25th Anniversary
LegalWriting institute

THE SECOND DRAFT

Volume 24, No. 1 Fall 2009

# Teaching Implicit Reasoning

**The articles in this issue present strategies for teaching students to work with implicit reasoning and improve the depth of analysis.**

**In This Issue** *(Click to go to article)*

# Call for Submissions

# THE SECOND DRAFT

## Spring 2010

*25th Anniversary Issue*

Submissions
are due
by Monday,
December 14th to
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## Letter from the Editors

Fall is in the air here in Boston, and another school year is under way. We hope that everyone has had an easy transition back to teaching. For most of us, teaching the concepts of legal reasoning and legal analysis to first-year law students makes for a challenging fall semester; and we are always striving to find new and better ways to help students master these concepts.

To assist with this challenge, we are very pleased to present this issue of *The Second Draft*, which is full of helpful articles, examples, and exercises on the various ways our colleagues have found to teach implicit reasoning to new legal writers. We are grateful to all the authors who have shared with us specific, practical advice and methods for teaching students to identify and to use the implicit reasoning needed to bring depth to their analyses. We are confident that you will find these articles as useful as we have.

Looking ahead, we are excited to announce the topic of our next issue, *"Celebrating 25 Years of the LWI."* We invite your submissions on where we've been as an academic discipline, your thoughts on where we're going, and your memories of all that's happened along the way. Please go to **www.lwionline.org** for details regarding submission formats and deadlines.

We wish everyone a successful fall semester!

*Kathleen Elliott Vinson*

*Stephanie Hartung*

*Samantha Moppett*

*Julie Baker*

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# The President's Column

*Ruth Anne Robbins,*
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Conferences and conversations. Everywhere I look, I see legal writing professors doing just that. Each year we are offered an ever-more-dizzying array of conferences: innovative-topics, single-themed, regional, those produced by the national organizations. At the same time our journals are being hailed by practitioners as "academia's . . . most advanced contributions to practitioners."[1] Our field is sparkling with creativity and energy. Is it any wonder that we wear our logo in rhinestones?[2]

At the 2008 biennial conference, I proposed that LWI take a three-step approach to the future. Step 1: Publicize our successes internally within our community. Step 2: Let the rest of the legal profession know about who we are and how much we can do. Step 3: Relying on the ethos from the first two steps, create our own future and live it.

This summer LWI sponsored two different and unique conferences that demonstrate our progress towards those steps. Both had international participants. The first was the APPEAL conference in South Africa. This conference provided an opportunity for us to collaborate with practitioners, judges, and professors about legal advocacy techniques and pedagogy. The other conference was the second Applied Legal Storytelling conference, held at Lewis & Clark. There, legal writing professors, clinicians, practitioners and other law professors conversed about the ubiquitous nature story structure in advocacy and in pedagogy. Thanks to all of the organizers who made those happen.

LWI also sponsored the annual Writers' Workshop, during which twelve members of our community sat down with each other and four facilitators to provide and receive detailed feedback on their own writing. This year's workshop involved new legal writing scholars as well as those with several articles under their belts.

> ***We now have so much scholarship and dialogue happening that no one can realistically keep up with it all in any kind of real time.***

In this short space of time I am not even able to do more than call attention to the several other legal writing events that happened or will happen before this Second Draft edition is published. The ALWD conference, the Assessment Conference, and three regional conferences: Central States, Northwest, and Southeast. This November, the Journal of Legal Writing will also sponsor a symposium devoted to LWI, the Journal, and the 25th anniversary celebrations. This December, we can learn about hope and optimism in our students. If I weren't teaching on Fridays this year, if my family had unlimited patience, and if I had been born into wealth, I would happily spend every weekend and all of my salary traveling to legal writing conferences.

What's the point of all of this? To show you with simple synthesis how rich our discipline is, even when you look at a mere six-month slice. We now have so much scholarship and dialogue happening that no one can realistically keep up with it all in any kind of real time. Thank heavens J.K. Rowling doesn't have anything new about to hit the shelves: I would probably gnaw my arm off with the frustration of having to choose what to read.

To each of you out there who has written about legal writing, who is writing about legal writing, or who will be presenting in the name of legal writing, I congratulate and thank you for all that you have done. You make our world go 'round.

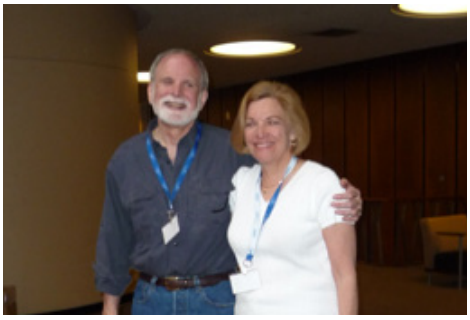
Warmly,

Ruth Anne

1 Raymond Ward, The (New) Legal Writer, *The Fall 2009 Issue of JALWD Has Hit the Streets*, **http://raymondpward.typepad.com/newlegalwriter/2009/07/the-fall-2009-issue-of-jalwd-has-hit-the-streets.html#comments** (July 27, 2009).

2 OK, maybe only some of us wear it in rhinestones, but you know what I mean.

# Photographs from the Rocky Mountain Regional Legal Writing Conference Spring 2009



# Implicit Reasoning and the Unconscious Brain

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Courts rarely lay out every logical step in their reasoning. To reach the conclusion that Socrates is a mortal, for example, a court may note that Socrates is a man, but neglect to state that all men are mortals. The reader is left to fill in the missing logic by connecting the facts to the holding. This missing logic is the implicit reasoning of a case–unwritten rules fairly inferred from the facts and the holding.

1Ls are hesitant to extract unwritten rules from a case or synthesize unwritten rules from a line of cases; they cling to black-letter law. Becoming a lawyer requires us to bring unwritten or vaguely articulated rules into the light of our conscious minds. Only then can we use the tools of legal analysis to evaluate the validity of the reasoning.

By using the familiar arena of their personal lives, students can develop confidence in their well-developed ability to discern unwritten rules. The first step is to become conscious of unwritten rules in their personal lives; the next is to connect those rules to facts. The following exercises ask students to identify the unwritten rules, and then note triggering facts.

First, have the students list several unwritten rules in their personal lives. An unwritten rule can be as simple as knowing not to ask Dad for the car keys until he's had coffee or as complicated as knowing that if Mom comes home from work and picks up the dog before saying hello, it means she had a bad day and you'd best give her a wide berth. Even complicated rules can be easy to master; it is a survival skill that every student has developed unconsciously.

Ask students to name one or two things that would earn them high praise from their parents, and one or two things that would get them in deep trouble. Break students into pairs, and have partners work together to transform those ideas into rules. Partners should ask students how they know that a rule exists: Did Mom tell you this? Did you see siblings get in trouble for that? Did you listen to conversations between your parents? When students are unable to identify how they know a rule is true, but are certain it is a rule, you've hit the mother lode: an unwritten rule, unconsciously internalized. This exercise is most successful when students are comfortable enough with the subject matter to talk about it in front of other students.

> ***Becoming a lawyer requires us to bring unwritten or vaguely articulated rules into the light of our conscious minds.***

The second step is to identify the triggering facts. Unwritten rules lie dormant until triggered by specific facts. If Mom walks in the door at the end of the day and calls out, "Hi! I'm home!" everyone runs to tell her about school, or ask what's for dinner. If she picks up the dog, no one comes out of their rooms. Find the unwritten rule.

