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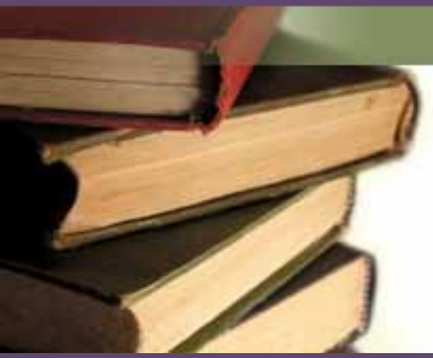
Tactical Teaching: How Legal Writing Teachers Stay Abreast of Legal Practice

IN THIS ISSUE

Joshua Tree National Park, near the site of the LWI 15th Biennial Conference in May 29 - June 1, 2012



Letter from the Editors

This issue of The Second Draft was inspired by a standing-room-only presentation at last summer's LWI Conference that asked the important and timely question of how (or whether) our classroom teaching should keep abreast of practical considerations, such as the growing tendency to report legal research and analysis to clients and supervisors via e-mail versus as a full-blown office memorandum of the kind that anchors many of our schools' fall semesters.

The exigence for this topic is heightened by the changing nature of the legal profession. In the past few years, the number of trained lawyers has grown exponentially, but the legal marketplace has contracted significantly. Fewer junior attorneys are being hired because technological innovations have made fewer necessary; as well, many major law firms are proposing new hiring strategies that massively reduce the need for associates – in favor of far cheaper, contract attorneys who do not have the same long term job prospects. And, because of rising costs and client pressure, many legal employers have less tolerance for on-the-job training – the result being that they are seeking junior attorneys with already established skills. How should law schools accommodate these changes? How should our profession respond? The articles in this issue address these concerns as they contemplate the necessity and wisdom of the legal writing classroom as a training ground for practice.

Looking ahead, we are delighted to announce the topics for the next two issues of this publication. The fall 2011 issue will focus on diversity issues in the teaching of legal research and writing. The spring 2011 issue will address ethics and the teaching of legal research and writing. The call for submissions for the fall issue is included in this issue of *The Second Draft*.

This is a digital publication which includes clickable links for navigation, e-mail and URLs. Use the Table of Contents on the cover to jump to any article you like, or use the footer to jump back to the cover.

The President's Column

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One of the most common complaints about law school is that it is "disconnected" from the actual practice of law. Lawyers, both recent graduates and the more senior hiring partners, often complain that students graduate from law school lacking some of the basic skills needed to interview clients, gather facts, analyze cases and do some of the most basic aspects of practice.

Legal writing classes are among the few exceptions to that complaint. Legal writing is the only required course in the curriculum of most law schools that teaches students some of the basic skills they will need in law practice. Legal writing faculty are more likely than casebook faculty to have had extensive practice experience before entering the teaching profession. And as schools increase their offerings of upper-level writing courses, once again legal writing courses often provide an important vehicle for schools to connect classroom learning to real-world application.

But there is always more we can do. We, as legal writing professors, can learn from our colleagues in the practice of law what works, and what doesn't, in legal writing. This issue of The Second Draft focuses on this question: what can we learn from legal practice to become better teachers?

The Legal Writing Institute has begun exploring this avenue. For example, at the 14th Biennial Conference at Marco Island, Florida in June, 2010, we had a "practitioner track" in which several distinguished practitioners attended our conference to make presentations. We learned from them and we hope they gained some insights into our world as they attended other sessions.

Likewise, many schools conduct moot court arguments at the conclusion of the first year of legal writing. Many schools invite their alumni and other practicing lawyers to serve as judges for these arguments, so that students can learn directly from those who are doing the actual work of the legal profession.

This summer LWI will make yet another connection with the practicing bar, in the form of our brothers and sisters

What can we learn from legal practice to become better teachers?

who teach live client clinics. The third biennial Applied Legal Storytelling Conference will take place from July 8 to 10 at the University of Denver Sturm College of Law. Significantly, this event is co-sponsored by both LWI and the Clinical Legal Education Association, marking the first time these two organizations have collaborated in this way. This seems like a natural fit. Legal problems are best understood through narrative: clients are the protagonists of the story that the lawyer (either a student lawyer in a clinic course, or a practicing lawyer) must tell effectively in order to achieve the client's legitimate goals. That story might be told orally at trial, but more often than not the story is told in writing, through pleadings, briefs and other written communications. Thus, in order to represent clients effectively, legal writers need to understand how to tell a good story.

The Applied Storytelling Conference features a number of presentations not just by LWI members, but also by clinicians. I hope it is just the first of many such collaborations between legal writing and clinical faculty members. We have a lot to offer each other.

And speaking of having a lot to offer, let me close with kudos to all the scores of the LWI members whose accomplishments are being recognized in the Program News & Accomplishments section of this issue of *The Second Draft*.

What Legal Employers Want…and Really Need: Report from a Conference at Boston College Law School

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What does it take for a law school graduate to be practice-ready? Answering this question has grown increasingly important as a troubled economy reduces the number of new legal positions and limits employers' resources to train new hires. In this unstable market, it is more critical than ever for law students to be well trained in order to get and succeed in jobs. Toward this end, Boston College Law School hosted the December, 2010 conference of the New England Consortium on Legal Writing to consider "What Legal Employers Want. . . And Really Need." With the goal of promoting dialogue among the bar, the bench, and the academy, a large law a firm partner, an in-house counsel, a government attorney, and a law firm writing specialist, joined legal writing and clinical faculty to discuss: 1) what makes a new lawyer practice-ready; and 2) how law schools and legal employers should apportion responsibility to ensure that new lawyers are ready to begin practicing law.

The first panel of non-academicians acknowledged that forms of legal research and writing are evolving rapidly as a consequence of ongoing developments in technology and practice patterns. They nevertheless emphasized the ongoing need for law schools to provide rigorous training in fundamental skills that can be adapted to various practice settings. Thus, even if some lawyers provide legal advice and advance their clients' positions using less formal modes of communication, the panelists agreed that law schools should continue to emphasize comprehensive, logical, and fully supported analysis. If these skills are acquired in law school, new hires should have a basic understanding of what law practice entails, what it means to represent a client, and how to engage in effective, efficient legal analysis and communication. In other words, in the view of these panelists, on the first day of work, a new lawyer may not be client-ready, but must be practice-ready.

Consequently, legal employers expect and need law schools to teach students how to: understand court structures and the life of a case; find and apply legal authority (using commercial fee-based and more cost-effective technologies and resources); evaluate their own work critically; and deliver a precise and concise analysis both orally and in writing, regardless of the type of document (e.g., e-mails, letters, formal litigation documents, or transactional documents). Notwithstanding their different arenas of legal practice, all panelists urged law schools to inculcate important professional attitudes and values. Thus, to be practice-ready, students must appreciate the importance of following directions, paying attention to detail, and understanding that errors in their final work product can significantly damage their own credibility and that of their employers. Although new lawyers will surely become more effective and efficient over time, employers still expect them to arrive knowing how to organize their work and manage their time, especially where private clients will closely scrutinize research charges and billable hours.

Representatives of the bench and the bar made it clear that to succeed in the work place, students need more opportunities to work collaboratively during law school just as they will be expected to in practice. Further, students should be better prepared to assess and adapt to different employer cultures. Students also need a more pragmatic grasp of what it means to owe their primary duty to the client. This includes understanding and responding to the client's needs and objectives, and in the commercial setting, understanding the client's business. Beyond the classroom, a student's work experience before and during law school develops the maturity and perspective needed for legal practice Consequently, law schools should begin to foster practice-readiness at the very start of a student's legal education. With these basics of practice-readiness in place, legal employers can further develop professional skills, enabling new lawyers to transition from being students of legal doctrine to assuming the role and responsibilities of legal practitioner. Legal employers must continue to hone the new lawyers' ability to be efficient and effective, since time is a scarce and literally costly resource.

In light of the cost of hiring and training new lawyers, panelists agreed that optimally, the concept of apprenticeship should be reinvigorated and incorporated into the employer's obligation to mentor new lawyers. The transition from medical school to medical practice illuminates how to use post-graduate training to meet the needs of both employers and new graduates. For example, medical students devote their last two years of school to clinical rotations. A fourth year of law school could similarly immerse students in the full-time practice of law without the distractions that other coursework can create while participating in a law school clinic. Alternatively, like medical internship and residency programs, post-graduate legal apprenticeships could provide on-the-job training and supervision, with commensurately lower salaries. These and similar programs pose the additional benefit of encouraging employers to increase their hiring and thereby expand long-term job opportunities for new lawyers.

A second panel of legal writing and clinical professors discussed law school initiatives for meeting the growing demand that law students be practice-ready. Panelists and attendees alike were enthusiastic about law schools doing more to maximize the success of new law graduates in getting and succeeding in jobs, but agreed that this would require a major infusion of resources. Suggested curricular strategies included LRW course assignments that mirror the work of new lawyers (e.g., e-mail versions of objective memoranda or client letters), expanding course offerings on research and writing in non-litigation contexts, and using clinics to offer practical experience in transactional law. Bridging the gap between school and practice in the literal sense was recognized as perhaps the quickest and least expensive way to foster practice-readiness. Inviting practitioners to share their work experiences and perspectives can enhance the student's appreciation for the practical application of classroom instruction. It also creates a valuable opportunity for students to network with prospective employers in a challenging job market. Externships are another way to connect theory with practice (while, again, facilitating networking), especially for areas of statutory and regulatory practice that are often under-emphasized in skills-based courses.

Finally, Conference panelists and participants agreed that the opportunity for legal educators and legal employers to collaborate was inordinately valuable, but far too rare. The value of the conference format was apparent from the degree of engagement and enthusiasm of all who attended. To continue the conversation, regularizing such events is required. Smaller gatherings and more frequent conversations, rather than large regional conferences, may actually do a better job of enabling educators and employers to understand, achieve, and build upon the common goal of achieving practice-readiness.

From the many insights elicited by this Conference, one overriding imperative emerged: legal educators must continue working with the bench and bar to reflect on, and discuss what it means and what it takes for new graduates to be practice-ready. Consequently, far more significant than how to collaborate, is that this collaboration be pursued. Boston College Law School's Legal Reasoning, Research and Writing Program is committed to developing additional modes of doing just this. Hopefully, other law schools will do the same. ■

Ding Dong! The Memo is dead. Which old Memo? The Traditional Memo.

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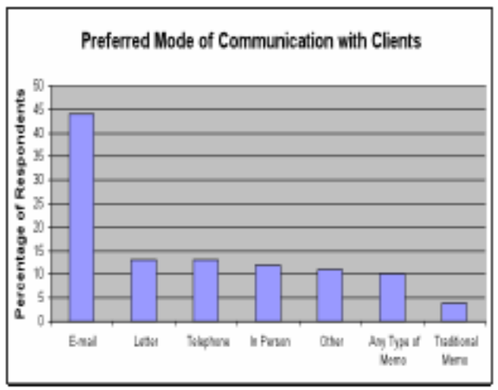
A 2006 survey confirmed what we have suspected for years: the traditional legal memorandum is no longer the quintessential form of communication between lawyer and client.[1] As the survey suggests, lawyers are more likely to advise clients by e-mail,



letter, telephone, or in person—and in that order of preference—than by any form of memorandum traditional or otherwise.[2] *See figure at right.* In fact, 57 out of 140 survey respondents from Georgetown Law Center's graduating classes of 1983, 1988, 1993, 1998, and 2003 said they write no traditional memoranda, and 41 said they write no more than three per year.[3] *Either none or no more than three.*

The implications of this survey were the topic of a panel presentation at the June 2010 biennial conference of the Legal Writing Institute. The large number of attendees and the conversation they generated indicate that whether, how, and why we continue to teach the traditional legal memorandum to first-year law students is a subject of great interest to legal writing faculty nationwide. Several faculty expressed the view that regardless of the writing conventions used in practice, traditional memoranda are the best way to teach deductive and analogical reasoning and should remain central to the first-year curriculum. Others suggested that the traditional memorandum be deemphasized or even eliminated to include the forms students are more likely to use such as informal or short form memoranda and e-mail.

