23, each generally has its own Issue, Rule, (Explanation), Application, and Conclusion. And, depending on how complex the sub-issue is, it may have its own even tinier “sub-sub-issue” IRACs.

### Putting IRAC to Work

Next, the students and I fill in the bare-bones structure using a global issue that easily breaks down into elements: burglary. I give them the global issue and global rule. The issue is whether their client can be convicted of burglary. The rule is that a defendant commits burglary if he breaks into the dwelling of another intending to commit a felony therein. We then break out

the sub-issues by finding each “component part” that may need to be analyzed. I tell the students to put a number over each. Usually they find five or six.

I then give the students a very short fact pattern and some pared-down facts and holdings from a precedent case or two. Together, we go through one of the IRACs and plug in the information. We come up with something like this:

**ISSUE STATEMENT (Question Presented) for the GLOBAL ISSUE**  
*Did a person commit burglary if...(add legally significant facts)*

**BRIEF ANSWER as to the GLOBAL ISSUE**  
*Yes, a person has committed burglary when he...(add legally significant facts)...because (add legal standards)*

**ANALYSIS of the GLOBAL ISSUE**  
*Client wants to know if he has committed burglary. A person commits burglary if he breaks into a dwelling of another with the intent to commit a felony therein.*

Sub-issue 1: **I** *The first issue is whether (structure in question) is a dwelling.*  
**R** *A dwelling has been defined as...*  
**(E)** *In Doe, the court held that “X” was a dwelling because...*  
**A** *The structure here is similar to “X” because...*  
**C** *Therefore, the structure is a dwelling.*

Sub-issue 2: **I** *The second issue is did the client “break into” the dwelling.*  
**R**  
**(E)**  
**A**  
**C**

**CONCLUSION as to GLOBAL ISSUE**  
*Therefore, because of the mini conclusions in the sub-issues, client committed burglary.*

This visual, while simple, is one that the students readily understand. They can see how their analysis fits in the IRACs that fit within the global issue.

### Packing IRAC to Go

Now that the students have a basic understanding of IRAC (what it is, where it goes, and how it relates to its kin), they need be encouraged to use it – and not just in law school. Recently, a student asked me to review a memo that she wished to use as a writing sample. It was a memorandum that she had written at her present job. I started reading; I got lost. I tried again, but before I got to page two, I was lost again. I tried

retracing my steps. I tried flipping pages back and forth. Nothing worked. The paper seemed to have no organization. When the student came in for her appointment, I asked her to explain to me how she had organized the memo. She couldn’t. I asked her if she had ever learned IRAC. She said that yes, she had, but that IRAC is only used in law school, and that “no one in the real world” uses it. So from my shelves, I pulled down a couple of recent court opinions. As we went through them, I pointed out the I – R – A – C. Lo and behold, someone really DOES use IRAC in the real world. In fact, most lawyers (and judges)

use it – even if they can’t remember what it’s called or what the letters represent.

Students use IRAC (or its kin) in law school because it’s what professors prefer. But students shouldn’t abandon IRAC when they leave. As someone once told me, “Pack IRAC [or a kin] in your knapsack and take it with you when you go.” Because whether you’re a student or a Supreme Court justice, organization is the key to clarity. And maybe more important to soon-to-be lawyers, clarity wins cases. If you write clearly and your organization is solid, you’re not only on your way to “writing like a lawyer,” but writing like a winning one.

## Cultivating a Professional Attitude

*Nancy Soonpaa, Texas Tech University School of Law*

In preparing students for daily practice, law professors should help students understand and develop a professional attitude. They can do so by modeling professionalism, encouraging and affirming appropriate professional behavior, offering observation opportunities, and demonstrating balance.

**1. Model professionalism.** Law professors often provide students' first extended exposure to attorneys. Their behavior can therefore have a powerful effect on law students' perceptions of law practice.

\* Consider how your comments reflect your attitude toward law school and law students, toward law practice, and toward the legal system. For example, law practice may have made you miserable, but many of your students are spending three years and \$100,000-plus with a goal of doing that very thing. Listening to a professor criticize their professional goal is demoralizing. Try to offer your own experience without blanket denigration of your students' career choice.

\* Consider how the way you do your job reflects your own professionalism and the reasonableness of the standards to which you hold your students. If a professor comes to class late, offers handouts with errors, and doesn't return papers as promised, it's hypocritical for that professor to hold students to a higher standard of performance.