Ask students to identify factual triggers for their rules. Partners should press for details: If the rule is, "Do well in school," does that mean straight As? Is a C ok if it's in PE? Students have probably not thought through the details of these rules; thus, partners' questions are very important in teasing out facts and exceptions.

Finally, the pieces must be tied together for the students. When the exercise is completed, each student should have at least two previously unwritten rules with triggering facts. You can have them turn these in as homework, or post them to a class wiki, or use them as a launching pad to come up with more rules. Their minds will enjoy this new game, which will make practicing fairly easy.

Working with unwritten rules shows students that their brains are paying attention outside of their conscious awareness. As students become comfortable with the fact that brains find patterns everywhere, they will develop confidence in their ability to distill implicit rules from cases, and slowly release the security blanket of black-letter law.

Featured Articles

# Empowering Students to Build a Better CREAC

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According to experts, "the most potent motivators for adult learners are internal, including … greater self-confidence."[1] New writers, however, can quickly lose self-confidence when they realize not only how much they need to know to be a successful writer, but also how much they do NOT know.

Especially daunting is learning how to use reasoning strategies to support analysis. "Implicit reasoning" is a concept that can help to empower new writers to do the hard work of legal analysis. The concept is best introduced at the revision stage of the writing process, after the writer has produced a rough draft of at least the discussion section of a memo. At that stage, the writer may sense that his or her analysis is a good start but just doesn't "gel" the way that he or she wants it to.

Two in-class exercises can help the writer to improve the draft. The first is the "Rainbow Exercise,"[2] in which the writer looks for the distinct layers of CREAC.[3] The second is an adaptation of this exercise, designed to help writers to see whether they have used implicit rather than explicit legal reasoning. In a well-formed CREAC, the layers should fit together to support rule-based and analogical reasoning; they should "match" in some sense. In other words, the "R" layer of each CREAC should match its "A" layer, because the rules in the "R" layer form the basis for rule-based reasoning in the application layer. Similarly, the "E" layer should match the "A" layer, because the explanation of cases in the "E" layer forms the basis for analogical reasoning in the "A" layer. Many new writers, however, have some idea of how the law should apply to the facts of their case—the "A" layer—but they have no idea how to support that application using legal reasoning strategies. They may have arrived at some great insights with respect to application, especially after having thought more deeply about the issue while writing the rule and explanation sections of CREAC. Unfortunately, this greater insight might not be reflected in the earlier-written sections.

To get a visual picture of whether the layers match, new writers can take a second look at the highlighted sections of their memos from the Rainbow Exercise, explained in footnote 2 below. For purposes of this discussion, let's assume (as detailed in footnote 2) that the application section is highlighted in blue. Starting with the blue section, for each sentence in that section, the student needs to find a specific sentence in the pink (rules) section or the yellow (explanation) section that supports the application sentence. When the student finds the sentence, he or she re-highlights the application sentence with either a pink or a yellow highlighter. In the end, the student's application section should not be solid blue in color. Instead, it should be tinged with purple (blue plus pink, for rule-based reasoning) and green (blue plus yellow, for analogical reasoning). The solid blue sentences are an indication of, perhaps, implicit reasoning: the writer may have applied a rule without explicitly stating it in the rules section, or the writer may have analogized facts without explicitly including those facts in the explanation section. The writer can then revise the draft by adding rules or explanation to make explicit the implicit reasoning in the application section.

Looking for "implicit reasoning" in this way empowers new writers because it shows them that they usually have at least the beginnings of legal analysis in their application sections. They can then use these beginnings to build a well-reasoned legal analysis.

1 M.H. Sam Jacobson, *Learning Styles and Lawyering: Using Learning Theory to Organize Thinking and Writing*, 2 J. ALWD 27, 44 (2004).

2 The very first CREAC-revision exercise that my class typically uses is an adaptation of the Rainbow Exercise. I believe that the exercise originated with Professor Mary Beth Beazley, though I think that I first saw it presented by Professor Tom Blackwell. In any event, what students do in my class is bring two copies of their first draft to class. I bring several sets of pink, yellow, and blue highlighters. On the first copy, students mark the layers of CREAC in colors, for example, pink for rules, yellow for explanation, and blue for application. On the second copy, they exchange drafts with a partner, and the partner marks the layers of CREAC. Hopefully, the two versions will look the same—a draft with, for each section or subsection in the memo, one layer of pink, one of yellow, and one of blue. If not, then students discuss the differences—seeing the reader's perspective often helps them to see the layers themselves.

3 I use the CREAC acronym, but the exercise will work using any of the other common acronyms, such as IRAC, TRAC, or CRuPAC.

Featured Articles

# Analyzing Analysis: Solving "Empty" Analysis

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I often see novice law students substituting facts for analysis, turning our well-known formulas into IRFC, CRFC, CREFC, etc. Students believe that they are following the formulas; they just don't understanding what we mean by "A" for analysis. Using Michael Hunter Schwartz's "FIL" model,[1] I have created a number of exercises that help students understand what legal analysis is and how to do it.

"FIL" stands for fact, inference, and link to rule. The facts are provided by clients or hypos. The inferences represent the implicit reasoning of the way we understand the facts. The link to the rule identifies the implicit reasoning that connects our understanding of the facts back to the rule. I tell students, "'Empty' analyses earn few points. You need to 'FIL' your analysis to earn maximum points." (Pardon the pun!)

I provide students with several exercises that move through Bloom's Taxonomy from comprehension to application to analysis to synthesis.

We start by identifying the key components using simple model paragraphs. (I've identified the components here.)

> Under the common law, burglary can only be committed at night. (rule) Here, the witness reported seeing the defendant using a flashlight before he entered the building. (fact) Generally, people use flashlights when it is dark. (inference) Because it is dark at night (link), the facts suggest that the defendant entered the building at night. (conclusion)[2]

As a more advanced exercise, I cut a paragraph into sentences. Students first identify the purpose of each sentence, then recreate the paragraph. For novices, this exercise works well with one paragraph. For more advanced learners, I cut multiple paragraphs sentence by sentence and have students identify both the paragraph and the purpose where each sentence fits.

To understand what's missing from their own analyses, I have students exchange writing samples and identify the purpose of each sentence in their peers' samples. Often, this exercise helps students to see that, instead of creating inferences and links to the rule, they are simply restating the facts using different words.

To encourage students to generate (rather than simply identify) analysis, I provide model answers where I delete either the inference or the link to the rule and have students attempt to fill them in. This exercise reinforces the difference between the inference and link, which is a complicated concept to apply.

To create a more advanced exercise, I provide a model paragraph (or paper) that contains the rule, the facts, and the conclusion, but delete the inferences and link to the rule. By providing the components that students tend to understand, they can focus solely on writing implicit reasoning. Additionally, this exercise implicitly reinforces how important implicit reasoning is to legal analysis because students only earn points for their implicit reasoning.

> Under the common law, an agreement to an offer must correspond exactly with the offer and cannot change terms. (rule) Here, Kevin agreed, but added only if Stephen agreed to pay him money. (fact) _____ (inference) _____ (link). Therefore, Kevin's statement could not be an acceptance. (conclusion)[3]

Students have reported that this exercise was most helpful, and in one class, students even asked for extra assignments using this exercise.

Once students understand each of the steps individually, we discuss ways to shorten their answers by combining two or more of the steps into one sentence. For example, "Because Kevin added 'only if you pay me your allowance,' (fact) he added a term to the offer (inference), which prevented his agreement from corresponding exactly with the offer (link).

With each of these exercises, FIL provides a way for students to learn what implicit reasoning is and how to do it within the context of legal analysis.