Fifty-nine percent of the survey respondents appeared to agree with the former view.[4] However, that view was shared largely by older graduates. Although roughly sixty percent of the classes of 1983 through 1998 thought the traditional memo was either the best way or a good way to teach objective analysis, only 35 percent of the class of 2003 shared that view.[5] One 2003 graduate said,

> ***"Most of my legal research is communicated by e-mail. It is relatively rare to be asked for a formal memo. Basically, the partners want new information, not redundancies in a specific format."***[6]

Overall, 58 percent of the respondents thought that learning to write a traditional memorandum was either extremely helpful or very helpful in making the transition from law school to practice; the remaining 41 percent thought it was only somewhat helpful or not helpful at all.[7]

As the 2007 Carnegie Report affirms, law students should be "learning to 'think like a lawyer' in practice settings."[8] As the practice of law changes in response to changing technology, we must reflect those changes in our teaching. Although the survey indicates that law graduates will find traditional memoranda best suited to their needs on occasion, they are far more likely to use e-mail, letters, or the telephone to communicate the results of research with their clients. To the extent they use written memoranda at all, these lawyers are twice as likely to use an informal versus a traditional one.[9] Thus informed, we have a dual obligation to our students. First, we need to inform our students that to the extent they are learning legal analysis through the vehicle of a traditional legal memorandum—Question Presented, Brief Answer, Statement of Facts, Discussion, and Conclusion—it may serve primarily as a heuristic for legal analysis. Second, we need to familiarize them with informal memoranda and e-mail because they are likely to encounter these upon graduation.

Both the advantages as well as the disadvantages to using these shorter forms of analysis should be taught. Short form memoranda and e-mail tend to be less expensive and more efficient. For that reason, they may also be more conclusory than full length memoranda and fail to preserve the writer's detailed thought process. As one survey respondent said, e-mail is "taken as a formal statement of your conclusion just as a memo would be. To the extent it's not a complete explanation of the analysis… it's important to specify what is being left out."[10] Moreover, e-mail (with or without memoranda attached) can easily be forwarded, which jeopardizes client confidentiality. The same respondent explained, "I've definitely had people at client companies other than the person to whom I sent an e-mail call me to talk about it."[11] ■

[1] Kristen K. Robbins-Tiscione, *From Snail Mail to E-Mail: The Traditional Legal Memoranda in the Twenty-First Century*, 58 J. Legal Educ. 32 (2008).

[2] *See id.* at 42-43. Ninety-two percent of the respondents indicated they use substantive e-mail to communicate with their clients. *Id.* at 42.

[3] *See id.* at 32.

[4] *Id.* at 45.

[5] *Id.* at 47.

[6] *Id.* at 46-47.

[7] *Id.* at 53, Question 10.

[8] William M. Sullivan, et al., *Educating Lawyers: Preparation for the Profession of Law* 9 (2007).

[9] Robbins-Tiscione, *supra* n. 1, at 43.

[10] *Id.* at 45.

[11] *Id.*

Legal Research and Writing as a Proxy: Using Traditional Assignments to Achieve a More Fundamental Form of Practice Readiness

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Legal Research and Writing teachers should assign their first-year students work that many or even most lawyers in fact do not perform.

Heresy, right? Wrong. Let me explain.

To be sure, the contraction of the legal marketplace in recent years has reignited the concern that law schools are not engaging in enough practical skills training to make their graduates practice-ready.[1] But how might a Legal Research and Writing course for first-year students contribute to making law school graduates "ready" to enter practice, no matter if that practice is litigation, transactional, regulatory, or anything else?

One approach that responds directly to the practice-ready push is to choose assignments that reflect as closely as possible those most often completed by beginning lawyers.[2] But this approach is certainly not the only way to serve the goal of any first-year legal writing course—teaching the fundamentals of legal analysis and writing.[3]

Regardless of what precisely beginning lawyers are writing or doing, there remains much to be said for requiring first-year students to complete the traditional troika of a formal inter-office memorandum, an appellate brief, and an appellate oral argument. This is something that the majority of Legal Research and Writing programs

still do, but it is a practice logically prone to criticism because most practicing lawyers will not perform all of these tasks during their careers, and many practicing lawyers will not perform any of them. Yet, each of these assignments retains considerable importance as an effective tool for instilling fundamental attributes of a good lawyer that go well beyond the basics of analysis and writing, and that ultimately can make a graduate more marketable and employable.

Formal Inter-office Memos

By the most reliable account, nearly every U.S. law school assigns inter-office memoranda to Legal Research and Writing students.[4] More than likely, most of these schools continue to assign a traditional, formal memorandum as opposed to an informal one. There is some evidence, however, that a large percentage of practicing lawyers do not write formal inter-office memoranda or write them very infrequently—and that this is true even for beginning lawyers.[5]

Nonetheless, from a pedagogical perspective, there is continuing merit to assigning traditional, formal memoranda. Producing any written assessment of how a body of law applies to a client's set of facts will surely build general analysis and writing skills. But a formal memorandum offers the additional advantage of requiring compliance with exacting rules of format and style. The presence and enforcement of these rules highlights the importance of an enhanced level of attention to detail. Regardless of the setting and regardless of the specialty of the lawyer, careful attention to detail is of paramount importance in the practice of law. It builds credibility, and in some instances it can make or break a case.

Sticking with formal memoranda and assigning them in the fall semester of the first year also falls in line with the general pedagogical approach of using strict constraints and formulas to introduce students to a new skill. At a later point, it is easier to loosen up strict habits than to tighten up loose ones.

Appellate Brief

At approximately 80 percent of law schools, students are required to complete an appellate brief.[6] "Why?" asks Erwin Chemerinsky. "Why not have students argue a motion to dismiss or a summary judgment motion, something more likely to be seen by a larger number of students in their early years of practice?"[7]

A large number of Legal Research and Writing programs do in fact assign trial-level motions, and several no doubt assign both appellate briefs and trial-level motions. But why assign an appellate brief at all when most lawyers will not write one and a very small percentage of lawyers specialize in appellate work?[8]

Assigning an appellate brief introduces students to the concept of standard of review, something that all lawyers need to understand to effectively interpret and use precedential opinions from appellate courts. Moreover, producing an appellate brief not only demands considerable attention to detail (to comply with the very strict requirements of appellate courts[9]), but also tests a student's ability to manage, organize, and execute a project of considerable size and importance.[10]

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Oral Argument

Nearly three-quarters of law schools require appellate oral argument in Legal Research and Writing.[11] But oral argument is heard in less than one-third of federal appeals,[12] and among the already small number of attorneys who handle appeals, an even smaller number end up delivering an appellate oral argument. Even throwing trial-level oral advocacy into the mix, a majority of attorneys do not engage in oral advocacy in a courtroom frequently or at all.[13]

Notwithstanding such statistics, appellate oral argument is a very effective means for developing basic oral communication and presentation skills, self-confidence, and the capacity to stand up for a client's interests in the face of a challenge to those interests. Lawyers both inside and outside litigation need these skills, and the formalities peculiar to an appellate court provide a constructive framework for developing them.

Conclusion

In the face of pressure to teach "to practice," law schools should be mindful that the best way to achieve desired outcome X might be for a Legal Research and Writing teacher to assign Y and Z to first-year students, even if the majority of lawyers will never do Y or Z. It is critical that Legal Research and Writing and other faculty retain the discretion to adopt such an approach, especially with first-year students. ■

[1] This concern is a significant contributing factor in the ABA's recent push for law schools to identify and measure desired outcomes for their graduates. See Catherine L. Carpenter et al., *ABA Section of Legal Education and Admissions to the Bar, Interim Report of the Outcome Measures Committee* 3 (2008), *available at* www.abanet.org/legaled/committees/OutcomeMeasures.doc.

[2] Presumably in pursuit of this goal (and the subject of an article in this issue of The Second Draft), some legal writing professors are working with members of the local bench and bar to address what new lawyers should be prepred to do when they enter the profession. *See, e.g.*, E. Joan Blum, et al., *What Legal Employers Want…And Really Need: Report from a Conference at Boston College Law School*, 25 The Second Draft 4 (2011).

[3] In some cases, research is also taught in first-year legal writing, though frequently, research is taught in a separate course.

[4] John Mollenkamp et al., *Ass'n of Legal Writing Dirs. & Legal Writing Inst., Report of the Annual Legal Writing Survey* 13 (2010), *available at* http://www.alwd.org/surveys/survey_results/2010_Survey_Results.pdf.

[5] *See, e.g.*, Kristin Konrad Robbins-Tiscione, *From Snail Mail to E-Mail: The Traditional Legal Memorandum in the Twenty-First Century*, 58 J. Legal Educ. 32 (2008) (reporting on the results of a survey of graduates of Georgetown University Law School).

[6] Mollenkamp et al., *supra* n.4.

[7] Erwin Chemerinsky, *Rethinking Legal Education*, 43 Harv. C.R.-C.L. L. Rev. 595, 597 (2008).

[8] One author asserts that "less than 10 percent of lawyers appear regularly in court in adversary proceedings." Hon. Dana Levitz, *So, You Think You Want to Be a Judge*, 38 U. Balt. L. Rev. 57, 64 n.17 (2008). This figure refers to trial work, but logically there are fewer appellate specialists than trial specialists. The appellate divisions at major law firms typically include between one and five percent of the firm's attorneys. E.g., dividing the number of appellate attorneys at Greenberg Traurig, LLP, http://www.gtlaw.com/Experience/Practices/Appellate, by the total number of attorneys at the firm, http://www.ilrg.com/nlj250, results in an appellate workforce of 4.3%.

[9] *See, e.g.*, 5 Am. Jur. 2d *Appellate Review* § 539 (2010) (listing cases where appellate briefs failed to conform to local rules); Maureen B. Collins, *Picky, Picky, Picky: Formatting an Appellate Brief*, 90 Ill. B.J. 491 (2002). To be sure, trial courts can also be exacting in enforcing their rules regarding the content and format of motions.

[10] At many schools, the appellate brief is the capstone or final project in Legal Research and Writing and counts for a significant percentage of the course grade.

[11] Mollenkamp et al., *supra* n.4.

[12] Michael Duvall, *When is Oral Argument Important? A Judicial Clerk's View of the Debate*, 9 J. App. Prac. & Process 121, 129 n.41 (2007).

[13] Levitz, *supra* n.8.

Developing Students' Identities as Legal Apprentices Through Interaction with Lawyers and Judges in a First Year Legal Writing Course

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As law schools begin to embrace the necessary transformation of legal education to an apprenticeship model, an obvious solution is increased clinical programs and externship experiences for upper level students. But law schools must begin by instilling first year law students with a sense of being a lawyer-in-training, even though it can often be a struggle to develop this identity amidst a thick doctrinal curriculum. Given this tension, a legal writing course is an ideal place to expose students to practical experience during the first year to help them make the connection between law school and practice, because skills learned in that course, more than any other in the first year, are the skills that they will use as lawyers.

One way to help students realize early on that they are embarking on an apprenticeship in law school is to bring lawyers and judges to the students, and to send students out to see lawyers and judges in practice settings. In their first semester, Western State University College of Law students attend a lecture by a panel of attorneys who practice in the area of law that was the basis for their first memo. For example, in Fall 2010 students wrote a memo on the enforceability of an arbitration agreement, and later attended a lecture given by two local attorneys who handled the appeal of the primary case in the closed universe problem. The students knew the published decision well, but the lawyers offered additional background facts that enhanced students' understanding of what the case meant to the client. The students also reviewed the actual arbitration agreement at issue, learned about the litigation tactics, unsuccessful settlement negotiations, and the research and writing process involved in the appeal. All of this brought an otherwise dry memo topic to life and solidified in the students' minds that the memo they wrote was a very real first step into practice.

During the second semester, a panel of attorneys is invited to speak to the students about written and oral persuasion in their practices. The panel is intentionally diverse, including attorneys practicing criminal and civil law, a partner at a national firm, a junior associate at a mid-sized firm, a solo practitioner, and a mediator. It becomes evident to the students that the persuasive writing techniques and oral advocacy skills they are learning in class, in an appellate context, will be used upon graduation regardless of the area in which they ultimately practice.