**2. Encourage and affirm appropriate professional behavior.** We can teach our students from an assumption (1) that they are not professional or (2) that they are professional. Teaching

from the negative assumption is demonstrated by policies that assume that bad (unprofessional) behavior will occur; teaching from the affirmative assumption is demonstrated by policies that assume that with notice, students will do what is appropriate (professional). For example, when attendance is required at a non-classroom event, a professor may plan how to take role to be sure that students attend. That approach suggests that students must be monitored and their attendance, independently confirmed. Another professor may ask the students to submit signed certificates of attendance, relying on the students to report accurately and be bound by their signature—much as they will be in law practice.

**3. Offer observation opportunities.** Students may come to law school with little exposure to law practice. Their concept of professional behavior may have been shaped by "Boston Legal," by their experience in traffic court, or by nothing at all. At Tech, we require two activities in our "Professional Observation Requirement" to provide students with a more accurate picture of professional life; our syllabus states:

Understanding the real-life context in which law is practiced is an important part of legal education. The law school and the community regularly offer students opportunities to learn more about the practice of law, and the Legal Practice Program has the following requirements:

Each semester, at least one court holds oral arguments at the law school... In addition, the Board of Barristers competitions' final rounds are open to the student body and offer opportunities to

watch mock arguments. You must observe at least one hour (or complete round) of oral argument either at the law school or on-site at a court of your choosing and write a 1-page reaction paper...

Each semester, students have many opportunities at the law school to listen to guest speakers on a variety of professional topics. Local bar association lunches and events also offer the opportunity to learn about the practice of law. You must attend at least one guest lecture, panel, speaker, or event and write a 1-page reaction paper...

**4. Demonstrate balance.** Lawyers have high stress levels, and a rate of substance abuse and depression higher than that of the general public. As professors, we have three choices: to do nothing, to contribute to those rates, or to break the cycle. One way to break the cycle is to model not just professionalism, but a balanced approach to law and life that maximizes health, well-being, and both job and life satisfaction. One group that promotes this approach is Humanizing Legal Education ([www.law.fsu.edu/academic\\_programs/humanizing\\_lawschool/humanizing\\_lawschool.html](http://www.law.fsu.edu/academic_programs/humanizing_lawschool/humanizing_lawschool.html)). Helping law students to be happy and healthy sets the pattern for them to be happy and healthy professionals. Showing respect for students as people; encouraging students to balance school with family, friends, and leisure activities; being aware of resources for them; and sharing with them our own struggles to find and maintain balance – those are the most valuable ways that we can prepare students for the specifics of daily practice.

# The Positive Pedagogy of Presentations to Partners

Michael D. Murray, University of Illinois College of Law

Making the transition from law study to law practice requires focusing attention, synthesizing information, and rigorously applying skills that are new and non-intuitive. One pedagogical tool that combines the knowledge gained in law study with the skills needed for practice is the “Presentation to a Partner” simulation exercise. Presentations to partners combine an oral presentation of the results of research with an information processing exercise in which the student must receive and respond to rapidly changing feedback and inquiries from the audience, all in five or ten minutes.

Presentations to partners and supervisors are a routine if not weekly occurrence for young lawyers in every law office. As a practice simulation to test lawyering skills, presentations to partners are comparable to trial or appellate oral argument sessions, but presentations can avoid much of the pomp and circumstance of oral arguments—the formality of tone and decorum, the grandness of the presentation, the litigation setting, the rigid structure of the oral argument paradigm—without losing the opportunities to test the students’ skills and explore their preparation, knowledge, understanding, and analysis of the problem.

A presentation to partner simulation should follow the following pattern:

**Initiation:** The “partner” — most often portrayed by the professor — initiates the simulation by inviting the student into an office or conference setting, and may wish to draw the student into the role-play by starting out with a short burst of law firm banter. This initiation can relax the tone of the setting or

set the tone in a different direction if you want to challenge students with a series of questions that the students were not expecting to have to answer.

**Opening statement:** Very early in the simulation, the partner will turn to the student and ask for the presentation of the student’s analysis and conclusions. Evaluation criteria for the opening statement include:

- Is the student speaking clearly both in a presentation sense and in a content of communication sense?
- Is the student starting out with the most important information first (the conclusions) followed by the most important supporting information from the analysis, and followed then by supporting information of lesser importance? Or is the student meandering from one idea to the next with little or no sense of the hierarchy of importance of the information to be communicated?
- Is the student reporting information that is correct and legally sound?
- Is the student reporting the information in a reasonably concise manner, or is the student running off at the mouth at top speed?