1 Michael Hunter Schwartz, *Expert Learning for Law Students* 214 (Carolina Academic Press 2008).

2 Loosely adapted from id. at 207, 217.

3 I created this model answer in response to a hypothetical provided by Ruth K. Stropus & Charlotte D. Taylor, BRIDGING THE GAP BETWEEN COLLEGE AND LAW SCHOOL: STRATEGIES FOR SUCCESS 98 (2001).

# Featured Articles

## Pardon Me, But Does Your Dog Bite? Turning Implicit Assumptions into Explicit Analysis

*Sandy C. Patrick,*
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In the movie *The Pink Panther Strikes Again*, the bumbling French detective, Inspector Clouseau (played by Peter Sellers), deftly illustrates the problem with assumptions. He enters a small hotel to secure a room. After bantering with the venerable hotel clerk, who cannot reconcile Clouseau's thick, French enunciation of the word "room" with his own accent-laden version, Clouseau notices a cute little terrier resting nearby. The following exchange ensues.

| | |
|---|---|
| Inspector Clouseau: | (Walking over to dog) Does your dog bite? |
| Clerk: | (Shaking head) No, no. |
| Inspector Clouseau: | Nice dog. (He bends down to pat the dog. Dog attacks, ferociously biting and growling.) |
| Inspector Clouseau: | I thought you said your dog did not bite? |
| Clerk: | That is not my dog. |

The good Inspector assumed a critical fact—that he and the hotel clerk were obviously talking about the same dog. Legal writers, particularly new ones, often run into the same type of problem—they assume the reader will know which dog they are talking about. Specifically, legal writers sometimes assume the reader will see the same "obvious" connections that they saw when reading the authorities, so the writers fail to explicitly explain the implicit connections.

An essential part of a lawyer's job, however, is to make those implicit ideas found in legal authority explicit. To develop this skill, students can use a three-part exercise to evaluate the authorities and find the connections they share: (1) Read a precedent critically to establish the case's facts and the court's conclusion; (2) explicitly articulate the implicit connection between the facts and the holding; and (3) explicitly formulate the overarching rule that ties all relevant precedent together.

Discerning implicit analysis can be frustrating. For students, the problem in articulating implicit analysis is two-fold. First, because courts often fail to either expressly articulate the rules or explain how the rules were applied to the facts, students struggle to discern the rules and how those rules connect to the facts. Second, while students feel safe in verbalizing rules or themes a court has expressly articulated in the opinion, they are reluctant to verbalize any rules or themes the court has not expressly articulated. The students fear they will overstep their bounds, insult the reader by stating the obvious, or worse, conclude wrongly. This reluctance leads to superficial analysis and a memo organized around cases instead of legal points.

For example, take a memorandum problem asking whether a state cleric-congregant privilege protects a disclosure between a rabbi and his friend, who is also a congregant. The governing statute establishes that a cleric may not disclose "a confession or confidence made to him in his professional character as spiritual advisor." The students quickly grasp that the statute has two elements, one being confidentiality.

The statute, however, does not define "confidence," so the students turn to case law. The case law is equally vague, with the three leading cases establishing the standard for "confidence" as a communication "intended to be confidential" or a communication in which the defendant "had a reasonable expectation of secrecy." The problem arises because the cases do not explain what actions demonstrate that a communication was confidential or that a reasonable expectation of secrecy existed. Moreover, the courts in each case do not expressly analyze the element, but instead just conclude that the element was met.

Consequently, the students' analysis mirrors that of the courts by merely giving the facts of the case and the conclusion that the communication was confidential. Students wrongly assume that the reader will automatically see the connection, so they simply repeat the case language without explaining the connection of what specific conduct established confidentiality.

# Featured Articles

Discerning and communicating the implicit rules can be easier when students engage in a three-part exercise. Charting the cases simplifies the process. First, have the students critically read the each case to see what the court held and what facts triggered the court's decision. Second, have the students assess the implicit rule or theme by asking, "What is the connection between the holding and the facts" and "what legal point does this case represent?" By answering these two questions, students can confidently assert each case's implicit rule or theme in the third step.

After reading the cases critically and articulating the implicit theme in each, the students can take the final step of articulating an overarching rule that encompasses all the cases. Because students have already assessed the implicit theme within each case, they can easily see the emerging pattern that connects the cases: The common denominator for confidentiality turns on the congregant's actions in securing a private conversation.

By engaging in this simple exercise, students will be more likely to see both the broad rule of law and the finer points of the cases. Further, the process gives students more confidence in asserting what legal principles the cases *really* represent. Most importantly, this exercise teaches the students to discern and explicitly communicate the connections between the facts and holding of one case as well as the connections among cases. Such connections eliminate assumptions and give the students' legal analysis a substantive bite.

| | Facts | Court's Conclusion and Reasoning | Implicit Connection |
|---|---|---|---|
| **Case A** | D waited until he and the minister were alone in the garden before opening up to him, showing confidentiality. | Confidentiality established, but no explicit analysis. | Taking overt actions to physically remove himself from others establishes congregant intended the conversation to be confidential. |
| **Case B** | Asking to see a priest, then waiting until he was alone with priest in rectory before confessing, shows confidentiality. | Confidentiality established.<br>No analysis of issue—court merely concludes communication was confidential. | Taking overt actions to secure heightened privacy establishes congregant intended the conversation to be kept secret.<br>(Similar to Case A) |
| **Case C** | Bringing a third party to the congregant's meeting with the cleric implies the congregant did not intend conversation to be confidential. | No confidentiality.<br>Little analysis. | By allowing another to overhear without congregant making any overt manifestation to seek privacy may indicate no reasonable expectation of confidentiality exists. |

Featured Articles

# Using Case Synthesis to Identify Implicit Reasoning

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Like many other Legal Writing programs, ours begins by assigning students a closed-universe office memorandum. I tell the students this is the only time that *Bluebooking* does not matter, because I want them to use this exercise to focus on understanding legal analysis and case synthesis. An important part of understanding case synthesis is grasping the reasoning that is implicit in the opinions I give them.

I have developed a problem that I think illustrates this particularly well for students. The students are told their client seeks a legal name change to the single name Mandala, which is a Sanskrit word meaning circle or center. The client owns a yoga studio by that name, and is known to all of her patrons by that name. Since opening the studio, she has also been using the name Mandala for all purposes, both business and personal.

I give them three New York cases, each dealing with an applicant who seeks to change their name to a single name for spiritual purposes. All of the cases reiterate the same legal standard—at common law, people have the right to assume any name they choose, but the right to a legal name change rests in the court's discretion. In *Application of Douglas*, the court discusses how the use of both a given name and a surname has evolved in order to make it easier to identify people in an increasingly complex society. The court finds that approving the name change to a single name would be regressive, disrupt official records, and cause "havoc and chaos." The court concludes that "[t]he judicial sanction of single names is as extinct as the Dodo bird."

Almost 25 years later, the *Miller* court relied heavily on the reasoning in *Douglas* in denying the plaintiff's application. The court took judicial notice of the 1994-95 White Pages for Manhattan, which lists fifteen people with the surname Sena, the name which the applicant sought to adopt. The court concludes that while the applicant can use the name Sena for all purposes, she has no legal right to this name change, because "[s]elf expression does not require a Court order." Finally, in a brief, unreported 2006 decision, the court in *Matter of Bishop* denied a name change to the single name Robbie, fearing "overwhelming untoward consequences" and holding that "as the Court in *Douglas* ruled, this Court sees no compelling need to set a precedent by judicially sanctioning the use of a single name."