The second semester curriculum also has students attend an oral argument at the state appellate court. Though the court is open to the public, the legal writing department works with the Senior Deputy Clerk to schedule small groups of students to appear on specific dates. The Justices are aware of the visiting students and meet with them after the arguments. They answer student questions and discuss the preceding cases, even commenting on the lawyers' various styles and strategies. Upon later reflection, students overwhelmingly report a sense of awe that the arguments they just watched were exactly the same format as they had practiced in class. Formalities, such as rising for initial appearances, as well as techniques such as answering questions directly prior to delving into case law analogies, are reinforced by the court of appeals visit. These skills are then incorporated by the students into their moot court arguments. Finally, the first year legal writing course culminates in a moot court competition, judged exclusively by lawyers and judges. Interaction with these lawyers and judges, predominantly WSU graduates, provides the students with an even more cogent vision of how their training in school will lead them to practice.

Creating opportunities for students to interact with lawyers and judges as part of a first year writing course encourages students to think of themselves as lawyers in training and clarifies that the writing, research, citation, advocacy and professionalism skills that they learn in class will be applied in practice. Developing this apprenticeship identity among first year law students is a critical step to reforming legal education and graduating practice-ready lawyers. ■

Using a Bar Outreach Project to Learn about Today's Law Practice

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The way attorneys practice is changing. Research and, to some extent, writing assignments are different from when we left practice 10 or even 15 years ago, and every year brings new developments. As a result, every revision of an LARW syllabus raises basic questions: Does anyone write a long, full-blown research memo any more? Is there any reason to take students into the law library at all when we no longer teach Shepard's or even the West Digest in book form? Does Google have a place in the curriculum? At the University of Dayton, we wanted to make sure our LARW courses were relevant to the current demands of practice. When revisions were needed, we wanted to rely on more than just anecdotes or one person's opinion before changing our course, and possibly our curricular, content. So, the two of us and Sheila Miller, three LARW professors, formed the Bench and Bar Outreach Project. Our goal has been to reach out directly to alumni and typical employers of our alumni in a systematic way to test our assumptions about the realities of today's law offices.

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To get an inside look at the current state of law practice, we decided to ask our recent alumni about what they do and the employers of our alumni about what they want from new hires. To start, we designed a survey, which we sent to alumni graduating in the years 2004-2008, asking them about their current research and writing habits. Then we interviewed some of the survey respondents on the telephone to clarify and probe deeper into the survey responses. We also held focus groups with local attorneys, who were potential or actual employers of our graduates, to find out what they most wanted to see in their new hires.

Our graduates provided valuable information. One eye opener was the demographics of our survey respondents. We learned that some 63 percent of our graduates work in firms with 25 or fewer attorneys, and well over half of our graduates report that they engage in litigation. This made us feel comfortable about keeping the current litigation focus in our first-year courses. But, it has caused us to consider the type of skills needed for practice in small law offices versus the

large corporate firms with which we were familiar. For instance, by far the most common document drafted by our graduates is the letter, a document we have taught sometimes, but not always. Our graduates do write inter-office memos, but they are much shorter than the ones we assign: 88 percent report that the average length for a memo is 1-5 pages. They are often not the formal documents we require, with separate sections for Question Presented, Brief Answer, Facts, and Discussion. Instead our graduates are more likely to present their research in informal memos, provide a "bottom line" answer, or even send their responses in the text of an e-mail. These results have caused us to consider the logistics of requiring shorter, more frequent writing assignments with responses due in different formats. We want our students to avoid getting "locked in" to one format, but instead to keep focusing on audience, purpose, and employer and client expectations.

When it comes to research we found that our graduates spend 80 percent of their time on-line and a mere 20 percent of their time in books. When on-line, our graduates often use search engines, like Google, as a starting point for their research, explaining that it allows them to quickly get access to relevant sources. In small law offices, efficient and cost-effective researching is especially important. Therefore, when it comes to non-legal Internet sources, we have moved quickly from a "Just say no" policy to teaching responsible use. Additionally, court and other government web sites now play a larger role in our research classes. Not surprisingly, graduates do use Westlaw and LEXIS frequently, and they continue to play a major role in our courses. We are also discussing the need to be even more frank about the expense of these commercial databases, pricing structures, and how to structure searches to reduce costs. As for the books, recent graduates tend to be selective and practical with the way they use print resources, reaching most often for annotated statutes, treatises, and hornbooks in paper.

We also gained valuable information from the employers in the focus groups. The employers echoed many of the findings from the survey. First, regarding writing assignments, they stressed the importance of good writing and analysis skills and not the drafting of a specific type of document, stating that with a solid foundation, good legal writing and analysis skills should be transferable to any type of writing assignment. Second, with regard to research, they stated that while books are not obsolete, few of their offices maintain a full library and that they expect new hires to be effective on-line researchers. In addition to basic research, writing, and analysis skills, the employers highlighted other skills that they wished to see in new hires, namely professionalism and "people skills."

Gathering information from members of the practicing bar has been an invigorating way for us to get "out of the house," to re-connect with students, and to meet new attorneys. By learning specifically about our own graduates and their employers it has helped us refine our own sense of audience and purpose and to consider how to focus our courses to meet the needs of these important constituents. ■

Altering Existing Classroom Exercises to Incorporate Practical Experiences that Help Prepare Students for Practice

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In addition to teaching law students how to analyze and write, law professors should also help students effectively transition from being a student to being a professional. Many students come straight from undergraduate school and have never had long-term or full-time employment. As a result, many students may be unsure how to approach and effectively talk to supervising attorneys and judges.

To assist my students in gaining some experience for the interactions and expectations in a law practice, I altered two exercises I already used in the classroom to give students practice in "mock" real world scenarios. My main goal was to give the students practice with verbal interactions in two different informal settings: the law firm and the judiciary.

Mock meeting with an assigning attorney. During the fall semester, I assign a problem that combines a written classroom exercise with an interactive meeting in "the assigning attorney's office." The exercise initially started as a rule synthesis exercise students worked on outside of class; I then used their written answers as the springboard for an in-class rule synthesis lecture. This year, I decided that my students would benefit more from the exercise if it required them to verbally present the answers to me in my office as if I were a detached, busy lawyer.

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During each meeting, a group of three students presented their rule and conclusion. I also questioned them about their rule and challenged them with different factual scenarios. At the end of the meeting, I gave the students two good samples of the rule and a list of tips for intra-office meetings. This verbal exercise provided valuable individual teaching moments about how to synthesize the best rule from a line of cases and also helped me satisfy at least one of my new goals: to make sure that the students would be ready for their first meeting with an assigning attorney when they started to practice in a real law office.

Mock in chambers argument with a judge. In the spring semester, my students write an ungraded closed argument to transition from objective to persuasive writing. Instead of just having them write the argument on their own, I altered the assignment so the students had to verbally support their position before they handed in the written argument. The students presented their analysis during an "in chamber" argument with "the judge."

This exercise gave students practice with oral argument in a setting that is different from a formal appellate argument. Although more informal, the students quickly learned that preparation and deference to the judge was just as important in this setting. In addition, verbally defending their position helped students organize their thoughts for the written argument; in particular, they had to really think about how to rebut a difficult adverse argument because they needed to provide a credible response when asked about it in person.

Time commitment and benefits. Since the fall exercise involved group meetings with three students, I completed all meetings in two afternoons. Although the mock argument in the spring was slightly more time-consuming because there were only two students per argument, it was still manageable because I limited each argument and feedback session to twenty minutes.

Small changes to existing exercises can enhance the lessons we teach and better prepare our students for law practice. In addition to providing practical experiences, these mock experiences also enhanced the goals of the original classroom exercises because the verbal presentations got students more invested in the learning process. Next year, I will present the fall assignment verbally, and not in a written assignment memorandum, to mimic the way assignments are often provided in an office setting. I anticipate this will emphasize listening skills and provide an opportunity to discuss how students should confirm and deal with verbal assignments in practice. ■

For the Love of the Case File

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During my 2L summer employment, my third assignment asked me to "get up to speed" on a client file. That was the assignment: no further guidance was offered. I located the three redwells comprising the file. Yet, they did little to help. They were replete with pleadings, some of which I had heard of but many I hadn't (motion *in limine*? document preservation order?? subpoena *duces tecum*???). Combing out what was relevant was akin to assembling a challenging jigsaw puzzle without the box with the puzzle's picture. My education to date hardly prepared for me for these "learn the case" type of assignments. Where was my pretty memo asking me to research a discrete legal question? Wasn't that the standard summer associate assignment?

Now that I have transitioned to academia, one of my primary quests is to save a few young associates from "client file" fear. This has meant going beyond providing a few, carefully parsed pieces of the record for writing assignments. Instead, my goal is give students a file that actually looks like it might in practice. The gains for the students are significant – particularly given employers' increased reluctance to spend time training junior associates.

Presenting the materials as they might appear in practice can help students learn to identify what actually matters in a dispute. Real files are replete with irrelevant material. As a result, young associates often struggle to identify what legal claims to pursue after an initial client in-take meeting. Using a client file that includes a few red herrings helps students with issue spotting—an essential skill in practice.

The key is making the case materials seem as true to life as possible. Walk students through a few actual client files. Show students how such information may be organized electronically or in the traditional paper folders. This is particularly important for the current technologically entrenched generation, as students are often surprised to learn that sometimes the only way to "search" a file is by reading a hard copy file index.

Providing a variety of different case materials will also help students be practice ready. Including complaints in a file helps students distinguish between legal theories and relevant facts. Go further and include an amended complaint to show how legal theories can be modified but factual allegations cannot. Use depositions rather than just affidavits to highlight how reading the entire transcript ensures the cross-examination testimony doesn't hurt your legal argument. These more nuanced uses of a case file add depth to an assignment and teach students how important it is to fully develop the fact record.

To maximize the benefit of a client file, pick assignments that force students to apply the materials to different standards of review. For example, have students work on a motion to dismiss then later use the same file for a summary judgment dispute on a different issue. Students instantly appreciate how different standards of proof alter which evidence is pertinent for a legal issue. While a complaint may be suitable evidence for a motion to dismiss, it is insufficient on summary judgment.

Admittedly, the burden of developing extensive case files is high. But electronic databases like PACER[1] have made this easier than it once was. Consider pulling a variety of pleadings from a single case. You may still have to supplement the discovery materials. But, by changing some names, isolating some issues, and changing the jurisdiction, you might have a wonderful and manageable case file to use in preparing students for life after graduation. ■

[1] Options like PACER (Available at: http://www.pacer.gov/) and Justia's Federal District Court Filings and Dockets (available at: http://dockets.justia.com/) offer materials from active federal cases across the country. The options for state court materials are more limited, but they, too, are sometimes available online. *See, e.g.*, San Francisco Superior Court's Online Services, available at http://www.sfsuperiorcourt.org/index.aspx?page=467 (allowing search by party name or case number).

On the Opposition of Practical and Theoretical

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Although it still may be fashionable these days to recognize a dichotomy in law schools between the practical and the theoretical, as LRW professors, we should resist the temptation. The opposing conceptions of law school as "trade school" and doctrinal academia do not neatly apply to what we do. Focusing too much on how we train our students for the real world, without highlighting our role in teaching legal analysis, may undermine our relative position in the academy and undervalue our role in legal education.

We confront daily the unmistakable reality that the world outside law school is changing rapidly and changing utterly. We get that teaching Shepard's in print does our students a disservice. Online databases change and, with them, change our instruction techniques. We want our students well-placed to succeed, and to that end, we take seriously our obligation to keep current and to inculcate real-world skills, perhaps more so than the next professor.

But overemphasis on how "practical" we are may have its downside, in that professors regularly placed into the "skills camp" often struggle for legitimacy within their institutions. Thus, touting our profession solely in terms of practical skills – without recognizing a fundamental identity of substantive purpose between LRW and doctrinal classes – may ultimately disserve our collective aspirations for legitimacy.