If the student is well prepared and the statement is delivered in conformity with the four evaluation criteria listed above, then the partner simply can sit back (or stand back) and listen to the presentation. In other situations, the partner must interject a comment or instruction to redirect the student’s focus and assist the student to get to the important parts of the

communication sooner.

**Questions and Answers:** The second substantive part of the simulation is the Q & A between the partner and the student. Here the partner has the opportunity to test the student’s understanding of the case, particular authorities, issues or policies, or the student’s willingness and ability to defend his or her analysis and conclusions in the face of adverse probing by the partner. The following criteria apply:

- Is the student easily thrown off her position? Does she flip-flop in the face of the partner’s adverse reaction to her presentation?
- Is the student prepared to discuss and further analyze the authorities? the public policies? the facts of the instant case?
- Are her answers direct and responsive or evasive and non-responsive?
- Is she able to receive, process, and effectively respond to a variety of questions in a prompt manner?

**Closing:** The partner can wind up the discussion to keep the exercise within the time limits.

**Feedback:** The eight criteria listed above give students feedback on a broad range of practice skills. Instant feedback in the form of oral comments delivered to each student at the end of the exercise can be effective. It gives the students an opportunity to comment on the exercise or ask follow-up questions. A short e-mail to each, or a brief sheet of notes, can also be used.

## The Real World: Law School Professionalism in Law School and Beyond

*Lisa Penland and Melissa Weresh, Drake University Law School*

Current law students are accustomed to virtual communication. In fact, virtual communication in the form of e-mail and Internet dialogue is the primary means of written communication for the Millennial generation. In recent years, however, we have been disappointed by lapses in professionalism by our students in these forms of communication. Some lapses are apparent – demanding or dismissive tone, clearly inappropriate content – while others are far more subtle and, in all likelihood, unintentional. Because lapses in communication have a detrimental effect on legal education and law practice, we decided that a primer in professional communication was in order. We sensed, however, that the biggest obstacle to the session's success was to identify lapses in professionalism in conduct students genuinely believe to be appropriate without insulting them in those illustrations. We therefore decided to have a workshop with students to discuss professionalism in virtual communication. We felt that the workshop environment would be informal and non-threatening and that students might therefore discern for themselves the inappropriate nature of the communication and its potential impact on relationships with peers, superiors, clients and judges.

As part of our workshop, we set up a fictitious exchange of emails within a law firm and some fictitious personal web pages. Both categories included exaggerated and subtle lapses in

professionalism. We set the stage for discussing these illustrations by identifying some peculiar attributes of virtual communication that make professionalism conventions less evident. Specifically, the informal and instantaneous qualities of virtual communication may suggest that concepts of professionalism do not apply. The personal nature of email correspondence, web pages, and blogs give writers a sense of privacy that does not exist. Our workshop then turns to current news stories that illustrate serious repercussions associated with a failure to incorporate professionalism into virtual communication.

We then directed the students' attention to the email communications. The emails illustrate communication between same-level associates, associate and senior associate, and associate and partner. The writers and recipients were chosen to illustrate the hierarchy of authority that exists in law practice. The email exchanges involved work on a client matter and the content of the exchanges was designed to reinforce concepts of professionalism relating to respect for colleagues, clients and client matters, and legal processes. The webpages similarly implicated issues of personal and professional communication and lapses associated with misapprehensions about the private nature of Internet dialogue.

In our presentation, we incorporated a power point presentation with links to the email exchanges and web pages.

The technology is helpful because we project slides providing direction to students while they turn their attention to the web links. Further, the web links allow us to present the virtual communication in a realistic - format. As the students examine the web links we ask them to break into groups to discuss the content. We then regroup to provide direction and focus, asking them to consider concepts such as respect for authority, respect for business and legal processes, and respect for issues of privacy and/or confidentiality. These concepts then provide students with some direction on issues to consider with respect to a professional, virtual dialogue. In this way, we collaborate with students to come to conclusions about professionalism in a manner that gives them ownership of the solutions.

The workshop's informal and collaborative atmosphere, together with some humorous and entertaining examples, achieved our purpose of allowing students to ascertain the parameters of professionalism in informal, virtual communication. The workshop was tremendously effective in bringing to the students' attention what professionalism is, how it relates to virtual communication both in the workplace and in their private lives, and how professionalism affects their ability to be effective and satisfied lawyers.