I ask the students to synthesize these cases by figuring out the common threads of reasoning found in all of them. As a class, we determine that the courts are reaching their decisions based on two reasons, one implicit and one explicit. The courts explicitly state that they are worried that the use of a single name may cause confusion for government entities, banks, credit card companies, and others. What is clearly implicit from the three decisions is that the courts are making a value judgment as to what they perceive to be a frivolous name change.

I then give the students the *Ferner* case, a New Jersey decision which allows the petitioner's name change to a single name, and is critical of the New York Courts' explicit and implicit reasons for denying the applications. *Ferner* reviews the various administrative difficulties the New York Courts raised and disposes of them one by one. The court then analyzes the role of the judge in granting a name change, and cautions that while a name change request may be discretionary, ". . . a properly presented request should not be denied because of an individual judge's preferences or speculation about whether the applicant has made a wise decision."

This problem is particularly empowering for students at the beginning of the first year: not only can they easily grasp the implicit and explicit reasoning raised by the New York cases; but they also build their confidence as they read the *Ferner* case and see that they have identified the same threads of reasoning as the New Jersey Superior Court.

# Beyond the First Year: A Brief Look at Ways to Use Implicit Reasoning and Implicit Communication

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In August or September of each year, students enter or return to law school to begin or continue their studies, on the path toward careers in law and law-related fields. As the incoming students begin their journeys, we teach them to read cases, analyze the courts' reasoning, and synthesize the holdings of cases.[1] In doing so, we instruct students to work with both the explicit and implicit reasoning contained in the cases they read.[2] This work prepares them for the tasks they will face as practicing attorneys.[3]

We can enhance our students' abilities to understand and work with implicit reasoning and implicit methods of communication in upper-level classes. This can be achieved through the use of illustrative student samples and the study of classical rhetorical techniques.

First, we can build on skills learned in first-year classes by using exercises to enhance students' use of cases to support their arguments. Selective use of student-written examples can illustrate for students how to use well-structured paragraphs to describe and use relevant cases.[4] For example, illustrative samples can show students how to describe a case in a thematic manner—rather than simply recounting the events that occurred in a particular case.

In both first-year and advanced legal-writing classes, students should be put on notice that their work may be displayed, without attribution, during in-class exercises. Students are adept at spotting weaknesses in their work and that of their colleagues. Student-written case descriptions provide a good vehicle for encouraging students to make effective, thematic use of precedent—rather than writing case descriptions that resemble book reports.

Second, classical rhetoric provides a framework for discussing both persuasion, in general, and the structure of legal reasoning and the use of syllogisms to structure legal arguments, in particular.[5] For upper-level students who focused on analogy in their first year, the study of the effective use of syllogisms provides an alternate view of structuring an argument.[6] Students can benefit from identifying the use of syllogistic reasoning in sample arguments. Students can also be encouraged to outline and draft arguments using syllogistic reasoning.

Additionally, much work has been and continues to be done to recognize the effectiveness of metaphors to express legal reasoning.[7] Students can enhance their understanding of the use of implicit reasoning by studying the use of metaphors in case law. Ideally, by better understanding the cognitive effect of metaphors on our understanding, students will gain another tool for recognizing and understanding judicial reasoning.[8] An upper level class can focus on the use of metaphor in case law by examining the many instances of such use, from doctrinal metaphors including the First Amendment as a "market place of ideas" to the corporation as a person.[9] Following a discussion of the prevalence of metaphors in legal reasoning, students may be assigned to find examples of such use in cases. After a thorough study of metaphors in judicial opinions, students can take on the task of incorporating metaphors in their own writing.[10]

1 Judith B. Tracy, *Constructing an Analytical Framework*, 14 The Second Draft 6, 6-7 (May 2000). Professor Tracy addresses the need to prepare students to work with and understand implicit reasoning in the Spring 2000 issue of *The Second Draft*. *Id.* In addition, many legal writing texts contain material on case synthesis. *See e.g.* Richard K. Neumann, Jr. & Sheila Simon, *Legal Writing* 55-56 (Aspen Publishers 2008).

2 *See e.g.* Neumann & Simon, *supra* n. 1.

3 *See generally* Jane Kent Gionfriddo, *Thinking Like a Lawyer: The Heuristics of Case Synthesis*, 40 Tex. Tech L. Rev. 1 (2007).

4 *See e.g.* Mary Beth Beazley, *A Practical Guide to Appellate Advocacy* ch. 6.2 (2d ed., Aspen Publishers 2006) (providing an explanation of effective case descriptions). Students can use effective case descriptions to capture what cases state implicitly.

5 *See* Kristin K. Robbins, *Paradigm Lost: Recapturing Classical Rhetoric to Validate Legal Reasoning*, 27 Vt. L. Rev. 483, 492-93 (2003); *see also* James A. Gardner, *Legal Argument: The Structure and Language of Effective Advocacy* 5-7 (2d ed., Lexis 2007).

6 Gardner, *supra* n. 5, at 7-9.

7 *See generally* e.g. Michael R. Smith, *Advanced Legal Writing: Theories and Strategies in Persuasive Writing* ch. 9 &10 (2d ed., Aspen Publishers 2008); Linda L. Berger, *What is the Sound of a Corporation Speaking? How the Cognitive Theory of Metaphor can Help Shape the Law*, 2 J. ALWD 170 (2004).

8 *See* Robbins, *supra* n. 5.

9 Smith, *supra* n. 7, at 207.

10 *Id.* at ch. 10.

# The Embedded Rule

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First-year law students can readily identify expressed rules found in judicial opinions. Those same students, however, often fail to identify a rule of law when a court fails to express the rule in its opinion. These implied, unexpressed, or embedded rules are employed by a court to resolve a legal issue. An unexpressed rule can have the same authoritative weight as an expressed rule, and therefore, students must learn to extract these rules from opinions.

Identifying unexpressed rules requires some measure of intellectual flexibility and creativity. Because the rule is implied and not expressed, students must extrapolate the missing legal principle from the expressed parts of an opinion. Consider the following opinion:

> *Held, the undercover police officer did entrap the defendant when she waived her revolver at the defendant and asked him to purchase a quantity of crack cocaine. But for the gun, the defendant would not have purchased the drugs.*

The issue before the court involved the defense of entrapment, but the court failed to expressly state the rule. Instead, the court relied on an unexpressed rule of law to reach its conclusion. To identify the implied rule, a student must think through the expressed portions of the opinion and extrapolate a rule of law. Consider the following unexpressed rules derived from the opinion:

> **Rule 1**: A police officer entraps a defendant when she brandishes a gun and requests the defendant to commit a crime.
>
> **Rule 2**: A police officer entraps a defendant when she coerces another to commit a crime.
>
> **Rule 3**: A police officer entraps a defendant when she threatens a defendant with death or serious harm to commit a crime.

All three rules fairly express the court's implied intent to determine how a police officer entraps another to commit a crime. The first rule narrowly tracks the facts of the case. This rule, however, may be too narrowly focused on the facts. A rule is a general legal principle that a court can apply in future cases to resolve the issues presented. Because the first rule is tailored to fit the facts of one case, its applicability to future cases is questionable.

The second rule is broader than the first but perhaps too broad. It merely requires a police officer to coerce another to commit a crime. This rule would likely broaden the scope of entrapment beyond its intended scope.

The third rule strikes a balance between Rules 1 and 2 by focusing on the significance of the gun without too narrowly focusing on the facts of the case. This rule fairly gauges the implied meaning of the court without broadening the scope of entrapment beyond its intended limit. Because the rule focuses on the implied significance of the brandished weapon and not the weapon itself, it could serve as a credible though implied rule of law.