Few, if any, doctrinal professors would claim teaching black letter law as their paramount pedagogical goal. Instead, we are told, they teach a critical way of thinking. The Socratic Method, for example, challenges students by means of oppositional statements and lines of inquiry into how to properly read a case, or to synthesize several cases, and to arrive at a refined rule statement. Over time, and with consistent practice, students learn how to extract meaning from cases and to synthesize rules that permit analogical application to new circumstances. Modern strategies for transmitting this skill may differ, but the objective of the doctrinal class even today is to teach students to perceive logical connections and to extrapolate. Of course, doctrinal professors also instruct in a particular substantive context. The torts professor grounds instruction in duty, breach, and causation; the contracts professor speaks of offer and acceptance. But as to each, the pedagogical goals are nearly identical: to instruct students in a mode of analysis while – incidentally – giving them passing familiarity with a substantive body of law on which they will be tested in the future. The doctrinal class, properly understood, thus has its abstract elements (teaching of legal inquiry) and its practical applications (introduction of a specific vernacular).

What is it that we do in LRW instruction? We teach students to express legal arguments. Along the way, they learn to cite, find resources, and marshal authority. But at the same time, our fundamental focus is teaching students how to synthesize rules and reason analogically. We teach them to read cases critically, to discern logical rules, and to extend these rules into previously unanticipated situations. Just like the doctrinal professor, our stock in trade is immersing our students in the practice of legal analysis. Though fewer of us may channel our inner Professor Kingsfield as we do this, all the same; our fundamental objective differs little from that of the torts professor. Properly understood, then, our class has its abstract elements (teaching legal inquiry) and its practical applications (introduction of a specific vernacular).

The contracting job market, and mounting student debt, rightly should prompt all those in academia to navel-gaze and to ponder which among many methods of teaching legal inquiry best situates our graduates in the modern era. However, as LRW professors, we may want to be careful as we proceed. The long-term objective of situating LRW professors on terra firma within the academy may best be served by trumpeting the substantive aspects of our jobs first and foremost. ■

Using Real Legal Research Assignments to Teach Upper Level Students[1]

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As the legal market contracts and we can no longer expect all of our students to be exposed to sophisticated legal research assignments during summer or part-time jobs, law schools should embrace curricular innovations that expose students to real law practice.

Law teachers have a responsibility to prepare our students for practice. One way is to teach upper level research and writing using real legal research assignments from practicing lawyers. At Rutgers-Camden, I've taught students using real legal research assignments both (1) as part of the Law School's public interest program and (2) as a hybrid clinical-writing course.

My colleague Eve Biskind Klothen and I run the Pro Bono Research Project, which matches upper level students with legal research requests from non-profits, government agencies, or private attorneys working pro bono. Since 2003, under the joint supervision of a faculty member and the outside attorney, up to 20 students annually have researched issues for non-profits such as the Education Law Center, Volunteer Lawyers for the Arts, the Regional Housing Alliance, and government agencies such as the Philadelphia Commission for Human Relations and the Environmental Protection Agency.

Based on the model of the Pro Bono Research Project, in 2009, I created a course called Public Interest Research and Writing, which is now formally part of the law school clinic.

In both the Pro Bono Project and the course, all students work on real research assignments from outside attorneys, culminating in oral presentations to the outside lawyer. Students in the course get additional research training and, importantly, peer review every stage of the research and writing process, from research plans, outlines, and drafts to practice oral presentations. For students on the cusp of becoming attorneys, it is useful to learn how to provide peer feedback on both written and oral presentations. To remove concerns about client confidentiality for the course, all students work for the same outside entity.

The Pro Bono Research Project model has been adapted at Florida Coastal by Kirsten L. Clement, Robert Hornstein, Karen Millard, and Missy Davenport; and was taught as a course at Buffalo. The model is flexible: in 2009, I taught Public Interest Research and Writing both via distance learning and as a live class. Last year, my colleague Jason Cohen taught the course live with a focus on research for an LGBT organization and suggested we seek faculty approval to formally cross-register the course as a clinic, which the faculty approved.

Whether as a pro bono project or as a hybrid clinical-writing course, the model has benefits for students and public interest organizations. Students are motivated by the knowledge that their research will be used by a real attorney to help a real client, not end up in a recycling bin. Students may be able to use the memo or brief as a writing sample for job searches. Public interest or government attorneys appreciate that students can devote weeks or even a full semester to researching an issue in depth, while periodically seeking guidance from the outside attorney. Students appreciate that both the Pro Bono Project and the Public Interest Research and Writing course expose them to practical and sophisticated legal research and writing while still in law school. Especially given the current legal job market, when we can no longer assume that students will get this kind of exposure in summer jobs, law school administrations also may appreciate additions to the curriculum that introduce students to law practice. ■

[1] A version of this essay is included in Gerry Hess, Steven Friedland, Sophie Sparrow, and Michael Hunter Schwartz, *Techniques for Teaching Law II* (Carolina Academic Press, forthcoming 2011).

Preparing students for practice by adding small follow ups

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One easy way to make every major first-year assignment more practical and broadly effective is to dovetail each one with a class-related assignment that requires students to extrapolate what they have learned to different contexts.

We know many students will not work as litigators, and that few litigators ever write an appeal. Nonetheless, the first-year course often mimics a litigation and appellate firm—teaching office memos, trial motions, appellate briefs, and oral argument—because the nature of these assignments help beginning legal thinkers develop skills they can easily apply to other practice areas and other professions.

The problem is, students don't always get this. Even though I explained the goals of each assignment and walked carefully through each grading rubric, the summer after my first year teaching, a student e-mailed me for advice. She was doing well, but was worried about one writing project because she said, "they write differently" than we taught them to do. My heart sank. I realized I hadn't done a sufficient job showing this student, at least, why I taught formats such as CREAC and thesis sentences and how to use the theory behind those formats in projects beyond the office memo or appellate brief. I try not to make that mistake anymore.

Now, not only do I teach the requirements for each specific project, I interweave each major assignment with small, related projects that illustrate how the skills they've learned apply more broadly. An easy example relates to the concept of "audience." We teach students to write to the trained legal reader who is discerning, busy, and a bit cynical or suspicious. In class, we discuss how we might alter our tone depending on our supervisor's personality, or if a memo, for example, will be handed off to another lawyer, to a business client, or perhaps incorporated into a court filing. And I explain that students must practice writing to one type of reader to be able to better gauge the needs of any audience.

To take this a step further, at the University of Missouri we follow up the first office memo assignment with a client letter. We give the students a sample or two, and contrast the tone, formatting, structure, and writing style to those of an office memo. When time permits, the students also draft a client letter stemming from the first assignment. These exercises give their brains the "muscle memory" that helps them think about variations of tone, structure, formatting, and writing style in any new project targeted at a different audience.

As another example, at Missouri we teach our students to write a closed-universe complaint and answer. At its most basic, the assignment refines analytical skills and gives the students practice on one type of document that they may eventually produce. But the class discussion does not stop at the initial pleadings, or in Missouri court. For example, we compare several complaints and answers from Missouri and federal courts so they can learn to gauge on their own which information is universal, which is jurisdiction specific, and which was included due to the nature of the particular case – again developing the mental muscle memory to do these tasks when they are given other projects in practice. I also follow up by having my students search out document forms in our library and on court websites. These small inter-related assignments teach students to quickly find, evaluate, and manipulate sample documents with discernment.

Doing small, follow-up assignments is an easy way to enhance the projects we already assign, helping students develop metacognitive skills, better preparing them for a range of practice areas and to critically think and write in any other profession they may pursue. ■

Use Metacognitive[1] Strategies to Promote Learning and Advance Writing Proficiency

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Focusing on students' writing processes, rather than focusing on students' writing product, is an approach to teaching legal writing that works to develop professional proficiency in writing. There are many kinds of writing strategies, but metacognitive strategies in particular have been found useful for student writers to manage and control their processes of learning. This is because these strategies are related to the concept of *self-regulation*, a term that "refers to learners' ability to make adjustments in their own learning processes in response to their perception of feedback regarding their current status of learning."[3] To learn most effectively, students need to know what strategies expert writers may use, what purposes they serve, and how to select, employ, monitor, and evaluate their use of these strategies in legal writing context appropriately.

The purpose of this article is to suggest that explicit teaching of metacognitive strategies in context for different legal writing tasks not only promotes legal learning but also advances writing proficiency. The idea comes from empirical research and from my dissertation research[4] on six multilingual writers operating at professional levels of writing proficiency. All student participants had been developing writing ability and knowledge of English in academic legal context for work as international lawyers or as legal scholars with English as the legal *lingua franca* or global language. The purpose of my legal writing intervention was to help student writers meet disciplinary standards: that is, original and comprehensive research, correct in language use and wording, logical in large-scale (major issues and sub-issues) and in small-scale (individual issues) organization, clear and immediately comprehensible to a legal reader, concise according to law journal or law professor specifications, and socioculturally appropriate—with extensive use of footnotes. The use of metacognitive strategies assisted all the legal writers in my study to (a) develop their analytical thinking in written and oral speech, and to (b) enhance their existing competencies for writing. The aim was to build on student writers' planning competence, genre (rhetorical) competence, and communication competence. Explicit discussion of strategies in legal writing context helped the legal writers make efficient use of their time and produce an *effective* legal research product.

Explicit discussion of strategies in legal writing context helped the legal writers make efficient use of their time and produce an effective legal research product.

The figure below shows the kinds of metacognitive strategies found by student writers in my study to be particularly useful for legal writing. Teaching these strategies for specific legal writing tasks will help the writer develop his or her own work product[5].

Metacognitive strategies for legal writers to produce quality text and avoid plagiarism:

Planning
Organizing
Evaluating
Managing
Monitoring

Besides planning, organizing, evaluating, and monitoring language use, managing the writing process helped the student writers control the complex cognitive and social processes[6] involved in the production of legal text. Examples of the metacognitive strategies found useful by these student writers include the following:

P - Planning

Three categories of "reading to write strategies" were found particularly useful: conceptual, rhetorical, and linguistic. Examples from the study follow.

Conceptual: I read for a purpose.

Rhetorical: I noted aspects of organizational structure for reuse in my writing.

Linguistic: I noted key legal terms and phrases for reuse in my writing.

Understanding planning in terms of these strategies' categories for disciplinary literacy is useful for student writers to understand their writing processes and for teachers to give organized feedback and formative assessment. With organized feedback, students can problem-solve and teachers can isolate problem areas for revision. The end result is a structure and a process for guided revision that does not depend on editing student text but on student learning.

In addition, the following strategies were found particularly useful by student writers in all phases or stages in writing. Examples are:

- *I paraphrased information by putting source material into my own words.*
- *I summarized information simply by reducing text.*
- *I summarized information by selecting and reorganizing source text.*
- *I synthesized information by combining and connecting source text.*
- *I analyzed information by reflecting and breaking down source text into its parts.*

The use of these language skills contributed to students' thinking and writing from source text in the planning stage. Further, understanding "summary" as conscious, goal-directed actions for working with source text in the planning stage helped the student writers learn, annotate, and prepare for writing as critical thinkers, even when they were using a second academic or legal language.

O - Organizing

In the study, all students organized their writing from legal source text in formative stages:

1. Planning/pre-writing (*researching to learn*).
2. Drafting (*writing to learn*).
3. Revising (*writing to communicate*).

The research literature suggests that a process orientation provides a deeper tool for student writers, and for instructors, than surface-level editing practices. Engaging with students during their processes of writing acted as a catalyst for student learning and writing quality in my study. Further, the concept of "editing" was seen as a distinct step in revising one's own written work, with a focus on clarity, tone, and correctness. This step was especially useful for foreign-trained legal writers unfamiliar with process approaches to writing and composing analytical text, but is relevant to all expert writing.

The process approach also allowed for interactive feedback from the writing instructor to help move student writers from lower to higher level thinking skills that included analysis, synthesis, and evaluation of their own legal research and writing. This approach is known as *knowledge-transforming* (versus *knowledge telling*

or simply stating knowledge) in the writing research literature.[7] Process orientations for writing may include both *knowledge telling* and *knowledge-transforming*, and when that is the case, their combined use can be made explicit for student writers to learn within the context of their legal writing tasks.