## Publication Spotlight

Louis Schulze

Transactional Law in the Required Legal Writing Curriculum: An Empirical Study of the Forgotten Future Business Lawyer, 55 Clev. St. L. Rev. \_\_\_ (forthcoming 2006); available on SSRN at [http://papers.ssrn.com/sol3/cf\\_dev/AbsByAuth.cfm?per\\_id=658525](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=658525).

Legal Writing courses traditionally focus on litigation writing. For future transactional lawyers, however, the dominance of litigation writing might seem to ignore their needs. Should they be learning how to draft contracts, create corporate documents, or write commercial leasing agreements?

This Article examines whether legal writing courses sufficiently address the needs of future business lawyers. It first establishes (by analyzing

results of the ALWD/ LWI Survey) that while transactional writing instruction is increasing, it still is not as prevalent as litigation writing, especially in the first year. The Article then determines, by means of original empirical research, the need for instruction in transactional writing. Based on this need, the Article concludes that law schools should focus more efforts on non-litigation writing instruction. It then canvasses several proposed methodologies to achieve this goal: writing-across-the-curriculum; the "integration model;" the "expansion model;" and a "hybrid model" which co-mingles instruction by transactional and writing faculty in the same course.

# NEWS

## Publications and Promotions

**Dan Barnett** (Boston College) will have his article, *Triage in the Trenches in the Legal Writing Course: The Theory and Methodology of Analytical Critique*, published in volume 38 of the University of Toledo Law Review (December 2006).

**John Bronsteen** (Loyola University Chicago) published a book, *Writing a Legal Memo* (Foundation Press 2006).

**Peter Butt** (Sydney, Australia) has published the second edition of his co-authored text, *Modern Legal Drafting* (Cambridge University Press 2006). He has also published an article, *Plain Language: Drafting and Property Law*, 7 European Journal of Law Reform 19 (2006)

**Christine Coughlin** (Wake Forest), **Joan Malmud** (University of Oregon), and **Sandy Patrick** (Lewis & Clark) recently signed a contract to publish a book. Tentatively titled *A Lawyer Writes: A Practical Guide to Predictive Writing & Analysis*, the book is a law student's step-by-step guide to developing objective memoranda.

**Kirsten Dauphinais** (University of North Dakota ) presented this summer on learning theory at the Institute for Law School

Teaching's conference in Chicago and the AALS Midyear Meeting in Vancouver. As a result of her efforts in scholarly presentations over the last year, the dean has made her the recipient of an endowed research fellowship with the title of Alphson Research Fellow.

**Scott Fruehwald** (Hofstra University) will have his article, *The Emperor Has No Clothes: Postmodern Legal Thought and Cognitive Science*, published in the Georgia State University Law Review in late 2006.

**Jane Kent Gionfriddo** (Boston College) is one of the co-authors of the recently published *ABA Sourcebook on Legal Writing Programs*.

**Lisa McElroy** (Southern New England) has become a regular legal commentator on Court TV radio and television, commenting on breaking news items. She continues to be the legal commentator for the Satellite Sisters, a nationally-syndicated radio show on ABC Radio.

**Michael D. Murray** (University of Illinois) will have his article, *Copyright, Originality, and the End of the Scenes a Faire and Merger Doctrines for Visual Works*, published in the

CONTINUED ON PAGE 14

Fall 2006 edition of the *Baylor Law Review*. In July 2006, he released the 2006 supplements for *Jurisdiction, Venue, and Limitations* (Thomson West 2005) and *Civil Rules Practice* (Thomson West 2005). In September 2006, he released the last seven chapters of the newly revised and updated *Deskbook of Art Law* (Oxford University Press, Oceana Division). The chapters were on Aid to the Arts, Art as an Investment, Authentication, Tax Problems for Collectors & Dealers, Tax Problems for Artists, The Museum Organization, and Internal Museum Problems. Also in September 2006, he was added as a new co-author for the next edition of *Art Law in a Nutshell* (West Group 2006) and added as a new co-author for a completely revised and updated edition of *The Law (in Plain English®) for Health Care Professionals* (Sourcebooks/Sphinx 2006).

**Sarah Ricks** (Rutgers-Camden) co-authored *Effective Brief Writing Despite High Volume Practice: Ten Misconceptions that Result in Bad Briefs*, 38 *Toledo L. Rev.* (forthcoming 2007), which will be excerpted in *New Jersey Lawyer*

(forthcoming Dec. 2006); and authored *Third Circuit Clarifies Inconsistency in State-Created Danger*, *The Legal Intelligencer* (July 31, 2006), which was reprinted in *The Pennsylvania Lawyer* (Aug. 2006). She presented *Encouraging Cooperation Between Legal Writing Programs and Pro Bono, Clinical, and Externship Programs* at the June 2006 Legal Writing Institute (Atlanta, GA) and at the May 2006 AALS Conference on Clinical Legal Education (New York, NY) (both with **Susan Wawrose**); and taught a CLE on persuasive writing to 300 Philadelphia lawyers in July 2006.