To ensure that the implied rule is credible, a student would test the rule in analogous cases. In the example above, a student would apply Rule 3 to all like cases on entrapment in the jurisdiction. If the rule works in all or most of the analogous cases, the student could conclude that it fairly represents the unexpressed meaning of the court.

Because an implied rule describes the unexpressed legal significance of a court's holding, law students must extrapolate the language the court could have expressed had it chosen to fully express the rule. So long as the rule fairly expresses the court's implied meaning and so long as the law student cites to the originating opinion(s) to establish the authority and credibility of the rule, a student can and should use the implied rule to the same extent as an expressed rule.

Featured Articles

# Introducing Implicit Reasoning Through Use of the *See* Signal

*Rosa Kim,*
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The key to teaching first-year legal writing and analysis effectively is to give students the right conceptual "tool" at the right time, and to pace the learning over a two-semester arc. Careful syllabus planning is key to helping students develop research and writing skills gradually and allowing them to build confidence as legal thinkers and writers. Implicit reasoning is a great example of a concept that needs to be introduced at the right time and in the right manner. Introducing the concept in conjunction with teaching citation signals, in particular the *See* signal, meets both criteria.

Early in the fall semester, the focus for first-year students is on reading and briefing cases, both in their doctrinal courses and in legal writing. The first memo assignment in the fall semester requires them to discuss the rule of law and explain the facts, holding and reasoning of each case--the "R" and "E" of CREAC, respectively. While I place emphasis on critical reading of cases, at this stage students are learning the basic elements of the paradigm. Even as they transition from the first memo to their next assignment, the open objective memo, the explanation of reasoning in a case opinion is still essentially limited to paraphrasing the court's explicit reasoning.

By the time the students are working on the research for the open objective memorandum and are exposed to a bigger universe of cases, they get a sense that not all opinions are created equal. A question that comes up fairly often as students are explaining cases is "How can I explain the court's reasoning if the court does not say what it is?" I typically explain to my students that sometimes judges drafting opinions fail to express the reasoning clearly, or deliberately hold back on specific reasoning, and that it's the lawyer's job to figure out what the court intended. The way to convey the reasoning, therefore, is to make reasonable and compelling inferences from what the court does say. At this point, I introduce citation signals, and focus primarily on the *See* signal as a way to cite authority when making an inference, rather than merely paraphrasing. By this time, students have been exposed to citation signals through reading cases and already have some idea that signals indicate how a case is being cited. Still, the notion that lawyers can utilize the *See* signal to make reasonable inferences from an opinion is a revelation to them.

Using familiar cases that the students know well, or will be using in their memos, is key because these cases provide context and students are more invested in the process. Once I make the connection between the *See* signal and implicit reasoning, I focus on getting students comfortable with the difference between a direct citation and an indirect one. An effective way of teaching the *See* signal is to do simple exercises designed to teach the students to recognize when a writer is drawing an inference from the court's words. Typically, I draft sentences relative to a case used in the open memorandum, one the class is very familiar with, and have the students decide whether a *See* signal is needed for the citation. I also elicit from the students a list of words describing the court's actions that show that the writer is making an inference, including the words "suggested," "implied," "implicitly reasoned," "intimated," and "hinted."

To illustrate how one would make a reasonable inference, I might also revisit a court opinion from the previous assignment, the closed memo, and give an example of implicit reasoning using another case the students know. For example: "The court, by not including a biological requirement to familial relations, implied that a stepfather-stepdaughter relationship qualifies as 'closely related.'"

While I encourage students to incorporate the *See* signal in their fall memos, if appropriate, I do not require them to do so until they draft their spring persuasive memo. By that time, the students will have done additional in-class exercises involving both signals and parentheticals. It takes a certain level of confidence to engage in implicit reasoning through inferences, especially when writing persuasively, but most are up to the challenge by the time they are drafting their spring memos. By the end of the spring semester, students have a strong understanding that using the *See* signal to convey the court's implicit reasoning is a powerful tool at a legal writer's disposal.

Featured Articles

# Missed Connections – Being Explicit About Relationships Between Authorities

*Stephen E. Smith,*
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Presuming the applicability/utility of facially similar laws is a potential pitfall in legal analysis. This is best explained by example. In most jurisdictions, there are *criminal* laws punishing battery, and *civil* laws creating liability for it. The standards applicable to both may be the same, but they are distinct creatures. It is neither necessary nor natural that a criminal battery and a civil battery should have the same elements. As a result, there is no reason to believe that cases arising under one law are citable in a memo or brief pertaining to the other. Nevertheless, the similarity in terminology may lead them to be spoken of in the same breath, without explanation of *why* that is permissible or useful. Students researching the civil cause of action are likely to discover comparable criminal cases, note the similarity in standards, and simply incorporate the criminal cases they find in their analyses. This may be appropriate, and even necessary, but it is also incomplete. Law must be found and deployed to connect the seemingly related, but analytically distinct, bodies of law.

Sticking to the example, under California law, the elements of the two–battery the crime and battery the civil cause of action–are largely the same and are treated interchangeably. But this doesn't mean they can be referred to without recognizing that a distinction *could* (and technically does) exist. An appropriately developed rule (or rule explanation) section on battery must include some sort of material connecting the two, if matter from both areas is used. A case (the most likely type of authority) must be cited that both acknowledges a relationship between the crime and the civil cause of action, and gives leave to cite cases pertinent to one in situations involving the other. For instance: "[i]t has long been established, both in tort and criminal law, that 'the least touching' may constitute battery."[1] This citation provides the gateway through which a legal writer may access another vein of authority to support an argument–examples of the sort of contact sufficient for the crime may also be used to define the contact required for the civil action.

Or imagine a court relying on an administrative agency's interpretive rulings in the course of assessing an issue. It might spend a portion of its opinion reviewing the rulings on the subject, and making analogies to/distinguishing from those varied rulings. What if the court neglects to indicate what sort of treatment it is according those agency rulings? Are they being considered as evidence? Are they authority? If authority, are they binding or persuasive?

To make a connection between the court's review of the hypothetical rulings and the decision at which it arrives, the court must indicate what weight the rulings have. Perhaps the decision would include some reference to a case in the *Chevron/Skidmore* line of Supreme Court authority.[2] These cases define the degree of deference Article III courts must give to agency determinations. Did the court believe it was required to give *Chevron* "deference" to the rulings? Or was it simply according them "respect," as *Skidmore* requires? The court's decision has an analytical hole in it if it does not explain *how* the court assessed the materials before it.

Without information about why an attorney is citing–or a court is considering–a particular source, it can become a *non sequitur*. It becomes an irrelevant, if interesting, blurt of authority. Moving from point A to point C, without passing through a necessary point B, is a problem for any phase of any writing project, but this particular kind of missed connection runs the risk of short-circuiting an entire analysis–maybe a connection doesn't exist at all, but was simply presumed. A part of teaching legal analysis is teaching students to evaluate and make explicit the connections between laws that may *appear*–but need not necessarily *be*–related.

1 People v. Mansfield, 200 Cal. App. 3d 82, 87 (Cal. App. 5th Dist. 1988).

2 Chevron U.S.A. Inc. v. Nat. Resources Def. Council, Inc., 467 U.S. 837 (1984); Skidmore v. Swift & Co., 323 U.S. 134 (1944).