E - Evaluating

Self-evaluation, with criteria for assessment, can also be made explicit for student writers. To illustrate from my study: *I compared my performance to the criteria for writing in the stage I was in—without worrying about my language, the outcome, or the final product.*

Student writers can use checklists[8] for each stage of writing to self-assess the quality of their own work for revising purposes, so they can meet the goals for the writing and the expectations of their legal readers. The students' checklist allowed the student writers in my study to compare their legal research product for stage 1 pre-writing with goals met by experts in the same stage. Similarly, the matching checklist for professors allowed writing teachers to provide feedback to students systematically. Legal writing teachers can research and share their goals and checklists for different legal writing contexts, thereby contributing to legal writing pedagogy and practice. Some of these goals and checklists exist in the literature already.

M M - Managing and Monitoring

Explicit strategies aimed at guiding student writers through the writing processes were found to work in the study. To illustrate: *I managed my shift from being learner-centered to reader-centered as a research writer, and I monitored the focus of my attention:*

- *conceptually;*
- *rhetorically;*
- *linguistically.*

With selective attention to language use, students in my study did not have to monitor their English usage while writing to produce a distinguished level writing product. The notion of thinking about writing in legal context as a recursive process—conceptually, rhetorically, and linguistically—from both a learner-centered view in the drafting stage to a reader-centered view in the revising stage, is important for control or self-regulation in legal writing. Literacy strategies can be made explicit for managing the shift from drafting to revising: that is, from writer-centered to reader-centered writing as discussed by Fajans and Falk,[9] and for monitoring language use in the revising stage.

Self-awareness of student writer process(es) for legal writing in my study allowed for learner transformation and writer development through the following:

- *self-reflection;*
- *planning how to proceed;*
- *monitoring my own performance on an on-going basis;*
- *getting feedback (conceptually, rhetorically, linguistically) when needed; and*
- *self-evaluation at key stages and upon task completion.*

Explicit teaching of writing strategies, with systematic use of strategies and quality assessment tools in legal writing context, enhances professional-level writing proficiency without teacher editing or intervention in students' text. All students can become self-regulated legal learners and writers.

How Legal Research and Writing Teachers Can Benefit

Legal research and writing teachers can benefit from this work by giving more attention to research-based strategies and quality checklists in legal writing context to help student writers develop existing competencies across recursive stages of writing rather than focus exclusively on student writers' product or language output.

Planning and re-evaluating (POEMM) were the key metacognitive strategies in my study that assisted student writers develop their analytical thinking and enhance their existing competencies. To re-evaluate, however, students needed clear goals for writing in stages that they could use as self-regulating checklists to guide and enhance their thinking and performance: for pre-writing, for drafting, and for revising. Goals for writing across stages or "levels of performance" require informed preparation on the part of writing instructors, advisors, and program directors.

Also associated with student writer development in this study was knowledge of how to manage the writing process to produce text that met disciplinary standards. Legal research and writing teachers need to be aware that editing student writing in-text can be less clear and helpful than giving explicit, organized feedback in

Writing strategies impact student writer processes, goals for writing in stages impact student writer product, and educational research impacts writing teacher practice.

categories: (a) conceptually, (b) rhetorically, and (c) linguistically. These categories from empirical research[10] promote reflection—for the teacher and for the student writer. They are learner-centered tools for re-working text and for self-editing that help to develop proficiency and enhance existing student writer competencies.

Finally, as writing teachers and as program directors, we all need to be aware of the important linguistic distinction between "usage" and "use" in our teaching discourse and community of practice. The former linguistic term deals with our comfort-zone of teaching native-speaker grammar, whereas the latter linguistic term deals with language use in legal writing context: that is, with the complex cognitive and social processes involved in developing legal writers' competencies or proficiency. Writing strategies impact student writer processes, goals for writing in stages impact student writer product, and educational research impacts writing teacher practice. ■

[1] Metacognition can be defined as thinking about thinking.

[2] Donna Bain Butler holds a Ph.D. in Second Language Education and Culture. She has taught LL.M. students, S.J.D. students, visiting legal scholars, and judges for 10 years.

[3] Edward Vockell, *Metacognitive Skills,* Educational Psychology: A Practical Approach, http://education.calumet.purdue.edu/vockell/edPsybook/Edpsy7/edpsy7_meta.htm (last visited April 4, 2011).

[4] Although my study was designed for second language legal writers from the U.S. and from overseas, the advice given in this article has been modified from the original to apply to all legal writers.

[5] Explicit strategies instruction is foundational for developing international LL.M. students and SJD student writers who come from different educational systems and scholarly traditions.

[6] Barbara Sitko, *Knowing How to Write: Metacognition and Writing Instruction*, in Metacognition in Educational Theory and Practice 93-115 (D.J. Hacker, J. Dunlosky, & A.C. Graesser eds., 1998).

[7] Carl Bereiter, & Marlene Scardamalia, *The Psychology of Written Composition* (1987).

[8] The author has formulated copyrighted checklists (SQAT/TQAT © Copyright by Donna Patricia Bain Butler 2010) for students to assess their own work and, separately, for professors to mirror their acknowledgement of the students' own assessments. Empirical research suggests that students tend to overestimate the quality of their writing, especially in the pre-writing and drafting stages. The professors' checklist helps the professor to recognize this overconfidence and to suggest strategies for helping the students to improve their writing at an early stage. The checklists are not included in this article but are available upon request from the author.

[9] Elizabeth Fajans, & Mary R. Falk, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers* (4th ed. 2011).

[10] Rachel Segev-Miller, *Writing from Sources: The Effect of Explicit Instruction on College Students' Processes and Products.* 4 L1–Educational Studies in Language and Literature 1, 21 (2004) (discussing intertextual processing strategies relevant to knowledge transforming).

Practice Makes Perfect: Making the CASE for Advanced LRW Courses

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In the academy, we evaluate ourselves in terms of best practices, but what does it mean to be the best in the practice?[1] For today's law students, the reality of entering the practice is that they will, in fact, practice. Law firms are looking for job-ready graduates who arrive with first-day skills, but the skills the firms seek are not all tied to whether a new associate can IRAC a memo for a senior partner. Law firms are looking for graduates who make the grade both personally and professionally.[2]

Law firms are looking for graduates who make the grade both personally and professionally.

As much as we love acronyms in Legal Writing, we might need a new one to help us remember what we can learn from practice in terms of our students' readiness to enter the profession. How can advanced LRW courses help students make their CASE to a potential employer?

C – Are our students collegial? We should be looking in advanced LRW courses for ways to incorporate group work and team-building exercises into the course material. Our students cannot compete in practice if they cannot show themselves to be reasonable, reliable colleagues.

A – Are our students adaptable? Upper level LRW courses can offer students more opportunities to apply their first-year skills in discrete practice settings. These opportunities can teach students how to transfer their existing skills to new contexts.

S – Are our students skillfully equipped? Beyond teaching basic research, analysis, and writing, we should be offering courses that allow students opportunities to develop specific skills with intentional focus. For example, upper level courses focused on advanced research, drafting, negotiation, or persuasion can help our students be better prepared for practice.[3]

E – Are our students efficient? Law is business. We should be challenging our students to become accurate but economical problem solvers. Simulation courses with billing requirements and case deadlines provide terrific settings to help our students learn the business of the law.

With creative and innovative upper level courses, we can help our students win their CASE for practice.

[1] *See generally* Roy Stuckey et al., *Best Practices for Legal Education* (Clin. Leg. Educ. Ass'n. 2007); *Sourcebook on Legal Writing Programs* (Eric B. Easton, ed., ABA 2d ed. 2006).

[2] See Kimberly K. Egan, *Everything Associates Didn't Learn in Law School*, The National Law Journal (Feb. 28, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202483306319&slreturn=1&hbxlogin=1.

[3] *See generally* Michael R. Smith, *Alternative Substantive Approaches to Advanced Legal Writing Courses*, 54 J. Leg. Educ. 119 (2004).

Program News

Arizona State University
The Legal Method and Writing Program at the Arizona State University's Sandra Day O'Connor College of Law has moved to a directorless model.

Seattle University
Anne Enquist reports that the law school faculty recently and overwhelmingly voted to allow current legal writing faculty members to apply for tenure and to advertise future, new hires as tenure-track positions.

University of Missouri-Kansas City School of Law
Wanda Temm, Clinical Professor of Law and Director of Legal Writing and Bar Services, anounces that the UMKC law faculty recently amended its by-laws to allow all full-time contract and contract-track faculty the right to vote on all matters except the hiring and promotion of tenure and tenure-track professors. This follows the faculty's recent resolution decreasing the class sizes of the first-year legal writing courses, which will result in the hiring of another full-time LW professor.

University of North Carolina
The 2010-11 academic year was one of unprecedented, positive program growth at Carolina Law in legal research and writing. Based on a foundation of strong faculty and student-body support, the first-year legal research and writing program will expand from its historical four-credit format to six credits, all graded. Additionally, the program is converting to a full-time teaching model, affording all Carolina Law students the opportunity to be taught research and writing in the first year by in-house, full-time faculty in sections of approximately seventeen students. The program will continue its traditional melding of academic support principles with the teaching of legal research and writing, with emphasis on increased opportunities for feedback and rewriting.

Also at **Carolina**, in anticipation of long-time Director **Ruth Ann McKinney's** retirement in 2012, Professor **Craig Smith**, presently Director of the first-year program (RRWA), has been appointed Assistant Dean for Legal Writing & Academic Success, as well as Director of RRWA, beginning this summer. Assistant Professor **Jon McClanahan** has been appointed Director of Academic Success, also beginning this summer. And Professors **Katie Rose Guest Pryal**, J.D., Ph.D., and **Aaron Harmon**, M.A., J.D., joined the program as full-time professors. A national search will be conducted in the 2011-12 academic year to fill five additional full-time faculty positions in the newly revised program.

University of the Pacific, McGeorge School of Law
The Global Lawyering Skills program at University of the Pacific, McGeorge School of Law made significant advancements in Spring 2011. First, both GLS I and GLS II were awarded an additional unit starting in academic year 2011-2012. This means both their first and second year required courses will have four units, for a total of eight required GLS units. Second, GLS faculty were given new titles and status. Four faculty members were promoted to Professor of Lawyering Skills and given 5 year presumptively renewable contracts consistent with ABA Standard 405(c): **Mary-Beth Moylan, Stephanie Thompson, Hether Macfarlane and Ed Telfeyan.** Several other faculty members were given the title Associate Professor of Global Lawyering Skills and two of those will be eligible for promotion to 405(c) status this coming academic year. The remaining faculty members are now Assistant Professors of Lawyering Skills and have a clear pathway to achieve the 405(c) status in the coming years. Pacific McGeorge is hosting the **2011 ALWD Conference** this June.

Washburn University School of Law
It's was a productive and landmark year in the history of Washburn Law's Legal Analysis, Research & Writing program. The school reached a major milestone this year as two more of its LARW Program faculty members, **Aïda M. Alaka** and **Jeffrey D. Jackson**, received tenure and were promoted to full professor. In addition, some faculty members were promoted into administration: **Aïda M. Alaka** will be the new

Associate Dean for Academic Affairs, and **Jalen O'Neil Lowry** will be the new Associate Dean of Students. Next year, Washburn will welcome two experienced professors to its program: **Joe Mastrosimone**, who has taught legal writing at George Washington University and at Kansas University, will join the Washburn faculty in a tenure track position, and **Emily Grant**, who has taught legal writing at Kansas University and the University of Illinois, will be a visitor. During the past year, **Emily Grant** was also a visiting professor.

Left to right: Emily Grant, Ellen Byers, Joe Mastrosimone, Aïda Alaka, Tonya Kowalski, and Jeff Jackson of the Washburn University School of Law

Hiring & Promotion

Arizona State University, Sandra Day O'Connor College of Law
Tamara Herrera, Clinical Professor of Law, was promoted to the position of Coordinator, Legal Writing Curriculum. **Amy Langenfeld**, Clinical Professor of Law, recently taught Common Law Method at Universite Paris Descartes V In Paris. In her class, law students from France, Mongolia, Spain, Italy, Poland, and Bahrain studied inductive reasoning, stare decisis, and the interaction between legislatures and courts in the United States. **Judy Stinson**, Clinical Professor of Law, was appointed Associate Dean for Professional Development and Legal Practice, effective July 1, 2011.