The **Suffolk University Law School** faculty voted to increase the number of credits for the Legal Practice Skills course, which brings the total to four credits for the year.

**Nancy Wanderer** (University of Maine) will have her article, *E-mail for Lawyers: Cause for Celebration and Concern*, in Volume 21, No. 1, of the *Maine Bar Journal*, The Quarterly Publication of the Maine State Bar Association (Fall 2006).

## Quick Tip Ten Questions for New Lawyers to Ask

Mark E. Wojcik, *The John Marshall Law School, Chicago*

In law practice, one of the most important first steps is to identify the parameters of a research assignment. A writer who does not determine the scope and limits of an assignment is headed for trouble. But unlike law school,

where students are given a due date and perhaps a page limit, law firms have different needs and concerns that require students to pay attention to factors that they might otherwise ignore.

Here are ten areas of concern that will help new associates and law clerks determine the scope and limits of a research assignment. Showing this list to students now will prepare them better for practice.

1. *Time*. When is the assignment due? Is a statute of limitations about to expire?
2. *Client*. Who is the client?
3. *Format*. Should you write an opinion letter, an internal office memorandum, a brief, or an article?
4. *Jurisdiction*. Is the matter one for state or federal court or an administrative agency?
5. *Scope*. What are the parameters regarding legal research, legal theories, or particular issues relevant to the case?
6. *Facts*. Do the facts suggest one or more legal theories that you should research? Where can you learn additional facts? Do you have access to the full case file?
7. *Hints*. Does the attorney who gave you the research assignment have any suggestions about specific research sources you should consult?
8. *Methods*. Will the client pay for computerized or manual research? Should you start with the statutes, or with secondary sources that explain the larger context of a problem?
9. *Discovery*. What is the status of discovery in the case and how is it being compiled?
10. *Anything Else?* When the attorney finishes giving an assignment to you, ask if there is "anything else" you should know about the case or the client. Often that simple question will lead to surprising answers and it may be a question to ask more than once.

## The Second Draft

Next issue: Fall 2007

Subject: Methods of Providing Students with Effective Oral and Written Feedback on Their Writing

## 2008 LWI Conference

June 2008, Indianapolis, IN

## Regional Conferences

The Seventh Annual Rocky Mountain Legal Writing Conference will be held at University of Las Vegas Law School, Las Vegas, on March 9 -10, 2007

Chicago-Kent College of Law is pleased to again welcome legal skills faculty and law librarians to a conference on May 18 & 19, 2007, to continue the discussion that we began at “The Future of Legal Research” conference in May, 2005.

## 2007 ALWD Conference

The Association of Legal Writing Directors’ 2007 Conference will be held at the University of Denver, Sturm College of Law, on June 14-16, 2007

### CONTINUED FROM PAGE I

#### Using the Attorney Mastery Scale

The scale works particularly well because:

1. Students consistently see how their writing stacks up to that of practicing attorneys;
2. Students understand that first-year writing skills vary considerably but need to improve in almost all cases in order to satisfy professional and ethical standards of competence, diligence, and zealous representation;
3. Students are motivated to earn higher and higher scores on the scale as the year progresses; they take real pride in earning better scores and in writing like “real lawyers;” and
4. The group as a whole moves up the scale over the course of the year, and students see evidence that they have learned a great deal in only a few months.
 

The scale does have drawbacks, including:

  1. At the beginning of the year, students understandably receive 1’s, 2’s, and 3’s on the scale. They often become disheartened until I explain two important concepts. First, they are graded on a curve. Therefore, in the grading context, their score has more meaning in relation to the mean than in relation to real attorneys. Second, no one, including me, expects students in their first weeks and months of law school to be able to write like seasoned attorneys!
  2. Some students fail to understand the expectation that they will move up the scale. When they earn strong early scores, they think that they have “figured it out,” and they rest on their laurels. It comes as an unpleasant surprise to many to find that their colleagues have surpassed them on the mastery scale, and therefore in the grading curve; and
  3. Students complain that it is impossible to earn much above a 7 on the scale. I agree with them. I tell them that I probably would not receive a 9 or 10. However, I hope that they’ll strive for 7’s and 8’s.

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