# From the Desk of the Legal Writing Specialist

## Finding Your Voice While Learning to Dance

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We offer new legal writers all sorts of advice, sometimes contradictory, about writing: "Avoid sentence fragments"; "Sentence fragments are okay if they are questions starting with *whether*"; "Avoid passive voice"; "Use the passive voice if you want to downplay a person's involvement with the action"; "Keep it short;"; "Don't leave out details." The process of learning the dialect of legal writing can seem a bit like a novice learning to square dance while she is already on the dance floor, losing points for committing missteps as the dance-caller shouts rules in quick succession. As a result, students often lose touch with their personal, comfortable sense of style—their voice.

Composition scholars use the term "voice" to describe the intangibles in a writer's prose, specifically those that allow the writer to become visible through the text. Thus, voice could be called a manifestation of personality in written prose. Voice, along with other textual identifiers, such as diction, tone, genre, and register, allows us to discern a Hemingway from a Hawthorn and a Scalia from a Souter. It is, however, very difficult to define: we often notice voice by its absence rather than its presence, as is the case with instruction manuals for modular furniture and tax documents. We also notice when a voice seems forced or inauthentic, more often the case when working with 1Ls.

Last year I worked with a student who was, like many new legal writers, having a hard time finding a suitable voice for his legal writing. Like most students, he was a successful writer as an undergraduate; over four years, he internalized his professors' expectations and learned to write to these standards. As a 1L, this student was falling victim to a common problem: in the absence of his own confident voice, he was channeling a stand-in. Specifically, he was writing the way he thought lawyers wrote, an assumption that resulted in his sounding similar to a pretentious, big-shot attorney, most likely from a prime-time lawyer show, a daytime television ad, or a 19th century judicial opinion. Composition scholar and voice researcher Walker Gibson, in his book *Persona: A Style Study for Readers and Writers*,[1] summarizes what my colleagues and I have noticed in 1L writing:

> [I]t is as if the author, as he "puts on his act" for a reader, wore a kind of disguise, taking on, for a particular purpose, a character who speaks to the reader. This persona may or may not bear considerable resemblance to the real author, sitting there at his typewriter.

My student's particular "act" had several features common to new legal writers: over-use of passive voice, overly complex sentences, and a general sense of opaqueness. I gave him a simple assignment: during his casebook reading for the next two weeks, find the best writer. Find a writer who makes you feel smart and empowered as a reader. Find a writer who does not allow complex content to create confusion. In other words, find a great legal writer.

The pool was easy to identify. Over two weeks, my student had to read dozens of cases and textbook chapters. When he returned to my office two weeks later, I asked him whom he found. I paraphrase:

"Easy. Justice Stevens."

I asked why.

"His writing is clear. I felt like I understood the main issues in the case by the end of the second page. I understood his decision and reasoning. He made me feel like an expert. Most of the other writers seemed like they were trying to sound smart, like big-shots."

I asked him what he had learned.

"The real big-shots don't write like big-shots, I guess."

True enough. The student's next assignment was two-fold: try not to act like a big-shot when he was writing and, when in doubt, ask himself "what would Justice Stevens write?" or, perhaps more appropriately, "how would Justice Stevens write THIS?"

It took several more meetings and plenty of emails before the student felt confident with his own voice. I spoke with his legal writing professor later in the year. I was pleased to hear that the young writer's work had improved over the year.

With enough practice, most students will find their own legal voices. In the meantime, channeling the voice of a good legal writer during the "learning to dance" phase is preferable to haphazardly modeling a bad one.

1 W. Walker Gibson, *Persona: A Style Study For Readers And Writers* (Random House 1969).

# Publications, Presentations and Program News

The *Legal Research Series* published by Carolina Academic Press has recently added new titles and new editions. **Mary Garvey Algero** (Loyola-New Orleans) is the author of *Louisiana Legal Research*, **Spencer Simons** (Houston) is the author of Texas Legal Research, and Jessica Hynes (Quinnipiac) is the author of *Connecticut Legal Research*. New editions have been published for *Illinois Legal Research* by **Mark Wojcik** (John Marshall) and for *Washington Legal Research* by **Julie Heintz-Cho** (formerly at Seattle U), Tom Cobb (Washington), and **Mary Hotchkiss** (Washington). The series editor is **Suzanne Rowe** (Oregon).

**E. Joan Blum** (Boston College) traveled to Bosnia in June, at the invitation of the U.S. Embassy in Sarajevo, to teach two short courses to staff of the Court of Bosnia and Herzegovina. The first, a half-day seminar for legal associates (prosecutors-in-training) in the organized crime division of the Court, covered basics of legal analysis and organizational techniques. The second was a three-day seminar for legal officers (analogous to our judicial clerks) of the Court's War Crimes Chamber. The goal was to improve the quality of the Court's written decisions through instruction on analysis, organization, and basic writing. Additionally, Joan's book, *Massachusetts Legal Research*, is forthcoming in late 2009 or early 2010 from Carolina Academic Press. She published two articles during the 2008-09 academic year. *Teaching in Practice: Legal Writing Faculty as Expert Writing Consultants to Law Firms*, 60 Mercer L. Rev. (2009) 761 (with **Kathleen Elliott Vinson**) and *A Methodology for Mentoring Writing in Law Practice: Using Textual Clues to Provide Effective and Efficient Feedback*, 27 Quinn. L. Rev. 171 (2009) (with **Jane Kent Gionfriddo** and **Daniel L. Barnett**). The latter article appears also in the inaugural volume of the LWI Monograph Series.

Recent publications from the writing faculty at **Brooklyn Law School** include the following: **Mary Falk**, *The Play of Those Who Have Not Yet Heard of Games: Creativity, Compliance, and the "Good Enough" Law Teacher*, 6 J. ALWD 201 (2009); **Elizabeth Fajans** & **Mary Falk**, *Untold Stories: Restoring Narrative to Pleading Practice*, 15 J. Leg. Writing Inst. 3 (2009); **Elizabeth Fajans**, **Mary Falk** (with **Helene Shapo**), *Writing for Law Practice, 2d ed.* (Foundation Press, forthcoming winter 2009-2010); **Aliza Kaplan**, *A New Approach to Ineffective Assistance of Counsel in Removal Proceedings* (submitted for publication); **Jayne Ressler**, *Plausibly Pleading Personal Jurisdiction*, forthcoming in Temple Law Review in December 2009; **Carrie Teitcher**, *Legal Writing Beyond Memos and Briefs: An Annotated Bibliography*, 5 J. ALWD 133 (2008); **Marilyn Walter**, *Using Dowry Death Law to Teach Legal Writing in India*, 15 J. Leg. Writing Inst. 213 (2009).

**Hillary Burgess** (Rutgers-Camden) published *Little Red Schoolhouse Goes to Law School: How Joe Williams' Teaching Style Can Inform Us About Teaching Law Students* in the Spring 2009 edition of *Perspectives*. In July, she presented "Effective Personal and Peer Reviewing Strategies," "Polishing Your Writing: Writing Lengthy Sentences That Are Easy to Read," and "Writing Effective Sentences" at the APPEAL conference in Pretoria, South Africa. In June, she presented "Experiential Exercises with Flowcharts Facilitates Learning Law" at the Institute for Law Teaching and Learning Conference at Gonzaga School of Law, "Revision & Reviewing: How Detailed Instructions Can Assist Students With Revising Their Own Work" at the Global Legal Skills IV conference at Georgetown School of Law, and "Blawging in Academic Success Programs: How to Support Students from Applications to Swearing In" at the LSAC Academic Assistance Training Workshop at St. Louis School of Law. Over the Spring Semester, Hillary presented "Conversational Prejudices: Avoiding Prejudices in Academic Counseling Caused by Conversational Preferences" at the Widener Academic Support & Bar Programs Workshop and "Graphic Exercises: Teaching Case Synthesis, Legal Analysis, and Organization Through Visual and Kinesthetic Exercises" at the Rocky Mountain Legal Writing Conference at Arizona State University's Sandra Day O'Connor College of Law.