Barry University, Dwayne O. Andreas School of Law
Cathren Koehlert has accepted an invitation to join the Research and Writing Program as an Assistant Professor of Law effective next fall.

Boston University School of Law
Tina L. Stark will become Professor in the Practice of Law on July 1, 2011. Professor Stark was formerly a member of the Emory School of Law faculty.

Duquesne University School of Law
Julia Glencer, Erin Karsman, and Tara Willke were promoted from 405(c) status to tenure track.

Emory University
Nancy Daspit, Jenn Mathews, Jennifer Romig, and Julie Schwartz have been awarded five-year contracts under the law school's recently-adopted security of position policy for non-tenure-track faculty. This is the first year any LWRAP faculty were eligible for this promotion, and all four were unanimously approved.

Golden Gate University School of Law
Leslie Rose, Professor & Director of the Advanced Legal Writing Program, has been awarded tenure.

Indiana University School of Law – Indianapolis
Allison Martin has been promoted to Clinical Professor of Law.

Marquette University Law School
Alison Julien was promoted to Professor of Legal Writing in August 2010, and has now been awarded a five-year, presumptively renewable contract effective August 2011.

Nova Southeastern University, Shepard Broad Law Center
Olympia Duhart and **David Cleveland** were recently promoted from Associate to Full Professors of Law. Therefore, Nova's LSV program, consisting of 17 full-time professors (all of whom enjoy status that exceeds ABA Standard 405(c) requirements), now has four faculty members holding Full Professor rank. Professor Duhart also teaches Constitutional Law and Women and the Law. She serves on the Board of Governors for the Society of American Law Teachers. She is also on the Board of Advisors for the Institute for Law Teaching and Learning. Professor Cleveland also teaches Professional Responsibility, and Administrative Law Research Skills. He has also created and currently teaches Current Constitutional Issues: Internet Gambling Law.

Rutgers University – Camden
Ruth Anne Robbins, a former president of LWI, was promoted to Director of Lawyering Programs. **Carol Wallinger** was promoted from Clinical Associate to Clinical Professor (she already has clinical tenure). **Jason Cohen** was awarded the five-year presumptively renewable contract, which is Rutgers' form of "clinical tenure." **JC Lore** was given clinical tenure and also promoted to Clinical Professor. **Joanne Gottesman**, was also promoted to Clinical Professor. **Sandra Simkins** was promoted to Clinical Professor. Sandra will also take over as the department chair of Rutgers' clinics at the end of May. Finally, Rutgers' new associate dean will be **Victoria Chase**, the first chair domestic violence clinician at Rutgers.

Stetson University
Kirsten Davis, Professor and Director of the school's Research & Writing Program, received tenure. **Linda Anderson** and **Jeff Minneti** received programmatic tenure and were promoted to Professors of Legal Skills. **Jason Palmer** was promoted to Associate Professor of Legal Skills.

Suffolk University Law School
Shailini Jandial George and **Stephanie Hartung** were awarded clinical tenure with the rank of Professor of Legal Writing. **Kathleen Elliott Vinson**, Professor of Legal Writing and Director of Legal Practice Skills Program, has been elected to the position of Chair-Elect of the AALS Section on Legal Reasoning, Writing and Research. Professor Vinson also reports that she was granted a Sabbatical for the Fall 2011 semester.

The John Marshall Law School
Sonia Green received tenure and was approved by the school's Board of Trustees.

University of Dayton
Susan Wawrose, Professor of Lawyering Skills, was appointed Director of Graduate Law Programs (LLM/MSL) in Law and Technology. **Victoria VanZandt** has been promoted to full Professor of Lawyering Skills with a presumptively renewable five-year contract. The review committee and the Dean were especially impressed with Professor VanZandt's accomplishments in the important area of law school assessment of student learning and with her contributions to the Bench and Bar Outreach Project.

University of New Hampshire
Amy Vorenberg, Professor of Law, has been awarded "Alternative Security," which is UNH's form of clinical tenure.

University of Louisville, Louis D. Brandeis School of Law
Susan H. Duncan was granted tenure and will become the Associate Dean of Academic Affairs and Faculty Development, effective July 1, 2011.

University of Oklahoma
Elizabeth T. Bangs was appointed Assistant Professor of Law and Director of Legal Research, Writing & Analysis with a long-term, renewable contract. She had been a visiting professor at OU and the interim director. Previously, Professor Bangs was Director of the First-Year Legal Research & Writing Program and the Climenko Program at Harvard.

University or Oregon School of Law
Suzanne Rowe has been promoted to Full Professor.

University of the Pacific, McGeorge School of Law
Ben Bratman, Associate Professor of Legal Writing at the University of Pittsburgh School of Law, will serve as Visiting Global Lawyering Skills Professor at McGeorge during the 2011-2012 academic year.

University of Washington School of Law
Kate O'Neill will be promoted from Associate Professor to Professor in September 2011. **Sarah Kaltsounis**,

will be promoted from Lecturer to Senior Lecturer in September 2011.

Washington University Law – St. Louis
Denise Field received a four-year reappointment as Professor of Practice in the Legal Practice program.

Widener University School of Law – Wilmington
Rebecca Scalio has joined the full-time Legal Methods faculty. Also, Associate Profesor of Law and Director of the Legal Methods Program, **Mary Ellen Maatman**, announces that **Ned Luce, Doretta McGinnis, and Micah Yarbrough** were awarded five-year, presumptively-renewable contracts under Widener's new system for retention and review.

Widener University School of Law – Harrisburg
Ann Fruth has received the first five-year presumptively-renewable contract at Widener-Harrisburg. Professor Fruth served as Dean of Students for several years before joining the faculty as a Legal Methods Professor.

Publications, Presentations & Accomplishments

Aïda M. Alaka of the Washburn School of Law published *Learning Styles: What Difference Do the Differences Make?,* 5 Charleston L. Rev. 133 (2011) and *The Grammar Wars Come to Law School*, 59 J. of Legal Educ. 343 (2010). Professor Alaka also presented as follows: Poster Presentation, "No Law Student Left Behind: Reaching out to the New Legal Writer," 14th Biennial Conference, Legal Writing Institute, Marco Island, Florida, June 28, 2010; Co-Presenter, "Building a Bridge to Everywhere: Improving Transfer of Learning from Legal Writing Programs to Other Contexts," Teaching Law Practice Across the Curriculum, Institute for Law Teaching and Learning, Washburn University School of Law, Topeka, Kansas, June 18, 2010 (with **Tonya Kowalski**); Invited Speaker, "Phenomenology of Error in Legal Writing and The Grammar Wars Come to Law School," Virtual Legal Writing Conference: Annual Scholarship Highlights--New Voices and New Ideas in Legal Communication, Project for Excellence in Legal Communication, Stetson University College of Law, Gulfport, Florida, April 29, 2010.

Helen A. Anderson of the University of Washington School of Law, published *Changing Fashions in Advocacy: 100 Years of Brief-Writing Advice*, 11 J. App. Prac. & Process 1-17 (2010).

Deborah L. Borman and **Dana Hill**, Clinical Assistant Professors, Northwestern University, presented "Freeze! Using Improvisational Theatre Games to Prepare Students for Oral Argument" at the Eleventh Annual Rocky Mountain Conference in Las Vegas in March, 2011.

Kamela Bridges and **Wayne Schiess**, Lecturers in Legal Writing at the University of Texas School of Law, announce the publication of their book, *Writing for Litigation*, from Aspen Publishers, available in Spring, 2011.

Kamela Bridges

Wayne Shiess

Thomas Burch of the Florida State University College of Law announces two articles, one published and another forthcoming. The first is *Manifest Disregard and the Imperfect Procedural Justice of Arbitration*, 59 Kan. L. Rev. 47 (2010). The second, *Regulating Mandatory Arbitration*, is forthcoming in the Utah Law Review in 2011. Professor Burch also presented on these topics at the ADR Works-in-Progress Conference at the University of Oregon School of Law in October 2010; at the Colloquium on Labor & Employment Law at the Washington University School of Law and at Saint Louis University School of Law in September 2010; and at the Law & Society Annual Meeting in Chicago in May 2010.

Charles Calleros of the Sandra Day O'Connor School of Law, Arizona State University, was awarded the ABA "Spirit of Excellence" Award for his work with the diversity pipeline programs, K-12 through law school. Information about the award can be found at abanow.org/2011/02/stellar-careers-of-extraordinary-lawyers-honored-at-spirit-of-excellence-awards/. Professor Calleros has just published the Sixth Edition of his textbook, *Legal Method and Writing*, through Aspen. In this edition, he includes an analytical teaching tool called "Rules for Lina," in which a mother's rules for her daughter's evening social activities introduce the process of synthesizing a series of four "cases." These materials are available online, including videotaped enactments of the cases.

Kim D. Chanbonpin of the John Marshall Law School published *We Don't Want Dollars, Just Change: Narrative Counter-Terrorism Strategy, an Inclusive Model for Social Healing, and the Truth about Torture Commission*, 6 Nw. J. L. & Soc. Pol'y 1 (2011) (lead article). Professor Chanbonpin also moderated "Teaching Civil Law Faculty How to Incorporate the Case Method" at the Global Legal Skills Conference VI in May. Professor Chanbonpin is the Chair, Diversity Committee, AALS Section on Legal Writing, Reasoning, and Research (2011) and is a Member, LWI/ALWD Survey Committee (Summer 2011). In addition, she was on panels entitled "The Future of Reparations Work: Legal Theory, Practice, and Social Movements" at the SEALS conference (Summer 2011) and "Outsider's Theory Inside: The Next Generation," at LatCrit XVI (October 2011).

Lurene Contento, Assistant Professor and Writing Resource Center Director at the John Marshall Law School, Presented "Plagiarism: Moving From Indictment Toward Education" at the Capital Area Legal Writing Conference, George Washington University School of Law, Feb 2011. Professor Contento also served on the planning committee for the Global Legal Skills VI Conference at The John Marshall Law School, May 2011 and moderated "Teaching Legal Culture – Are We (and Should We) Be Promoting U.S. Values Abroad Through the Teaching of Legal English and Legal Writing to Non-U.S. Lawyers?" presented by **Mimi Samuel** and "May It Please the Court's Culture: International Implications in Appellate Advocacy" presented by **Suzanne Rowe**.

Christine Nero Coughlin, Professor of Legal Writing and Director of Legal Analysis, Writing & Research at Wake Forest University, has received the 2011 Teaching Innovation Award from The Wake Forest University Teaching and Learning Center. Professor Coughlin is *the* recipient of this award (it's only given to one person university-wide) for the course she developed this spring, "Legal Methods for Medical Professionals," which enabled fourth-year medical school students to do a one month "rotation" in the law school. The awards committee specifically praised the way that the course brought together students from the medical and law schools in an interactive pedagogical environment.

Kirsten Dauphinais of the University of North Dakota School of Law has been named the law school's recipient of the 2011 North Dakota Spirit Faculty Achievement Award. This award is given annually by the University of North Dakota Foundation to one faculty member per UND department or school for outstanding contributions in teaching, scholarship, and service.

Sabrina DeFabritiis, Associate Professor of Legal Writing at the Suffolk University Law School, was a presenter and moderator of the "Grading Papers and Handling Student Conferences" Panel Discussion at the LWI's Suffolk One-Day Workshop on December 3, 2010. Professor DeFabritiis also authored a Poster Presentation entitled "Barking Up the Wrong Tree: Companion Animals and the Judiciary's Failure to Keep Pace" at the 2011 AALS conference in San Francisco. Her law review article by that same title is forthcoming in the Northern Illinois University Law Review.

Olympia Duhart, Professor of Law, Nova Southeastern University, Shepard Broad Law Center, reports the following articles and books published or in process: *OutCrit Jurisprudence and Soldier Suicides: An Anti-Subordination Analysis*, Creighton Law Review (forthcoming); *Vulnerable Populations and Transformative Law Teaching: A Critical Reader*, (Carolina Academic Presss 2011); *On Rothko and Writing*,

Nova Law Review (forthcoming); *Using Legal Writing Portfolios and Feedback Sessions as Tools to Build Better Writers*, 24 The Second Draft 1 (Fall 2010) (with Anthony Niedwiecki). Professor Duhart also presented and/or moderated: "Course (Re)Design" at the Institute for Law Teaching and Learning Conference at Salmon P. Chase College of Law, Northern Kentucky University, in March, 2011, (with Gerry Hess, Michael Hunter-Schwartz and Sophie Sparrow); Pipeline Program, Society of American Law Teachers & Southeast/Southwest/Midwest People of Color Legal Scholarship Conference at Nova in March 2011; "Rhymes and Reason: How TLC, Tube Tops, and Teenage Babysitters Can Help Teach Legal Analysis," at Capital Area Legal Writing Conference at George Washington University Law School in February, 2011 (with Camille Lamar and Hugh Mundy); and "Advice for Late-Bloomers," Pipeline Program, Third National People of Color Legal Scholarship Conference, Seton Hall Unversity School of Law, in Seotember, 2010.

Susan Hanley Duncan, of the Louis D. Brandeis School of Law at the University of Louisville, published *A Legal Response is Necessary for Self Produced Child Pornography: A Legislator's Checklist for Drafting the Bill*, 89 Oregon L. Rev. 645 (2011).

Mary Dunnewold of Hamline University School of Law has published the following pieces: *Rethinking Case Briefing: Teaching Case Briefing as a Sustainable Skill*, 19 Perspectives: Teaching Legal Res. & Writing 11 (2010); *Professionalism 101: Obtaining Letters of Recommendation*, Student Lawyer, Oct. 2010, at 8; *Use and Abuse of Metadata,* Student Lawyer, Dec. 2010, at 8; *Social Networking: Friend or Foe?*, Student Lawyer, Jan. 2011, at 18; *You're a Law Student: What Should I Do?*, Student Lawyer, April 2011, at 18. Professor Dunnewold also presented "Geometric Proof as a Method for Structuring Legal Analysis" to the Minnesota Court of Appeals' "Quill and Bagel Society" in April 2011.

Elizabeth Fajans, of the Brooklyn Law School, reports that the Fourth Edition of her book, *Scholarly Writing for Law Students*, was published in January. Professor Fajans was also a panelist at the New York "Legal Writing Workshop for New Teachers," where she discussed "How a Writing Specialist Can Save You."

Miriam E. (Miki) Felsenburg and **Laura P. Graham**, of Wake Forest University School of Law, presented at the Empire State Legal Writing Conference in May, focusing on their second in a series of articles about improving the earliest part of the first-year Legal Writing course and curriculum to less traumatically and more successfully introduce beginning law students to the process of legal analysis. The article is available on SSRN under the title, *A Better Beginning: Helping Novice Legal Writers Shift Their Focus From* Product *to* Process and is forthcoming in the Regent University Law Review.

Denise Field, Jo Ellen Lewis, Jane Moul and Ann Shields, all Professors of Practice at **Washington University Law – St. Louis**, presented as part of the Teaching Methods section program at the American Association of Law Schools annual meeting in San Francisco in January, 2011. The title of their presentation was "From the Classroom to the Conference Room - Teaching Law Students the Essential Skill of Oral Communication." As part of their presentation, the presenters shared a video of current Washington University Law students describing their preparation and reflections on oral presentations students conducted as part of summer clerkships with various legal employers. The presenters produced and directed the video.

Linda C. Fowler

Linda C. Fowler, Associate Professor of Legal Analysis & Writing at Southern University Law Center, was selected SULC Professor of the Year for the Evening Division following a school-wide student vote.

Shailini Jandial George, of Suffolk University Law School, published an article, *Do Sexual Harassment Claimants Get Two Bites of the Apple? Sexual Harassment Litigation after* Fitzgerald v. Barnstable County School Committee, 59 Drake L. Rev. 1 (Fall, 2010).

J. Lyn Entrikin Goering, of Washburn School of Law, published *Tailoring Deference to Variety with a Wink and a Nod to Chevron: The Roberts Court and the Amorphous Doctrine of Judicial Review of Agency Interpretations of Law*, 36 J. Legis. 18 (2010). Professor Goering also presented as follows: Co-Presenter, "Professional Responsibility in the Legal Writing Classroom," Capital Area Legal Writing Conference, The George Washington University Law School, Washington, D.C., February 25, 2011; Co-Presenter, "Teaching the Mystique of Rule-Drafting and the Underlying Structure of Legal Analysis: Music, Math, and Magic," Teaching Law Practice Across the Curriculum, Institute for Law Teaching and Learning, Washburn University School of Law, Topeka, Kansas, June 17, 2010 (with **Richard K. Neumann, Jr.**, Hofstra University School of Law).

Stephanie Hartung, of Suffolk University Law School, published *The Limits of "Extraordinary Power": A Survey of First-Degree Murder Appeals Under Massachusetts General Laws Chapter 378, Section 33E*, in Volume 16 of the Suffolk Journal of Trial & Appellate Advocacy in Spring 2011.

Tamara Herrera, Clinical Professor of Law at the Sandra Day O'Connor College of Law, Arizona State University, publishes a regular monthly column for the "Maricopa Lawyer." In addition, she and colleagues, **Amy Langenfeld** and **Judy Stinson**, presented on "How to Find the Time and Support for Scholarship" at the Rocky Mountain Legal Writing Conference in March 2011.

Jeffrey D. Jackson, of the Washburn School of Law, has an article forthcoming called *Be Careful What You Wish For: Why McDonald v. City of Chicago's Rejection of the Privileges or Immunities Clause May Not Be Such a Bad Thing for Rights*, and is forthcoming in the Penn State Law Review. Professor Jackson also published *Putting Rationality Back into the Rational Basis Test: Saving Substantive Due Process and Redeeming the Promise of the Ninth Amendment*, 45 U. Richmond L. Rev. 491 (2011) and *Blackstone's Ninth Amendment: A Historical Common Law Baseline for the Interpretation of Unenumerated Rights*, 62 Oklahoma L. Rev.167 (2010). Professor Jackson also presented as follows: "Gender Diversity in the Kansas Judiciary," Safeguarding U.S. Democracy: The Quest for a More Diverse Judiciary, The League of Women Voters of Kansas Meeting, Topeka, Kansas, March 24, 2011 (with David Cleveland, Nova Southeastern School of Law); "Why the Supreme Court's Rejection of Privileges or Immunities in *McDonald v. City of Chicago* might not be a Bad Thing for Rights," University of Mississippi School of Law, Oxford, Mississippi, March 3, 2011.

LRW Faculty from Duquesne University School of Law at the Second Colonial Frontier Legal Writing Conference: Erin Karsman, Tara Willke, Julia Glencer, and Jan Levine

Erin Karsman, Asst. Professor of Legal Research & Writing at Duquesne University School of Law, reports that she and her colleagues, **Jan Levine, Tara Willke, and Julia Glencer** recently hosted "The Second Frontier Legal Writing Conference." The theme of the conference was "The Arc of Advanced Legal Writing: From Theory through Teaching to Practice." **Michael Smith** (Wyoming), **Elizabeth Fajans** (Brooklyn), and **Mary Ray** (Wisconsin) presented, and articles based on Professors Ray and Fajans' presentations will be published by the Duquesne Law Review in Spring 2011. In addition, **Sheila Miller**, **Susan Wawrose**, and **Victoria Van Zandt**, all of Dayton, spoke about their extensive surveys of the bench and bar, and reported on the advanced writing skills that lawyers and judges now believe new attorneys should have. Professors Glencer, Karsman, and Willke described the team-taught advanced legal writing "law firm simulation" course they created,

which was supported by an ALWD Research Grant. The closing session included a panel of law firm attorneys who addressed how law firms can be agents of curricular change and encouraging law schools to implement advanced legal writing courses. There were 62 attendees, including 52 law professors from 28 law schools.

Joe Kimble, of the Thomas Cooley Law School, was the principal drafter of the proposed new (or "restyled") Federal Rules of Evidence. They have been submitted to the Supreme Court and are scheduled to take effect in December 2011. In 2009, Professor Kimble wrote four articles in the Michigan Bar Journal called *Drafting Examples from the Proposed New Federal Rules of Evidence*. He listed the flaws in the current rules, so the articles might lend themselves to drafting assignments or exercises. He has recently written several other articles for the Bar Journal, including two in 2010 on footnoted citations. In May, he asked Michigan lawyers to choose between two versions of some passages that were identical except for the placement of citations. In June, he reported the results: readers preferred citations in footnotes. For a complete index of Plain Language columns in the Bar Journal — with links — Google "plain language column index."

Tonya Kowalski of the Washburn School of Law has a forthcoming Tulsa Law Review article called, *A Tale of Two Sovereigns: Danger and Opportunity in Tribal-State Court Cooperation*. Professor Kowalski also published *True North: Navigating for the Transfer of Learning in Legal Education*, 34 Seattle Univ. L. Rev. 51 (2010) and *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 Clinical L. Rev. 285 (2010). Professor Kowalski also presented as follows: "Toward a Pedagogy for Teaching Legal Writing in Law School Clinics," Stetson University College of Law, Gulfport, Florida, January 13, 2011; "Teaching the Third Sovereign: How and Why to Include Tribal Nations and Courts in Legal Writing Courses," 14th Biennial Conference, Legal Writing Institute, Marco Island, Florida, June 30, 2010; "The Transfer of Learning in Legal Education: Using Schema Theory to Connect the Curriculum," Teaching Law Practice Across the Curriculum, Institute for Law Teaching and Learning, Washburn University School of Law, Topeka, Kansas, June 17, 2010.

Terri LeClerq, University of Texas, and **Karen Mika**, Cleveland Marshall College of Law, recently published the Fifth Edition of the *Guide to Legal Style* through Aspen Publishers. The new edition is shorter and now includes more "robust" web exercises.

Betsy Lenhart, Assistant Professor of Practice, University of Cincinnati School of Law, was awarded the 2011 Goldman Prize for Excellence in Teaching, awarded annually to Cincinnati law professors who distinguish themselves in the classroom and who demonstrate excellence in teaching. Professor Lenhart also presented "Interpreting the Internet through the Eyes of a Historian: What Law Students (and Law Professors) Can Learn from the Research Techniques of Historians" at the Southeast Regional LW Conference in April at Mercer University School of Law.

Jo Ellen Lewis, Director of Legal Practice and Professor of Practice at **Washington University Law (St. Louis)**, presented as part of the "Nuts and Bolts" program at the one-day LWI workshop held at American University – Washington College of Law in December 2010. Professor Lewis also gave a panel presentation, "Teaching the Teachers – Lessons from Around the Globe" at the Global Legal Skills VI conference held at the John Marshall School of Law in May 2011. She presented with **Diane Penneys Edelman**, Villanova University School of Law, **Deborah B. McGregor**, Indiana University School of Law Indianapolis**,** and **Craig T. Smith, University of North Carolina School of Law - Chapel Hill.**

Sue Liemer, of Southern Illinois University School of Law, published *Bots and Gemots: Anglo Saxon Legal References in Harry Potter*, in the book, *The Law and Harry Potter* (Jeffrey Thomas & Frank Snyder, eds., Carolina Academic Press, 2010). Professor Liemer also anticipates publication of, *Via Video: Making Instructions Memorable*, 18 The Law Teacher, in the Spring 2011 issue. Professor Liemer presented "On the Origins of *Le Droit Moral*: How Non-Economic Values Came to Be Protected in French IP Law, which was one of 18 papers presented at the Villanova Law & Literature Symposium in October, 2010.

Ruth Ann McKinney and **Katie Rose Guest Pryal** of the University of North Carolina School of Law, launched *Core Grammar for Lawyers*, an online, self-instructional, interactive program through the Carolina Academic Press this Spring. Professor McKinney also received the faculty's Outstanding Service Award for "exemplary public service activity . . . measured by the time, effort, and creativity devoted to the activity, as well as the significance of its impact on the community or communities served." In bestowing the award, the faculty specifically cited the significant impact of the first-year writing program on the life of the law school.

Samantha Moppett, of Suffolk University Law School, presented "Think It, Draft It, Post It: Creating Legal Poster Presentations" at the March 2011 Rocky Mountain Legal Writing Conference.