In the spring, **Cleveland-Marshall's** faculty adopted procedures for renewals of long-term appointments of clinical and legal writing faculty. Cleveland-Marshall's clinical and legal-writing faculty members have been eligible for five-year appointments since 2003, and the first group of faculty sought renewal in 2008-09. While the procedures for obtaining the initial appointments were clearly and thoroughly articulated, the procedures for renewal were not. Ultimately, the faculty adopted guidelines that reaffirm that the long-term appointments carry a presumption of renewal and that provide for limited faculty and decanal review consistent with the presumption. This summer, **Brian Glassman's** long-term appointment was renewed for another five-year term. Brian was one of the first group of Cleveland-Marshall legal writing and clinical faculty to receive a

# Publications, Presentations and Program News

long-term appointment when long-term appointments first became available. Consequently, Brian was also in the first group of faculty up for renewal, and the newly-adopted renewal procedures and standards were applied to his application. We're pleased to report that the new procedures worked beautifully, and Brian's application and renewal proceeded smoothly.

**Beth D. Cohen** (Western New England) was elected to serve a two-year term on the Board of Directors of Scribes. Scribes, the American Society of Legal Writers, was founded in 1953 to honor legal writers and encourage a "clear, succinct, and forceful style in legal writing." Beth was also appointed to serve as the Associate Dean for Academic Affairs at Western New England College School of Law beginning on July 1, 2009.

**Judith D. Fischer** (Louisville) published *Got Issues? An Empirical Study About Framing Them*, 6 J. ALWD 1 (2009); *Framing Gender: Federal Appellate Judges' Choices about Gender-Neutral Language*, 43 U.S.F. L. Rev. 473 (2009); and *Avoid Cliches*, 73 Bench & B. 48 (July 2009).

**Tenielle Fordyce-Ruff** (Oregon) presented "More than Googling: Teaching 21st-Century Students the Depth of Legal Research" at the Northwest Regional Legal Writing Conference August, 2009. She also presented "Teaching Surfers to Dive: Legal Research, Learning Theory, and Millennial Students" at the ALWD Scholars Forum, Northwest Regional Legal Writing Conference in August, 2009. She recently contributed an essay, *Six Simple Steps to Correct Commas*, to "The Legal Writer," a monthly column in the *Oregon State Bar Bulletin*. Tenielle also received the Distinguished Faculty Award for 2009.

**Teresa Godwin Phelps** (American) published *Truth Commissions* in the *Oxford University Encyclopedia of Human Rights*, ed. David P. Forsythe (2009).

**Shailini George** & **Stephanie Hartung** (Suffolk) published their article, *Promoting In-Depth Analysis: A Three-Part Approach to Teaching Analogical Reasoning to Novice Legal Writers*, 39 Cumb. L. Rev. 685 (Summer 2009).

**Rebekah Hanley** (Oregon) led a writing workshop for special education hearing officers in Seattle in July 2009. She also worked with **Toni Berres-Paul** of Lewis & Clark to plan the Northwest Regional Legal Writing Conference in Portland in August, 2009.

**Rebekah Hanley** & **Megan McAlpin** (Oregon) presented "To Build or To Borrow: Using New and Recycled Materials to Create Legal Writing Assignments" at the Northwest Regional Legal Writing Conference.

**Sam Jacobson** (Willamette) was appointed a foreign expert to the Bulgarian Department of Education. He will be consulting with them on the issue of law school rankings, among other issues. Sam also published the 2009 edition of his LRW book, *Legal Analysis and Communication*, which is available through **www.authorhouse.com** or any major online portal, such as Amazon.

**Amy Langenfeld** (Arizona) has been granted tenure and promoted to full Clinical Professor of Law at the Sandra Day O'Connor College of Law at Arizona State University.

**The Legal Writing Institute Board of Directors** has created a Monograph Series, which will be a sequence of electronic volumes posted on the LWI web site. Each volume will focus on a specific topic relevant to teaching, curriculum, scholarship, or status of legal writing professionals and will include substantial, well-developed pieces of scholarship in the form of law review articles or book chapters that have been previously published elsewhere. The first volume of this Series—"The Art of Critiquing Written Work"—is now available on the LWI web site at **http://www.lwionline.org/monograph.html**. This topic was chosen for the first volume because critiquing writing is fundamental to teaching our students in our first-year and upper-level classes. New teachers will find articles in the volume that provide an introduction to effective critique—oral or written critique by teachers; peer review critique; or self-critique. More experienced teachers will find discussions of theory and may even discover new ideas. This fall, the Editorial Board for Volume One will be working on Policies and Procedures for the Editorial Board of the Monograph Series and will submit a proposal to the LWI Board for its approval at its January 2010 meeting. Once these Policies and Procedures are finalized, they will be posted on the LWI web site as well as sent out on the LWI listserv so that anyone who would like to apply to serve on the next board will have a chance to do so. If you have any questions or suggestions about the Series, please email **Jane Kent Gionfriddo** (Boston College Law School),

# Publications, Presentations and Program News

Editor-in-Chief of the Monograph Series, at **gionfrid@bc.edu.**

**Lisa A. Mazzie** & **Jessica Slavin** (Marquette) have been promoted to associate professor of legal writing.

**The University of the Pacific, McGeorge School of Law** is pleased to announce two new faculty members in our new two-year Global Lawyering Skills program. **Jennifer Gibson** and **Jeffrey Proske** join nine other full-time faculty to offer students two years of required legal research, writing, and oral advocacy instruction. Jennifer has had her own appellate practice in Elk Grove, California for the last several years. She graduated from Vanderbilt University School of Law and served as a law clerk to the Honorable R. Guy Cole of the United States Court of Appeals for the Sixth Circuit. Jeffrey comes to Pacific McGeorge after 20 years of practice in the area of corporate real estate and business. He has served as in-house counsel for several fortune-500 companies and practiced for private firms as well. He brings considerable business and transactional experience to the GLS program.

**Teri McMurtry-Chubb** (La Verne) wrote an article, *Writing at the Master's Table: Reflections on Theft, Criminality and Otherness in the Legal Writing Profession*, which will be appearing in the Fall 2009 issue of the Drexel Law Review. She is the Director of Legal Analysis and Writing at the University of La Verne College of Law.

**Sarah Ricks** (Rutgers-Camden) was elected to the American Law Institute in March 2009. She was selected as a recipient for the Chancellor's Award for Teaching Excellence, a Camden campus-wide prize presented at the law school graduation. The Women's Law Caucus honored Sarah with a 2009 Faculty Appreciation Award. She was a guest presenter in a Rutgers-Camden Women's Studies class on "Procedural Due Process: The Failed Attempt to Create a Constitutional Right to Enforce Protection from Abuse Orders" (April 2009). At the Spring 2009 meeting of the Delaware Valley Legal Writing Consortium, she presented a draft chapter of her forthcoming civil rights textbook, *Current Issues in Constitutional Litigation: The Roles of the Courts, Attorneys, and Administrators* (Carolina Academic Press, forthcoming 2010). The book will be part of the Context and Practice Series co-edited by **Michael Hunter Schwartz.**

**David S. Romantz** (Memphis) has been named the Associate Dean for Academic Affairs at the University of Memphis School of Law. Dean Romantz had served as the Director of Legal Methods at the law school since 1998.