Sarah Morath and **Ann Schiavone**, Assistant Professors of Legal Writing, at the University of Akron School of Law, are recipients of the 2011 Legal Writing Scholarship Grant sponsored by ALWD-LWI. They will study gender differences in legal writing using both qualitative and qualitative research methods.

Mary-Beth Moylan and **Stephanie Thompson**, of McGeorge School of Law, University of the Pacific, announce that they have just signed a contract for a new Global Lawyering Skills book. The book will be published by West and will be a comprehensive writing, research, and oral advocacy book including international and transnational, as well as domestic, legal problems.

Anthony Niedwiecki of the John Marshall Law School was elected President-Elect of ALWD.

Chad Noreuil, Clinical Professor of Law at the Sandra Day O'Connor School of Law, Arizona State University, recently published a book, *The Zen of Passing the Bar Exam,* through Carolina Academic Press, 2011.

Kate O'Neill of the University of Washington School of Law, published *"Should I Stay or Should I Go?" Covenants Not to Compete in a Down Economy: A Proposal for Better Advocacy and Better Judicial Opinions*, 6 Hastings Bus. L. J. 83 (2010).

Suzanne Rabe, Director of Legal Writing and Clinical Professor of Law at the University Arizona James E. Rogers College of Law, and **Stephen A. Rosenbaum**, formerly Staff Attorney, Disability Rights California, and current Lecturer in Law at the University of California, Berkeley School of Law and Stanford Law School, have published *A "Sending Down" Sabbatical: The Benefits of Lawyering in the Legal Services Trenches*, 60 J. Legal Educ. 296 (2010).

Sarah Ricks of the Rutgers School of Law-Camden, with contributions from **Evelyn Tenenbaum**, of the Albany Law School, authored *Current Issues in Constitutional Litigation: A Context and Practice Casebook* through Carolina Academic Press in 2011. The accompanying Teacher's Manual includes exercises, exams, and teaching notes. There is also a companion website containing guest speakers, links, and other teaching tools at constitutionallitigation.rutgers.edu. In addition, Professor Ricks, as a Commissioner on the Philadelphia Commission on Human Relations. helped draft a new ordinance expanding civil rights protections in Philadelphia and helped author the associated *Report and Recommendations* based on eleven public hearings on intergroup conflict in the public schools.

Leslie Rose, Professor & Director of the Advanced Legal Writing Program at Golden Gate University School of Law, presented at the AALS 2011 Annual meeting Section on Women in Legal Education (co-sponsored by the Section on Teaching Methods). Her paper was titled "Teaching Gender as a Core Value in the Legal Writing Classroom" and was presented as part of the panel on "'Sex'"in the Classroom: Teaching Gender as a Core Value."

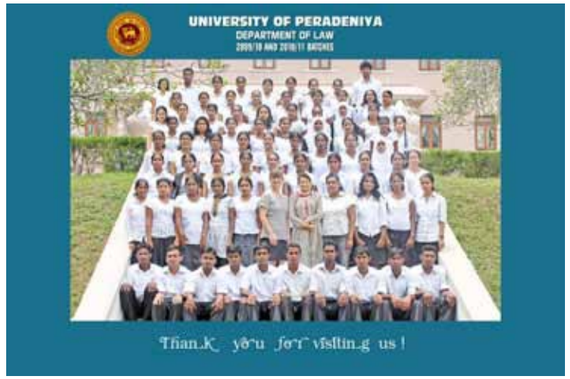
Suzanne Rowe, Professor and Director of Legal Research and Writing was recently the unanimous selectee for the 2011 Hollis Teaching Award by the University of Oregon's School of Law. As a peer reviewer noted,

Professor Rowe is "a dynamic and organized teacher who clearly enjoys her time with her students. [Her students] matched her enthusiasm and efficient conduct of the class with rapt attention." A student nominator noted further that "[s]he is a tireless teacher and mentor for her students. She demands a lot from [them] and they rise to the challenge." Another student nominator observed: "I felt more than adequately prepared to write for the court this summer, and my confidence and ability had everything to do with the preparation I'd gone through in Professor Rowe's class." In other news from the University of Oregon, Professor Rowe reported that she and her colleagues, **Megan McAlpin** and **Rebekah Hanley** along with **Sam Jacobson** of Willamette, have recently contributed articles to The Oregon Bar Bulletin's monthly column called "The Legal Writer." Professor Rowe's recent article was *Painful Prose: The Difficulty of Writing.* Professor Hanley wrote *Notes on Quotes: When and How to Borrow Language.* Professor Jacobson contributed *What's Your Point?* Professor McAlpin contributed *Celebrating Dependence: The Joys of Subordinate Clauses*.

Suzanne Rowe

Megan McAlpin

Mimi Samuel, Associate Professor of Lawyering Skills at Seattle University School of Law, taught a 6-week Legal Research and Writing class at the University of Peradeniya in Sri Lanka, as part of a Fulbright Specialist grant in February-March 2011. This was the first time that a Legal Research and Writing course has been offered in any university in Sri Lanka.



Deborah Schmedemann, of the William Mitchell College of Law, recently authored a book and article and presented at two conferences. Her book is *Thorns and Roses: Lawyers Tell Their Pro Bono Stories* (Carolina Academic Press 2010). The book is an anthology of a dozen, first-person narratives of lawyers' stories in various areas of practice followed by study questions. Her article was *Navigating the Murky Waters of Untruth in Negotiation: Lessons for Ethical Lawyers,* 12 Cardozo J. Conflict Resol. 83 (2010). Professor Schmedemann's presentations were: "Navigating the Murky Waters of Untruth" at the AALS ADR Section Works-in-Progress Conference in Eugene, Oregon in October, 2010; and "Lead Them into Temptation: Negotiation Ethics and the First Year of Law School" at the ABA ADR Section 13th Annual Spring Conference Legal Educators Colloquium in Denver in April 2011.

Sheila Simon, an admired and highly respected member of the Legal Writing community and former professor at Southern Illinois University has been sworn in as the Lieutenant Governor of the State of Illinois. Lt. Gov. Simon reports that she is very much enjoying being the LG, but is still a legal writing professor "at heart."

Carrie Sperling, Associate Clinical Professor of Law at the Sandra Day O'Connor College of Law, Arizona State University, recently presented: "Why Susie Strives Harder and Kimberly Crumbles after Receiving Feedback and How to Arm Kimberly with Susie's Resilience" at the Rocky Mountain Legal Writing Conference in March 2011.

Kenneth Swift of Hamline University School of Law published *Lessons Learned in Giving Writing Exams*, 24 The Second Draft 15 (Fall 2010).

Hollee Schwartz Temple, of West Virginia University, announces her new book, *Good Enough is the New Perfect: Finding Happiness and Success in Modern Motherhood*, released nationally by Harlequin's Nonfiction division in May 2011. Based on exclusive data and more than 100 in-depth interviews, the book builds on the growing "anti-perfection parenting" movement by being the first to present empirical evidence that this philosophy offers an advantage. Professor Temple and her co-author, Chicago Journalist **Becky Beaupre Gillespie**, discovered a paradigm shift in motherhood today as more and more mothers move from a "never enough" attitude toward a "good enough" mindset and report more confident, successful, and happier motherhood experiences.

Stephanie Thompson, Hether Macfarlane, Jenny Darlington-Person, and **Monica Sharum**, all of Pacific McGeorge School of Law, presented various topics at the December, 2010 LWI One-Day Workshop at Santa Clara University School of Law.

David I. C. Thomson, Legal Practice Professor and Director, Lawyering Process Program, University of Denver Sturm School of Law, published a book, *Skills & Values: Discovery Practice* (LexisNexis/Matthew Bender 2010). The book is a textbook for an upper level pre-trial course, with an extensive online component. The website link is http://www.discoveryskills.com.

Brenda Tofte, of Hamline University School of Law, was a panel presenter at the Tulsa, Oklahoma One-Day LWI Workshop in December, 2010, on two panels: "Designing Assignments" and "Grading." Professor Tofte also presented a talk on careers in law to middle and high school students at "Neighborhood House" in St. Paul, MN, in December, 2010.

Mary Trevor of Hamline University School of Law published a series of articles (with **Giuseppe DePalo**) in Worldly Perspectives, 28-29 Alternatives to High Cost Litig. (April 2010 – Mar. 2011). The articles covered: Jordan, Algeria, Tunisia, Morocco, Bulgaria, Romania, Latvia, Poland, Slovakia, Greece, and Portugal. Professor Trevor also presented (with **Kimberly Holst**) "Culture Shock! Acclimating Law Students to the Culture of Law Through Legal Writing" at the Rocky Mountain Legal Writing Conference in March 2011.

Kathleen Elliott Vinson, Professor of Legal Writing and Director of the Legal Practice Skills Program at Suffolk University Law School recently published *The Blurred Boundaries of Social Networking in the Legal Field: Just "Face" It*, 41 U. Memphis L. Rev. 355 (2010). The article is available on Professor Vinson's SSRN site at papers.ssrn.com/sol3/papers.cfm?abstract_id=1666462.

Marilyn Walter, Professor and Director of the Writing Program at Brooklyn Law School, recently authored "*Writing as Conversation:" Using Peer Review to Teach Legal Writing*, 16 J. Legal Writing 411 (2010). Professor Walter was also a Panelist at the recent Scholar's Forum held in connection with the Empire State Legal Writing Conference in May.

Susan Wawrose, Sheila F. Miller, and **Victoria L. VanZandt,** all of the University of Dayton School of Law, recently presented work they did for their Bench & Bar Outreach Project. Their presentations were: "Listening to the Bar: Using Surveys and Focus Groups to Stay Current with Trends in Law Practice**,"** at the Second Annual Empire State Legal Writing Conference in New York City in May 2011; "A Different Kind of Group Work: Using Focus Groups to Learn From Legal Employers," at the Eleventh Annual Rocky Mountain Legal Writing Conference in March 2011; and "Guidance from the Bench & Bar, The Arc of Advanced Legal Writing: From Theory Through Teaching to Practice," at The Second Colonial Frontier Legal Writing Conference in Pittsburgh, in March 2011. Professor Wawrose also moderated a

roundtable on LLM/MSL programs, "Can We Talk?: Roundtable Discussion for Directors and Administrators of Graduate (LLM/MSL) Programs," at the Global Legal Skills Conference VI, in Chicago in May 2011.

Ursula Weigold, Director of Legal Research and Writing at the University of Wisconsin School of Law, spoke to the Law Librarians Association of Wisconsin in February 2011, on "Teaching Law Students How to Research — The Law School Perspective."

Mark E. Wojcik of The John Marshall Law School-Chicago, a member of the board of the Legal Writing Institute, was elected Chair of the Association of American Law Schools Section on Legal Writing, Reasoning, and Research. He announced that the AALS Section would have its first section field trip (to the Law Library of the Library of Congress) during the 2012 AALS Annual Meeting in Washington, D.C. Professor Wojcik also co-chaired the sixth Global Legal Skills Conference, which attracted more than 200 attendees from around the world to the conference held at The John Marshall Law School in May 2011. Also in May, he conducted a workshop in Cairo for Egyptian law professors. ■

Call for Submissions

Diversity Issues in the Teaching of Legal Research and Writing

The fall 2011 Issue of The Second Draft will address issues related to diversity in the teaching of legal research and writing. As teachers and practitioners in skills programs, legal writing faculty often model behavior and discuss "real-world" issues with law students. To ensure that our students receive the maximum educational benefit from a practice-based program, we should consider how issues of diversity arise in the context of skills education. This includes cross-cultural training as it pertains to client counseling, interviewing and representing persons from varied backgrounds, e.g., ethnic, linguistic, racial, religious, LGBT and persons with physical or mental disabilities. A focus on the diversity of audience in the legal writing classroom also frames this inquiry. Articles might consider how to teach students these skills or raise additional issues related to diversity in the classroom that legal writing faculty should address.

The deadline for submissions for the Fall 2011 issue is August 15, 2011. Please send your submission as an e-mail attachment to TheSecondDraftLWI@gmail.com. Submissions should be in Microsoft Word. Please include at the top of the submission your name(s), school, address (including city, state, and zip code), e-mail address, and telephone. We request that submissions be limited to approximately 1200 words.