**David S. Romantz** (Memphis) and **Kathleen Elliott Vinson** (Suffolk) have publish the second edition of their popular book, *Legal Analysis: The Fundamental Skill, 2d ed.* (Carolina Academic Press 2009).

**Santa Clara University Law School** Legal Analysis, Research, and Writing ("LARAW") faculty members published the following: **Stephen Smith's** article *The Poetry of Persuasion: Early Literary Theory and its Advice to Legal Writers*, was published at 9 J. ALWD 55-74 (Fall 2009); **Yvonne Ekern** and adjunct faculty member **Joanne Banker Hames** published *Introduction to Law* (4th ed. 2010) and *Legal Research, Analysis, and Writing* (3d ed. Pearson Prentice Hall 2009). The fifth edition of *The VAWA Manual: Immigration Relief for Abused Immigrants*, by LARAW Director **Evangeline Abriel** and **Sally Kinoshita**, was published by the Immigrant Legal Resource Center.

**Suzanne Rowe** (Oregon) has been named chair of the ABA's Communications Skills Committee. She recently published *Learning Disabilities and the Americans with Disabilities Act: The Conundrum of Dyslexia and Time* in the LWI Journal. She continues writing "The Legal Writer" column for the Oregon State Bar Bulletin; recent essays include *Running On?: Life Support for Sentences and Word Choices III: Verb Pairs that Puzzle*. At the ALWD Conference in Kansas City, she appeared on two plenary panels: "Tales of Development in LRW Told by Pioneers and Newcomers" and "ABA Updates." Along with Steve Johansen and Dan Barnett, she facilitated the Northwest Scholars' Forum in Portland, Oregon at the end of August.

Several faculty members from the **Suffolk University Law School** Legal Practice Skills Department appeared as guest authors in the Massachusetts Lawyer's Weekly monthly column, "Write On." The column focuses on practical advice for both new and experienced lawyers. These articles include: **Julie Baker**, *In Editing Others' Docs, Cite Negative, Highlight Positive*, June 8, 2009; **Julie Baker** & **Lisa Healy**, *Look Before Leaping Into Research*, September 14, 2009; **Sabrina DeFabritiis**, *Clarity, Organization: Watchwords for Client Correspondence*, March 9, 2009; **Shailini George**, *The Three C's:*

# Publications, Presentations and Program News

*Counterarguments, Concessions and Credibility*, April 6, 2009; **Geraldine Griffin**, *Taking Your Case Analysis to the Next Level*, July 6, 2009; **Stephanie Hartung**, *In Argument, Even the Rule of Law is Fair Game*, February 16, 2009; **Samantha Moppett**, *Heading the Reader in the Write Direction*, May 4, 2009; and **Leigh Watts-Mello**, *Cohesion Key to Effective Legal Memo*, August 17, 2009. These articles are available on the authors' SSRN pages or through Massachusetts Lawyer's Weekly. Additionally the following Suffolk professors presented at the 2009 Rocky Mountain Legal Writing Conference hosted by the Sandra Day O'Connor College of Law at Arizona State University: **Sabrina DeFabritiis**, "Top Your Students' Playlist: Using Voice Comments to Provide Feedback on Students' Memoranda"; **Geraldine Griffin** and **Rosa Kim**, "Teaching Introductory Signals and Explanatory Parentheticals Through Interactive Exercises"; and **Ann Santos**, "Using Documents From Real Cases for Persuasive Legal Writing Assignments."

**Ruth Vance** (Valparaiso) is the 2009 recipient of the Distinguished Faculty Award. This award is provided by the Mabel Burchard Fischer Grant Foundation in Honor of Professor Jack Hiller. The award was established in 1999 to recognize outstanding teaching, scholarship, and service to the Valparaiso University School of Law. Ruth was described as follows: "[O]ne of the most dedicated and broadly contributing members of our faculty. A nationally recognized figure in Legal Writing, she has long directed the School of Law's Legal Research and Writing Program. She has also served as Chair of the AALS Section on Legal Writing, Reasoning and Research; was a founder and member of the Board of Directors of the Association of Legal Writing Directors; is a member of the ABA Section on Legal Education's Communication Skills Committee. Professor Vance has increasingly devoted teaching, scholarly, and service time to negotiation and alternative dispute resolution." Ruth also spoke on a panel at a program entitled "Rules of the Road: How to Navigate the Legal Land Mines of Mediation" for the 2009 ABA Annual Meeting sponsored by the Dispute Resolution and Litigation Sections of the ABA.

**Daniel B. Weddle** (Missouri–Kansas City) & **Maurice R. Dyson** published their new book *Our Promise: Achieving Educational Equality for America's Children* (Carolina Academic Press 2009).

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***New job?***
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***Please send us your publications, presentations, and program news.***

# Calendar


## June 27-30, 2010: 14th Biennial LWI Conference

The LWI Board of Directors has selected the Marco Island Marriott Beach Resort for the site of the **2010 LWI Biennial Conference** and appointed the Conference Site Committee to begin planning the conference. The Resort is located on three miles of pristine Southwest Florida beaches. With over 225,000 square feet of indoor and outdoor function space, a full-service event planning staff, several renowned restaurants, championship golf, a world-class spa, and a wide range of activities and amenities, the Resort seemed like an ideal setting for the first LWI Conference to be held at a non-campus site. The impressive meeting space, beach location, and affordable accommodations should entice members to not only attend the 2010 Conference but also to combine it with a family vacation, especially since the LWI special rates have been extended to before and after the conference dates. For more information about the Resort, please visit the resort's website: www.marcoislandmarriott.com. The preliminary conference website is now open! Go to http://indylaw.indiana.edu/LWIconference/. As the program is completed, additional information will be added.

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### May/June 2012: 15th Biennial LWI Conference

The LWI Conference Site Evaluation Committee and the LWI Board of Directors are pleased to announce that **2012 LWI Biennial Conference** will take place at the JW Marriott Resort & Spa in Desert Springs, California, from May 29 to June 1, 2012. For complete information about the resort, please visit www.desertspringsresort.com.

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On June 4 and 5, 2010, the **Emory Conference on Transactional Law and Practice** will be held at Emory University School of Law in Atlanta, GA.

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# Calendar


On May 14, 2010, Hofstra Law School in Hempstead, New York, will host the first annual **Empire State Legal Writing Conference**. The Conference will be a one-day event, timed in such a way that people in the greater NYC area can easily travel to the Law School and back on the conference day. Out-of-town participants are welcome, and we will arrange a conference rate at a local hotel, as well as transportation to the Law School. We will also send out a request for proposals in the fall and the committee will make its selections by December or January. For further information, please contact Amy Stein, Conference Chair, at lawars@Hofstra.edu.

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On November 5-6, 2009, Mercer University School of Law will host a symposium entitled **The Legal Writing Institute: Celebrating 25 Years of Teaching and Scholarship**, sponsored by the Journal of the Legal Writing Institute & Mercer University School of Law Symposium.

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On December 7, 2009, the **Conference of the New England Consortium of Legal Writing Teachers** will be held at Western New England College School of Law, in Springfield Massachusetts. The conference theme is "The Changing Landscape of Legal Writing Programs."

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***If you have any news or calendar items for the Spring 2010 issue of The Second Draft, please send them in!***

***Contact us at: seconddraft@suffolk.edu***